

NOTTINGHAMSHIRE HEALTHCARE NHS FOUNDATION TRUST

CONSTITUTION

March 2016

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1. 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

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

References in this Constitution to legislation include all amendments, replacements or re-enactments made and include all sub-ordinate legislation made thereunder.

Headings are for ease of reference only and are not to affect interpretation.

If there is a conflict between the provisions of this Constitution and the provisions of any document referred to herein or the law then the provisions of this Constitution shall prevail unless the law requires otherwise.

In this Constitution:

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

“the 2012 Act” means the Health and Social Care Act 2012.

“Accountable Officer” means the NHS Foundation Trust Officer responsible and accountable for funds entrusted to the Trust and discharging the functions specified in Paragraph 25(5) of Schedule 7 of the 2006 Act. For the Trust, this shall be the Chief Executive

“Annual Accounts” means those accounts prepared by the Trust pursuant to paragraph 25 of Schedule 7 of the 2006 Act

“Annual Members Meeting” is defined in paragraph 11 of this Constitution

“Applicant NHS Trust” means the Nottinghamshire Healthcare NHS Trust as established under the Nottinghamshire Healthcare National Health Service Trust (Establishment) Order 2000 No. 2908 (the Establishment Order) as amended by the Nottinghamshire Healthcare National Health Service Trust (Establishment) Amendment Order 2011 No.1518

“Appointed Governor” means a Governor Member appointed by a Partner Organisation

“Board of Directors” means the Board of Directors of the Trust as constituted in accordance with this Constitution

“Chairman” means the Chairman of the Council of Governors and Board of Directors appointed in accordance with the Constitution to ensure that the Council of Governors and the Board of Directors discharge their overall responsibilities for the Trust as a whole. The expression “Chairman of the Trust” shall be deemed to include the Vice Chairman or any other Non-Executive appointed in the event that the Chairman is absent from the meeting or is otherwise unavailable

“Chief Executive” means Chief Executive of the Trust and Accountable Officer

“Code of Conduct” means any code which the Trust may publish from time to time to govern or guide the conduct of the Board of Directors, Council of Governors and Directors and Officers of the Trust

“Constitution” means this constitution and all annexes to it.

“Council of Governors” means the Council of Governors of the Trust as constituted in accordance with this Constitution

“Director” means a member of the Board of Directors and includes both Executive Directors and Non-Executive Directors

“Elected Governor” means a Governor elected by the Public, Patient, Service User and Carer Constituency or the Staff Constituency

“Executive Director” means an Executive Director of the Trust

“Finance Director” means the Finance Director of the Trust

“Financial year” means:

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

“Forward Plan” means the document prepared by the Trust pursuant to paragraph 27 of Schedule 7 of the 2006 Act

“Governor” means a member of the Council of Governors elected or appointed as provided by the Constitution

“Governors’ Code of Conduct” means the Code of Conduct for Governors of the Trust as adopted by the Applicant NHS Trust and as amended from time to time by the Trust, which all Governors must subscribe to

“Member” means a member of the Trust

“Model Rules for Elections” means the election rules set out in Annex 4 of this Constitution

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

“NHS Foundation Trust Code of Governance” means the “NHS Foundation Trust Code of Governance (December 2013) as issued by Monitor (as updated or replaced)

“Non-Executive Director” means a voting member of the Board of Directors who does not hold an executive office of the Trust

“Officer” means an employee of the Trust or any person holding a paid appointment or office with the Trust

“Partner Governor” means a Member of the Council of Governors other than an elected Public, Patient, Service User and Carer Constituency Governor or Staff Constituency Governor

“Partner Organisation” means an organisation that may appoint Partner Governors and which is specified in Annex 4 of this Constitution

“Public, Patient, Service User and Carer Constituency” means the constituency formed of eligible public, patient, service user and carer members of the Trust

“Secretary” means the person appointed by the Trust to perform the duties of the Secretary of the Trust as set out in this Constitution

“Staff Constituency” means the constituency formed of those staff eligible to be members of the Trust and have not opted out of membership

2. Name

- 2.1 The name of the NHS Foundation Trust is Nottinghamshire Healthcare NHS Foundation Trust (the Trust).

3. Principal purpose

- 3.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Trust may provide goods and services for any purposes related to:
 - 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
 - 3.3.2 the promotion and protection of public health.
- 3.4 The purpose of the Trust includes providing education, training and research and other facilities for purposes related to the provision of health care.
- 3.5 The Trust may carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others.
- 3.6 The Trust may fulfil prescribed health-related functions of any local authority as specified by an agreement or arrangement made under Section 75 of the 2006 Act.
- 3.7 The Trust may also carry on activities other than those mentioned in the paragraph 3.1 to 3.6 above. These activities must be for the purpose of making additional income available in order to better carry on its principal purpose.

4. Powers

- 4.1 The Trust is to have all of the powers of an NHS Foundation Trust as set out in the 2006 Act.
- 4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3 Subject to any restriction contained in this Constitution or in the 2006 Act or the 2012 Act and to paragraph 4.4 below, any of these powers may be delegated to a committee of Directors or to an Executive Director.

- 4.4 Where the Trust is exercising functions of the managers pursuant to section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorised by the Board of Directors, each of whom must be neither an Executive Director of the Trust, nor an employee of the Trust.

5. Membership and Constituencies

- 5.1 The Trust shall have Members, each of whom shall be a member of one of the following constituencies:
- 5.1.1 a Public, Patient, Service User and Carer constituency
 - 5.1.2 a Staff constituency

6. Application for Membership

- 6.1 An individual who is eligible to become a Member of the Trust may do so on application to the Trust.
- 6.2 Applications for membership will be handled by the Trust in accordance with the provisions of Annex 8

7. Public, Patient, Service User and Carer Constituency

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a Public, Patient, Service User and Carer constituency may become or continue as a member of the Trust.
- 7.2 Those individuals who live in an area specified for a Public, Patient, Service Users and Carer constituency are referred to collectively as the Public, Patient, Service User and Carer Constituency.
- 7.3 The minimum number of members in each area for the Public, Patient, Service User and Carer Constituency is specified in Annex 1.
- 7.4 Further provisions relating to membership of the Public, Patient, Service User and Carer constituency are set out in Annex 8

8. Staff Constituency

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

- 8.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into five descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.
- 8.6 For the purposes of paragraph 8.1 above, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply 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.
- 8.7 Individuals who are eligible to be a member of the Staff Constituency may not become or continue as a member of more than one Staff Class, and individuals who are eligible to join more than one Staff Class, shall be allocated by the Secretary in his absolute discretion to the Staff Class for which they are primarily employed by the Trust.
- 8.8 For the avoidance of doubt, the chairman and other non-executive directors are not eligible to be members of the Staff Constituency.
- 8.9 Further provisions relating to membership of the Staff Constituency are set out in Annex 8.

9. Automatic Membership by Default – Staff

- 9.1 An individual who is:
 - 9.1.1 eligible to become a member of the Staff Constituency, and

9.1.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency

shall become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.

10. Restriction on Membership

- 10.1 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.
- 10.2 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.
- 10.3 An individual must be at least 12 years old to become a member of the Trust.
- 10.4 Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Trust are set out in Annex 8.

11. Annual Members' Meeting

- 11.1 The Trust shall hold an annual meeting of its Members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.
- 11.2 The Annual Members' Meeting shall be held no later than 30 September in each year.
- 11.3 Further provisions about the Annual Members' Meeting are set out in Annex 6 para. 4.4 and Annex 8 Section 7.

12. Council of Governors – Composition

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

- 12.2 The composition of the Council of Governors is specified in Annex 3
- 12.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency.
- 12.4 The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

13. Council of Governors – Election of Governors

- 13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 13.2 The Model Election Rules as published from time to time by the Foundation Trust Network form part of this Constitution. The Model Election Rules current at the date of the Trust's authorisation are attached at Annex 4.
- 13.3 A subsequent variation of the Model Election Rules by the Foundation Trust Network shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 46 of the Constitution (amendment of the Constitution).
- 13.4 An election, if contested, shall be by secret ballot.

14. Council of Governors - Tenure

- 14.1 An elected Governor may hold office for a term(s) of up to 3 years per term
- 14.2 An elected Governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 14.3 An elected Governor shall be eligible for re-election at the end of his term but may not serve for more than 3 terms in total.
- 14.4 An appointed Governor may hold office for a term(s) of up to 3 years per term.
- 14.5 An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 14.6 An appointed Governor shall be eligible for re-appointment at the end of his term but may not serve for more than 3 terms in total.

14.7 Further provisions relating to a Governor's tenure of office are set out in Annex 5

15. Council of Governors – Disqualification and Removal

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

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

15.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);

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

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

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

15.3 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 and 6.

15.4 Annexes 6 and 8 of the Constitution make provision for the removal of Governors.

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 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 Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 26.1 / paragraph 27.1 below) or, in his absence the Vice Chairman (appointed in accordance with the provisions of paragraphs 28.1 and 28.2 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 unless the Council of Governors resolves that members of the public be excluded from the meeting, on the grounds that publicity would be prejudicial to the public interest or the interests of the Trust by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business to be transacted or the proceedings.

17.3 The Council of Governors may invite the Chief Executive or any other member of the Board of Directors, or a representative of the auditor, or other advisers to attend a meeting of the Council of Governors.

17.4 The Chairman or in his absence, the person presiding at the meeting, may exclude any person present from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

17.5 The Chairman, or in his absence, the person presiding at the meeting, may exclude any person present from a meeting of the Council of Governors for a breach of Standing Orders relating to the conduct of meetings.

17.6 The Council of Governors shall hold not less than 4 general meetings in each financial year, including an annual meeting no later than 30 September in each year.

17.7 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

- 18.1 The Standing Orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 6.

19. Council of Governors – Referral to the Panel

- 19.1 In this paragraph, the “Panel” means a panel of persons appointed by Monitor to which a Governor of an NHS Foundation Trust may refer a question as to whether the Trust has failed or is failing-

19.1.1 to act in accordance with this Constitution, or

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

- 19.2 Subject to paragraph 19.3, a Governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

- 19.3 Where practicable, the Council of Governors shall consult the Board of Directors prior to voting to approve a referral in accordance with paragraph 19.2.

20. Council of Governors - Conflicts of Interest of Governors

- 20.1 If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it.

- 20.2 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 and remuneration

- 21.1 The Trust may pay travelling and other costs and expenses to members of the Council of Governors at such rates as the Board of Directors decides from time to time.

- 21.2 For the avoidance of doubt, members of the Council of Governors are not to receive remuneration, but can receive expenses incurred as part of their role as Governors

22. Council of Governors – Further Provisions

- 22.1 Further provisions with respect to the Council of Governors are set out in Annex 5. These include:
- 22.1.1 Terms of Office;
 - 22.1.2 Transitional Provisions for the Initial Elected Governors;
 - 22.1.3 Eligibility to be on the Council of Governors;
 - 22.1.4 Vacancies;
 - 22.1.5 Roles and Responsibilities of Governors;
 - 22.1.6 Declarations; and
 - 22.1.7 Nominations and Remuneration Committee.

23. Board of Directors – Composition

- 23.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.
- 23.2 The Board of Directors shall comprise:
- 23.2.1 a Non-Executive Chairman
 - 23.2.2 a maximum of 7 other Non-Executive Directors; and
 - 23.2.3 a maximum of 7 Executive Directors but in any event not more than the number of Non-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 (within the meaning of the Medical Act 1983) 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 within the meaning of the Nurse and Midwifery Order 2001 (SI 2002/253).
- 23.8 One of the Executive Directors is accountable to the Board of Directors for the Trust's high security psychiatric services.

- 23.9 The validity of any act of the Trust is not affected by a vacancy among the Directors or by any defect in the appointment of any Director.
- 23.10 In the event that the number of Non-Executive Directors (including the Chairman) is equal to the number of Executive Directors, the Chairman (and in his absence, the Vice Chairman), shall have a casting vote at meetings of the Board of Directors in accordance with the Standing Orders for Directors attached at Annex 7, and will in any event have a casting vote when a vote of all members of the Board of Directors present is tied.
- 23.11 Subject to the provisions of paragraphs 23.3 to 23.8 above, the Board of Directors shall determine any change in the number of Directors, provided that any change in the number of Directors is within the range set out in paragraph 23.2 above.
- 23.12 The Trust may confer on senior staff the title of "Director" as an indication of their responsibility within the Trust but such persons are not Directors of the Trust for the purpose of the 2006 Act ("statutory Directors") unless they are a member of the Board of Directors and will not have voting rights of statutory directors or any power to bind the Trust.
- 23.13 If:
- 23.13.1 An Executive Director is temporarily unable to perform his duties due to illness or some other reason (the "Vacant Director"); and
 - 23.13.2 The Board of Directors agree that it is inappropriate to terminate the Vacant Director's term of office and appoint a replacement Director; and
 - 23.13.3 The Board of Directors agree the duties of the Vacant Director need to be carried out;
 - 23.13.4 Then the Board of Director's Nomination and Remuneration Committee with the Chief Executive may appoint an acting Director as an additional Director to carry out the Vacant Director's duties temporarily.
- 23.14 For the purposes of paragraph 23.13, the maximum number of Directors that may be appointed under paragraph 23.2 may be relaxed.
- 23.15 The Acting Director will vacate office as soon as the Vacant Director returns to office.
- 23.16 The Acting Director shall be responsible for his own acts and defaults and he shall not be deemed to be the agent of the Vacant Director.

24. Board of Directors – General Duty

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

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 he is a member of a Public, Patient, Service User and Carer Constituency, or

25.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and

25.3 he is not disqualified by virtue of paragraph 31 below.

25.4 The Chairman shall not be a former Chief Executive of the Trust.

26. Board of Directors – Appointment and Removal of the Chairman 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 Chairman of the Trust and the other Non-Executive Directors.

26.2 Removal of the Chairman or another Non-Executive Director shall require a resolution to be submitted by one Governor which must be seconded by not less than ten Governors including at least three Elected Governors and two Appointed Governors, and requires the resolution in question to be approved by three-quarters of the total number of members of the Council of Governors.

26.3 The Governor sponsoring the resolution mentioned in paragraph 26.2 above shall provide written reasons in support of the resolution to the Chairman or Non-Executive Director in question, who shall be given the opportunity to respond to such reasons.

26.4 In making any decision to remove either the Chairman or a Non-Executive Director under paragraph 26.2 above, the Council of Governors shall take into account the results of the annual appraisal

concerning the Chairman (or, as the case may be) the Non-Executive Director in question.

- 26.5 If any resolution to remove the Chairman or a Non-Executive Director is not approved at a meeting of the Council of Governors in accordance with paragraph 26.2 above, no further resolution can be put forward to remove such Non-Executive Director, or the Chairman which is based on the same reasons within 12 calendar months of the meeting of the Council of Governors at which the resolution mentioned in paragraph 26.2 above was considered.
- 26.6 The initial Chairman and the initial Non-Executive Directors are to be appointed in accordance with paragraph 27 below.
- 26.7 Subject to the provisions of paragraph 27 below, new Non-Executive Directors and the Chairman will be appointed using the procedures set out at paragraph 3.9 and 3.10 of Annex 7.

27. Board of Directors – Appointment of Initial Chairman and Initial other Non-Executive Directors

- 27.1 The Council of Governors shall appoint the Chairman of the Applicant NHS Trust as the initial Chairman of the Trust, if he wishes to be appointed.
- 27.2 The power of the Council of Governors to appoint the other Non-Executive directors of the Trust is to be exercised, so far as possible, by appointing as the initial Non-Executive Directors of the Trust any of the Non-Executive Directors of the Applicant NHS Trust (other than the Chairman) who wish to be appointed.
- 27.3 The criteria for qualification for appointment as a Non-Executive Director set out in paragraph 26 above (other than disqualification by virtue of paragraph 31 below) do not apply to the appointment of the initial Chairman and the initial other Non-Executive Directors in accordance with the procedures set out in this paragraph.
- 27.4 An individual appointed as the initial Chairman or as an initial Non-Executive Director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chairman or (as the case may be) Non-Executive Director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

28. Board of Directors – Appointment of Vice Chairman, Reserve Chairman and Senior Independent Director

- 28.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as the Vice Chairman.
- 28.2 The Council of Governors shall appoint the Vice Chairman of the Applicant NHS Trust as the initial Vice Chairman of the Trust, if he wishes to be appointed.
- 28.3 If the Chairman and the Vice Chairman are both absent from a meeting of the Council of Governors or are absent temporarily on the grounds of a declared conflict of interest, the Council of Governors shall appoint another Non-Executive Director to preside (the "Reserve Chairman") in accordance with the provisions of the Standing Orders for the Governors.
- 28.4 If the Chairman or (as the case may be) the Vice Chairman is unable to discharge his functions as Chairman of the Trust, another Non-Executive Director will be selected by the Chief Executive and a Non-Executive Director to be the "Acting Chairman" of the Trust until such time as the Chairman or (as the case may be) the Vice Chairman is able to discharge his functions as Chairman, or a new Chairman is appointed by the Council of Governors in accordance with paragraph 26 above.
- 28.5 The Board of Directors shall appoint one of the independent Non-Executive Directors to be the Senior Independent Director, having consulted with the Council of Governors before so doing.
- 28.6 The Board of Director shall appoint the Senior Independent Director of the Applicant NHS Trust as the initial Senior Independent Director of the Trust, if he wishes to be appointed.
- 28.7 The term of office of the appointed Senior Independent Director shall be for a period not exceeding the remainder of his term as a Non-Executive Director.
- 28.8 Any Non-Executive Director appointed to the office of Senior Independent Director may at any time resign from the office by giving notice in writing to the Chairman. The Board of Directors (in consultation with the Council of Governors) may thereupon appoint another Non-Executive Director as Senior Independent Director in accordance with the provisions of paragraph 28.5 above.
- 28.9 The Senior Independent Director shall perform the role set out within the NHS Foundation Trust Code of Governance.

29. Board of Directors - Appointment and Removal of the Chief Executive and Other Executive Directors

- 29.1 The Chairman and Non-Executive Directors shall appoint or remove the Chief Executive.
- 29.2 Subject to the provisions of paragraph 30.2 below, the appointment of the Chief Executive shall require the approval of the majority of members of the Council of Governors present and voting at a meeting of the Council of Governors
- 29.3 The initial Chief Executive is to be appointed in accordance with paragraph 30 below.
- 29.4 A committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive directors.
- 29.5 In the event the Chief Executive is temporarily unable to perform his duties due to illness or some other reason, the person identified as the Deputy Chief Executive will fulfill the role and functions of the Chief Executive, during the period of absence.

30. Board of Directors – Appointment and Removal of Initial Chief Executive

- 30.1 The Non-Executive Directors shall appoint the Chief Executive of the Applicant NHS Trust as the initial Chief Executive of the Trust, if he wishes to be appointed.
- 30.2 The appointment of the Chief Executive of the Applicant NHS Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Governors.
- 30.3 The Board of Directors shall appoint the Deputy Chief Executive of the Applicant NHS Trust as the initial Deputy Chief Executive of the Trust, if he wishes to be appointed.

31. Board of Directors – Disqualification

- 31.1 The following may not become or continue as a member of the Board of Directors:
 - 31.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.

- 31.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
- 31.1.3 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 him.
- 31.1.4 a person whose tenure of office as a chairman or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 31.1.5 a person who has had his name removed from a list maintained under regulations pursuant to sections 91, 106, 123 or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list;
- 31.1.6 a person who has within the preceding two years been dismissed, otherwise than by reason of redundancy, by the coming to the end of a fixed term contract, through retirement or through ill health, from any paid employment with a Health Service Body;
- 31.1.7 a person who is a member of the Council of Governors;
- 31.1.8 a person who is an Executive or Non-Executive Director, Chairman, Chief Executive Officer of another Health Service Body as defined by National Health Service Act 2006, other than an NHS Trust, or a body corporate whose business includes the provision of health care services, including for the avoidance of doubt, those who have a commercial interest in the affairs of the Trust.
- 31.1.9 a person who is a member of a local authority Health Overview and Scrutiny Committee;
- 31.1.10 a person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
- 31.1.11 a person who has failed without reasonable cause to fulfil any training requirement established by the Board of Directors;

- 31.1.12 a person who has failed to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Directors' Code of Conduct;
- 31.1.13 a person who is an immediate family member of a Director or of a Governor;
- 31.1.14 a person who is the subject of a Sex Offenders Order and/or his name is included in the Sex Offenders Register;
- 31.1.15 a person who by reference to information revealed by a Criminal Records Bureau check is considered by the Trust to be inappropriate on the grounds that his appointment might adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
- 31.1.16 a person who is incapable by reason of mental disorder, illness or injury of managing and/or administering his property and/or his affairs;
- 31.1.17 he is subject to a direction made under Section 142 (Prohibition from Teaching) of the Education Act 2002; or
- 31.1.18 Monitor has exercised its powers to remove him as a Director of the Trust or has suspended him from office or has disqualified him from holding office as a Director of the Trust for a specified period or Monitor has exercised any of those powers in relation to him on any other occasion whether in relation to the Trust or some other NHS Foundation Trust.

32. Board of Directors – Meetings

- 32.1 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
- 32.2 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.

33. Board of Directors – Standing Orders

- 33.1 The Standing Orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 7.

34. Board of Directors - Conflicts of Interest of Directors

- 34.1 The duties that a Director of the Trust has by virtue of being a Director include in particular –
- 34.1.1 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.
 - 34.1.2 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.
- 34.2 The duty referred to in sub-paragraph 34.1.1 is not infringed if –
- 34.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 34.2.2 The matter has been authorised in accordance with the constitution.
- 34.3 The duty referred to in sub-paragraph 34.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 34.4 In sub-paragraph 34.1.2, “third party” means a person other than –
- 34.4.1 The Trust, or
 - 34.4.2 A person acting on its behalf.
- 34.5 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.
- 34.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 34.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 34.8 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.
- 34.9 A director need not declare an interest –

- 34.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 34.9.2 If, or to the extent that, the Directors are already aware of it;
- 34.9.3 If, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered –
 - 34.9.3.1 By a meeting of the Board of Directors, or
 - 34.9.3.2 By a committee of the Directors appointed for the purpose under the constitution.

34.10 The Standing Orders for the Board of Directors make provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

35. Board of Directors – Remuneration and Terms of Office

- 35.1 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 Chairman and the other Non-Executive Directors.
- 35.2 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.

36 Registers

The Trust shall have:

- 36.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 36.2 a register of members of the Council of Governors;
- 36.3 a register of interests of the members of the Council of Governors;
- 36.4 a register of Directors; and
- 36.5 a register of interests of the members of the Board of Directors.

37 Admission to and Removal from the Registers

- 37.1 The Secretary shall be responsible for compiling and maintaining the registers as listed in paragraph 36, either in paper or electronic form. The process of admission to and removal from the registers shall be in accordance with the provisions of this Constitution.

38. Registers – Inspection and Copies

- 38.1 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.
- 38.2 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.
- 38.3 So far as the registers are required to be made available:
- 38.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 38.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 38.4 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.

39. Documents Available for Public Inspection

- 39.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times as well as on the Trust's website:
- 39.1.1 a copy of the current Constitution,
 - 39.1.2 a copy of the latest Annual Accounts and of any report of the auditor on them, and
 - 39.1.3 a copy of the latest Annual Report.
- 39.2 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:
- 39.2.1 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.

- 39.2.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.
 - 39.2.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act.
 - 39.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 39.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
 - 39.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
 - 39.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 39.2.8 a copy of any final report published under section 65I (administrator's final report),
 - 39.2.9 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.
 - 39.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 39.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 39.4 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.

40. Auditor

- 40.1 The Trust shall have an auditor.

- 40.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.
- 40.3 The Auditor is to carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.
- 40.4 The Board of Directors may resolve that an "external auditor" be appointed to review and publish a report on any other aspect of the Trust's performance. Any such "external auditor" is to be appointed by the Board of Directors.

41. Audit Committee

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

42. Accounts

- 42.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 42.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 42.3 The accounts are to be audited by the Trust's auditor.
- 42.4 The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct
- 42.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

43. Annual Report, Forward Plans and Non-NHS Work

- 43.1 The Trust shall prepare an Annual Report and send it to Monitor.
- 43.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 43.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.

- 43.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 43.5 Each forward plan must include information about –
- 43.5.1 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
 - 43.5.2 the income it expects to receive from doing so.
- 43.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 43.5.1 the Council of Governors must –
- 43.6.1 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
 - 43.6.2 notify the Directors of the Trust of its determination.
- 43.7 Where the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England, the proposal may only be implemented if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

44. Presentation of the Annual Accounts and Reports to the Governors and Members

- 44.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 44.1.1 the Annual Accounts
 - 44.1.2 any report of the Auditor on them
 - 44.1.3 the Annual Report.
 - 44.1.4 the Annual Quality Account
 - 44.1.5 the Annual Involvement Report
- 44.2 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.

44.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 44.1 with the Annual Members' Meeting.¹

45. Instruments

45.1 The Trust shall have a seal.

45.2 The seal shall not be affixed except under the authority of the Board of Directors as set out within the Standing Orders of the Board

46. Amendment of the Constitution

46.1 The Trust may make amendments of its constitution only if –

46.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments, and

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

46.2 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.

46.3 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) –

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

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

46.3.3 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.

¹ This reflects para 28A.

46.4 Amendments by the Trust of its Constitution are to be notified to Monitor. For the avoidance of doubt, Monitor’s functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

47. Mergers etc. and Significant Transactions

47.1 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.

47.2 The Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors of the Trust present and voting at the meeting of the Council of Governors approve entering into the transaction.

47.3 For the purposes of paragraph 47.2 above, a “Significant Transaction” means a transaction which meets the definition set out in Table 1 below:

Table 1:

Ratio	Description	Significance
Assets	The gross assets* subject to the transaction, divided by the gross assets of the Trust	>25%
Income	The income attributed to the assets or the 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 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 Trust equals taxpayers’ equity

**ANNEX 1 THE PUBLIC, PATIENT, SERVICE USER AND
CARER CONSTITUENCY**

AREA	Defined as the electoral areas comprising:	Minimum number of Members *
The City of Nottingham	Nottingham City Council area	60
The County of Nottinghamshire	The districts of Broxtowe, Rushcliffe, Gedling, Mansfield and Ashfield, Newark and Sherwood and Bassetlaw	110
South Yorkshire and the rest of East Midlands	The Counties of South Yorkshire, Derbyshire, Leicestershire, Northamptonshire, Rutland and Lincolnshire (except North Lincolnshire and North East Lincolnshire)	20
The Rest of England and Wales	Other than the above defined areas	20

- * If the number of members in any area falls below the minimum specified for that area, no elections shall be held for Governors for that area until such time as the membership equals or exceeds the specified minimum.

ANNEX 2 THE STAFF CONSTITUENCY

CLASS	Minimum number of Members *
Medical	10
Nursing	20
Allied Health Professionals	20
Clinical Support Staff	10
Non Clinical Support Staff	20

* If the number of members in any area falls below the minimum specified for that area, no elections shall be held for Governors for that area until such time as the membership equals or exceeds the specified minimum.

ANNEX 3 COMPOSITION OF THE COUNCIL OF GOVERNORS

Elected Governors:

Public, Patient, Service User and Carer Constituency:

Area	Number of Governors
Nottingham City	6
Nottingham County	11
South Yorkshire and Rest of East Midlands	2
The Rest of England and Wales	2
TOTAL	21

Staff Constituency:

Class	Number of Governors
Medical	1
Nursing	2
Allied Health Professionals	2
Clinical Support Group	2
Non Clinical Support Staff	1
TOTAL	8

Appointed Governors:

Appointer (Partner)	Number of Governors
University of Nottingham ²	1
Framework Housing Association ³	1
Carers Federation ³	1
3 rd Sector organisation ³ (NOTE: currently vacant)	1
Nottinghamshire Office of the Police and Crime Commissioner ³	1
Derbyshire and Nottinghamshire Chamber of Commerce ³	1
Nottingham City Council ¹	1
Nottinghamshire County Council ¹	1
TOTAL	8

TOTAL	37
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¹ paragraph 9(4) ² paragraph 9(6) ³ paragraph (7) Schedule 7 National Health Service Act 2006

MODEL ELECTION RULES 2014

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1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

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

3. Computation of time

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

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

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

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

4. Returning Officer

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

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

5. Staff

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

6. Expenditure

6.1 The corporation is to pay the returning officer:

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

7. Duty of co-operation

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

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

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

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

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

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

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

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

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

(b) the declared interests of each candidate standing,
as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

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

(b) the returning officer is to order a new election to fill any vacancy

which remains unfilled, on a day appointed by him or her in consultation with the corporation.

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 he or she has not marked or returned any other voting information in the election, and
- (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

("declaration of identity")

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

declaration form”) or the use of an electronic method.

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

Action to be taken before the poll

22. List of eligible voters

- 22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 22.2 The list is to include, for each member:
- (a) a postal address; and,
 - (b) the member’s 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 he or she is entitled to at the election;
- (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote,
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
- (f) prevent any voter from voting after the close of poll.

26.5 The returning officer shall ensure that the telephone voting facility and

telephone voting system provided will:

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

26.6

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

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

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

29. Spoilt ballot papers and spoilt text message votes

- 29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
 - (a) is satisfied as to the voter's identity; and

(b) has ensured that the completed ID declaration form, if required, has not been returned.

29.4 After issuing a replacement ballot paper for a spoiled ballot paper, the returning officer shall enter in a list (“the list of spoiled 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 he or she 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 he or she is 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 he or she:

(a) is satisfied as to the voter’s identity,

(b) has no reason to doubt that the voter did not receive the original voting information,

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

returned.

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

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

31. Issue of replacement voting information

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

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

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

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.

33.2 When prompted to do so, the voter will need to enter his or her voter ID number.

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

34. Voting procedure for remote voting by telephone

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

35. Voting procedure for remote voting by text message

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

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

36. Receipt of voting documents

36.1 Where the returning officer receives:

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

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

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

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

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

37. Validity of votes

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

37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:

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

37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:

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

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

of the poll, with a declaration of identity if required that has been correctly made.

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

37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:

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

38. Declaration of identity but no ballot paper (public and patient constituency)²

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

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

39. De-duplication of votes

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

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

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

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

² It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

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

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

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

40. Sealing of packets

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

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

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

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 he or she can be identified by it.

FPP44.4 The returning officer is to:

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

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

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

(d) unmarked or rejected because of uncertainty,

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

FPP44.6 Any text voting record:

(a) on which votes are given for more candidates than the voter is entitled to vote,

(b) on which anything is written or marked by which the voter can be identified except the voter ID number, or

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

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

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

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

(a) otherwise than by means of a clear mark,

(b) by more than one mark,

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

FPP44.9 The returning officer is to:

(a) endorse the word "rejected" on any text voting record which under this rule is not to be counted, and

(b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words "rejected in part" on the text voting record and indicate which vote or votes have been counted.

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

(a) voting for more candidates than the voter is entitled to,

(b) writing or mark by which voter could be identified, and

(c) unmarked or rejected because of uncertainty,

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 he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
 - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
 - (d) compare:
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.
- STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:
- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
 - (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

STV50. Filling of last vacancies

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

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

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

STV51. Order of election of candidates

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

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

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

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

FPP51. Equality of votes

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

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

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

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

FPP52.2 The returning officer is to make:

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

available on request.

STV52. Declaration of result for contested elections

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

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

by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or

- (ii) in any other case, to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

STV52.2 The returning officer is to make:

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

available on request.

53. Declaration of result for uncontested elections

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

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

54. Sealing up of documents relating to the poll

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

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

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

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

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

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

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

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

55. Delivery of documents

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

the chair of the corporation.

56. Forwarding of documents received after close of the poll

56.1 Where:

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

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

57. Retention and public inspection of documents

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

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

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

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

58.1 The corporation may not allow:

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

internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,

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

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

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

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

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

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

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

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

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

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 chairman of the corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

- 62.1 No person may:

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

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

Publicity

63. Publicity about election by the corporation

- 63.1 The corporation may:

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

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

as it considers necessary.

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

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

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

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

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

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

65.2

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

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

67. Secrecy

67.1 The following persons:

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

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

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

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

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

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

Annex 5 Additional Provisions – Council of Governors

1 Council of Governors: Terms of Office

Subject to the transitional provisions contained in paragraph 2 below, a Governor shall:

- 1.1 be elected or appointed for a term of three years;
- 1.2 be eligible for re-election or re-appointment at the end of that term; but may not serve as a Governor for more than a total of 3 terms;
- 1.3 cease to hold office if:
 - 1.3.1 in the case of an Initial Elected Governor or an Elected Governor, he ceases to be a member of the constituency he represents or where relevant, the class of the constituency he represents and, in the case of an Appointed Governor, the sponsoring organisation withdraws its sponsorship of him;
 - 1.3.2 his term of office is terminated in accordance with paragraph 4 below and/or he is disqualified from or is otherwise ineligible to hold office as a Governor; or
 - 1.3.3 he resigns by notice in writing to the Trust.
- 1.4 A Governor shall cease to hold office on death.

2 Council of Governors: Transitional Provisions for the Initial Elected Governors

- 2.1 Notwithstanding the provisions of paragraph 1 above and of paragraph 13.1 of the Constitution, the Initial Elected Governors shall hold office for those terms set out in Table 1 below.
- 2.2 Where a constituency or class of a constituency is entitled to elect more than one Governor at the Initial Election, the candidate(s) who secures the highest number of votes shall serve for the longest period and the candidate(s) who secures the lowest number of votes shall serve for the shortest period. In the event of the number of votes cast being equal, a drawing of lots will occur with the person whose name is drawn first serving for the longest period and the person whose name is drawn last, the shortest period.

2.3 In circumstances where either no candidates have stood for office, or, where the number of candidates who have stood for office is insufficient to fill all of the vacancies in question, the Trust may either:

2.3.1 hold further elections for that vacant office as soon as is reasonably practicable; or

2.3.2 defer the holding of such further elections until the next scheduled date for holding an election for the constituency in question, or (where relevant) the class of the constituency in question, at which time the Trust shall hold a further election for the vacant office, together with such other vacancies as may exist.

Table 1

	Constituency	24 Months	36 Months
1.	All Public, Patient, Service User and Carer Constituencies	10	11
2.	All classes of the Staff Constituency	4	4

3 Council of Governors: Eligibility to be on the Council of Governors

3.1 A person shall not be eligible to become or continue in office as a Governor of the Trust if:

3.1.1 in the case of an Elected Governor, he ceases to be a member, of the constituency or class within a constituency which he represents;

3.1.2 in the case of an Appointed Governor, the appointing organisation withdraws its sponsorship of him;

3.1.3 any of the grounds contained in paragraph 15 of the Constitution apply to him;

3.1.4 he has within the preceding two years been dismissed, otherwise than by reason of redundancy, by the coming to the end of a fixed term contract, by retirement or through ill health from any paid employment with a Health Service Body;

3.1.5 he is a person whose tenure of office as a chairman or as a member or director of a Health Service Body has been

terminated on the grounds that his appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

- 3.1.6 he is a person who by reference to information revealed by a Criminal Records Bureau check is considered by the Trust to be inappropriate on the grounds that his appointment might adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
- 3.1.7 he has failed to make, or has falsely made, any declaration as required by paragraph 20 of the Constitution;
- 3.1.8 he is subject to a direction made under section 142 (prohibition from teaching) of the Education Act 2002;
- 3.1.9 he is a person who is a member of the Council of Governors, an executive or non-executive director or a governor of another NHS Foundation Trust, an executive or non-executive director, chairman, chief executive officer of another Health Service Body or a body corporate whose business includes the provision of health care services, including for the avoidance of doubt, those who have a commercial interest in the affairs of the Foundation Trust;
- 3.1.10 he is a person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
- 3.1.11 he is a person who is the subject of a Sex Offenders Order and/or his name is included in the Sex Offenders Register;
- 3.1.12 he is a member of a Local Authority Health Overview and Scrutiny Committee;
- 3.1.13 Monitor has exercised its powers to remove him as a Governor of the Trust or has suspended him from office or has disqualified him from holding office as a Governor of the Trust for a specified period or the Monitor has exercised any of those powers in relation to him on any other occasion whether in relation to the Trust or some other NHS Foundation Trust;
- 3.1.14 he has received a written warning from the Trust for verbal and/or physical abuse towards Trust staff;
- 3.1.15 his term of office is terminated pursuant to SO 4.13 of the Standing Orders for the Council of Governors set out in Annex 6;

- 3.1.16 he is a person who is incapable by reason of mental disorder, illness or injury of managing and/or administering his property and/or his affairs, unless the advance expressed agreement of the Trust is obtained in relation to his election or continuation in office;
 - 3.1.17 he is a patient (including anyone referred to as a notional Section 37 patient) who is detained or is subject to transfer under the provisions of part 2 of the Mental Health Act 1983 and whose current detention or transfer is subject to the provision of High Secure Service or a patient who is detained or is subject to transfer under the provisions of either part 3 of the Mental Health Act 1983 or section 5 of the Criminal Procedure (Insanity Act) 1964;
 - 3.1.18 he is a person who is an immediate family member of a Director or Governor;
 - 3.1.19 he is a person who has refused without reasonable cause to undertake any training which the Trust and/or the Council of Governors requires Governors to undertake;
 - 3.1.20 he is a person who has failed to sign and deliver to the Secretary a statement in the form required by the Trust confirming acceptance of the Governors' Code of Conduct;
 - 3.1.21 he is a member of a Staff Class and any professional registration relevant to his eligibility to be a member of that Staff Class has been suspended by the appropriate professional regulatory body for a continuous period of more than six months; or
 - 3.1.22 the relevant organisation which he represents ceases to exist.
- 3.2 Where a person has been elected or appointed to be a Governor and he becomes disqualified or removed from office under paragraph 15 of the Constitution or paragraph 3.1 above, he shall notify the Secretary in writing of such disqualification and/or (as the case may be) removal as soon as practicable and in any event within 14 days of first becoming aware of those matters which rendered him disqualified or removed.
- 3.3 If it comes to the notice of the Secretary at the time his taking office or later that the Governor is so disqualified, the Secretary shall immediately declare him disqualified and shall give him notice in writing to that effect as soon as practicable.

- 3.4 Upon the giving of notice under paragraphs 3.2 and/or 3.3 above, that person's tenure of office (if any) shall be terminated and he shall cease to act as a Governor and his name shall be removed from the register of Governors.

4 Council of Governors: Vacancies

Where a vacancy arises on the Council of Governors for any reason other than expiry of a term of office, the following provisions will apply:

- 4.1 Where the vacancy arises amongst the Appointed Governors, the Trust will request that the relevant sponsoring organisation appoint a "Replacement Governor" within 30 days to hold office for the remainder of the term of office.
- 4.2 Subject to the provisions of paragraph 4.3 and paragraph 4.4 below, where the vacancy arises amongst the Elected Governors, the Council of Governors shall:
- 4.2.1 offer the candidate who was ranked next highest in the last election for the Public, Patient, Service User and Carer Constituency Area or Staff Constituency Staff Class (as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office of Governor until the next annual election ("the Reserve Governor"), at which time the seat will fall vacant and subject to election for any unexpired period of office;
- 4.2.2 if that candidate does not accept that invitation within 14 days of the date of the invitation then the vacant office shall be offered to that candidate who was next highest ranked in the last held election until the vacancy is filled ("the Reserve Governor"), but if no other candidate stood for election or there are no remaining candidates who stood for election, to that office, or no candidate accepts the Trust's invitation in accordance with the above provisions within such time as the Trust may in its absolute discretion decide, the Trust shall hold an election for the vacancy as soon as reasonably practicable thereafter.
- 4.3 Subject to the provisions of paragraph 4.4 below, where an Elected Governor ceases for whatever reason to hold office within the last twelve months of his term of office, the office shall remain vacant until the next scheduled election takes place.
- 4.4 Notwithstanding the above provisions of this paragraph 4, where the termination of a Governor's term of office causes the total number of

Public, Patient, Service User and Carer Constituency Governors to be equal to or fewer than the other Governors, then an election for that vacant office shall be held as soon as reasonably practicable.

- 4.5 No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.

5 Council of Governors: Role and Responsibilities of Governors

- 5.1 The roles and responsibilities of the Governors are:

5.1.1 At a general meeting:

- (i) subject to paragraphs 26 and 27 of this Constitution, to appoint or remove the Chairman and the other Non-Executive Directors. The removal of a Non-Executive Director requires the approval of three-quarters of the members of the Council of Governors;
- (ii) to decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors;
- (iii) to appoint or remove the Auditor;
- (iv) to be presented with the annual accounts, any report of the Auditor on them and the Annual Report;
- (v) to consider resolutions to remove a Governor pursuant to paragraph 15 of this Constitution.
- (vi) To consider and give/withhold approval for applications for a merger, acquisition, separation or dissolution. Approval requires the approval of more than half of the Council of Governors.
- (vii) To consider and give/withhold approval for the Trust to enter into a Significant Transaction. Approval requires the approval of more than half of the members of the Council of Governors of the Trust present and voting at the meeting of the Council of Governors.

5.1.2 At a general meeting or otherwise:

- (i) approve (by a majority of the Council of Governors voting) an appointment (by the Non-Executive Directors) of the

Chief Executive (and Accounting Officer) other than the initial Chief Executive appointed in accordance with paragraph 19 (5) of Schedule 7 to 2006 Act;

- (ii) give the views of the Council of Governors to the Directors for the purposes of the preparation (by the Directors) of the Forward Plan in respect of each Financial Year to be given to Monitor;
- (iii) consider the Annual Accounts, any report of the Auditor on them and the Annual Report; and/or
- (iv) respond as appropriate when consulted by the Directors.

5.1.3 The Governors also have the specific role and function of:

- (i) providing views to the Board of Directors on the strategic direction of the Trust and targets for the Trust's performance and in monitoring the Trust's performance in terms of achieving those strategic aims and targets which have been set;
- (ii) developing the Trust's membership;
- (iii) representing the interests of the membership and of the wider public.
- (iv) holding the Board of Directors to account in relation to the Trust's performance in accordance with the terms of the Authorisation and the terms of the Constitution.

5.1.4 Notwithstanding the provisions of paragraphs 5.1.1 to 5.1.3 above, the Governors may exercise other functions at the request of the Board of Directors.

5.1.5 Notwithstanding the provision of paragraphs 5.1.3 and 5.1.4 above, the Governors shall exercise their own skill and judgement in the conduct of Trust affairs and shall in their stewardship of Trust affairs bring an appropriate perspective of the constituency or organisation by which they were elected or appointed.

6 Council of Governors: Nominations and Remuneration Committee

6.1 Subject to the provisions of paragraphs 26 and 27 of the Constitution in relation to the appointment of the Initial Chairman and Non-Executive Directors of the Trust:

- 6.1.1 only a member of a Public, Patient, Service User and Carer Constituency may be appointed as the Chairman or as a Non-Executive Director; and
- 6.1.2 the Chairman and Non-Executive Directors shall be appointed following a process of open competition conducted in accordance with paragraphs 6.2 to 6.5 below.
- 6.2 The Council of Governors shall establish a committee of its members to be called the Nominations and Remuneration Committee to discharge those functions in relation to the appointment of the Chairman and Non-Executive Directors described in paragraph 6.3 below.
- 6.3 The functions of the Nominations and Remuneration Committee shall be as follows:
 - 6.3.1 to determine the criteria and process for the selection of candidates for office as Chairman or other Non-Executive Director of the Trust having first consulted with the Board of Directors as to those matters and having regard to such views as may be expressed by the Board of Directors. In so doing, due regard should be made to equality and diversity in the composition of the Board. Any candidates for the office of Chairman must meet the independence criteria set out in the NHS Foundation Trust Code of Governance
 - 6.3.2 to seek by way of open advertisement and other means, candidates for office and to assess and select for interview such candidates as are considered appropriate and in doing so the Nominations and Remuneration Committee shall be at liberty to seek advice and assistance from persons other than members of the Nominations and Remuneration Committee or the Council of Governors;
 - 6.3.3 to make recommendation to the Council of Governors as to potential candidates for appointment as Chairman or other Non-Executive Director, as the case may be;
 - 6.3.4 on a regular and systematic basis monitor the performance of the Chairman and other Non-Executive Directors and make reports thereon to the Council of Governors from time to time when requested to do so or when in the opinion of the Nominations and Remuneration Committee the results of such monitoring ought properly to be brought to the attention of the Council of Governors; and

- 6.3.5 consider and make recommendations to the Council of Governors as to the remuneration and allowances and other terms and conditions of office of the Chairman and other Non-Executive Directors.
- 6.4 The Council of Governors shall resolve in a general meeting to appoint such candidate or candidates (as the case may be) as it considers appropriate and in reaching its decision it shall have regard to the views of the Board of Directors and of the Committee as to the suitability of the available candidates including (but not limited to) their qualifications, skills, experience and values.
- 6.5 The Council of Governors may consider nominations for membership of the Board of Directors other than those made by the appropriate Nominations and Remuneration Committee (but subject to paragraph 25 of the Constitution).

ANNEX 6 STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

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1. Introduction

- 1.1 The Nottinghamshire Healthcare NHS Foundation Trust (the "**Trust**") became a Public Benefit Corporation on XXXXXXXX following authorisation by Monitor pursuant to the National Health Service Act 2006 (the "**2006 Act**").
- 1.2 The principal place of business of the Trust is The Resource, Duncan Macmillan House, Porchester Road, Nottingham, NG3 6AA.
- 1.3 The Trust is governed by the 2006 Act, the 2012 Act, its Constitution and its Authorisation granted by Monitor (the "**Regulatory Framework**"). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Council of Governors of the Trust to adopt Standing Orders for the regulation of its proceedings and business and to adhere at all times to the Code of Conduct for Governors.
- 1.4 As a Public Benefit Corporation, the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable.

2. Definitions

- 2.1 In these Standing Orders:

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

"**2012 Act**" means the Health and Social Care Act 2012

"**Accountable Officer**" means the NHS Foundation Trust Officer responsible and accountable for discharging the functions specified in Paragraph 25(5) of Schedule 7 of the 2006 Act.. The officer shall be responsible for ensuring the proper stewardship of public funds and assets. For the Trust, this shall be the Chief Executive

"**Annual Accounts**" means those accounts prepared by the Trust pursuant to paragraph 25 of Schedule 7 of the 2006 Act;

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

"**Auditor**" means the Auditor of the Trust appointed by the Council of Governors pursuant to paragraph 40 of the Constitution;

"**Authorisation**" means the Authorisation issued to the Trust by Monitor under section 35 of the 2006 Act;

"Board of Directors" means the Board of Directors of the Trust as constituted in accordance with the Constitution

"Chairman" means the Chairman of the Council of Governors and Board of Directors appointed in accordance with the Constitution to ensure that the Council of Governors and the Board of Directors discharge their overall responsibilities for the Trust as a whole. The expression "Chairman of the Trust" shall be deemed to include the Vice Chairman or any other non-Executive appointed in the event that the Chairman is absent from the meeting or is otherwise unavailable

"Chief Executive" means the Chief Executive of the Trust and Accountable Officer

"Clear Day" means a day of the week not including Saturday, Sunday or a public holiday

"Code of Conduct" means any code which the Trust may publish from time to time to govern or guide the conduct of the Council of Governors, Directors and Officers of the Trust

"Constitution" means the Constitution together with the attached Annexes

"Council of Governors" means the Council of Governors as constituted in accordance with the Constitution, which has the same meaning as the "Council of Governors" in paragraph 7 to Schedule 7 of the 2006 Act

"Financial Year" means

- a. the period beginning with the date on which the Trust is authorised pursuant to the 2006 Act and ending 31 March in the next following year, and
- b. each successive period of 12 months beginning 1 April

"Governor" means a member of the Council of Governors elected or appointed as provided for by the Constitution

"Monitor" is the body corporate known as Monitor, as provided for by Section 61 of the 2012 Act;

"Non-Executive Director" means a voting member of the Board of Directors who does not hold an executive office of the Trust

"Nominations and Remuneration Committee" means the Committee established in accordance with paragraph 22.1.7 of the Constitution

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

"Public, Patient, Service User and Carer Constituency" means the constituency of Public, Patients, Service Users and Carers constituted in accordance with paragraph 7 of the Constitution

"Reserve Chairman" means the non-executive director, appointed in advance, who will deputise in the absence of the Chairman and Vice Chairman

"Secretary" means the person appointed by the Trust to perform the duties of the Secretary of the Trust as set out in this Constitution.

"Standing Orders (SO)" means the Standing Orders of the Council of Governors

"Staff Constituency" means the constituency of staff of the Trust constituted in accordance with paragraph 8 of the Constitution

"Trust" means the Nottinghamshire Healthcare NHS Foundation Trust

"Vice Chairman" means one of the Non-Executive Directors appointed by the Council of Governors, either generally or for a specific meeting, to preside at a meeting of the Council of Governors in the absence of the Chairman

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

NOTE: Words importing the masculine gender include the feminine gender and vice versa.

3. The Council of Governors

3.1 The roles and responsibilities of the Governors are as follows:

3.1.1 ensure that the Trust operates in accordance with the Authorisation and will also act in a Trustee role for the welfare of the organisation as a vehicle for influencing change and developments;

3.1.2 advise the Board of Directors when requested to do so by the Board of Directors regarding the Trust's future plans and priorities;

3.1.3 to monitor the performance of the Trust against its Forward Plan with a view to satisfying itself that the Board of Directors is fulfilling its responsibilities in this regard. This will be achieved by regular briefings on the performance of the Trust

at its meetings, and being able to consider and comment on that performance;

3.1.4 ensure continued success of the organisation through overseeing of effective management, partnership working and maintenance of NHS values and principles;

3.1.5 oversee the development of the Trust as an effective social enterprise through focus on the wider public interest and promoting social cohesion in ensuring that the Council of Governors reflects all the interests of the membership community;

3.1.6 to share local responsibility for the success of the Trust, in particular by building and sustaining a wide consensus to the vision for the Trust and by members representing the services to their respective communities and organisations and vice versa; and

3.1.7 to instigate or be involved in review of a specific issue, or be involved in further development of a particular strategy through specific working groups.

3.2 Certain powers and decisions may only be exercised by the Council of Governors in formal session. These powers and decisions are set out in paragraph 5.1 of Annex 5 of the Constitution.

3.3 An Elected Governor shall represent the members of their constituency and not any professional body, political party or trade union of which he is a member.

3.4 Appointed Governors shall represent the organisation (or group of organisations) that appointed them, and shall also provide a perspective of the wider sector which they represent, being a knowledgeable source for Governors to develop a better understanding of the environment in which the Trust operates.

4. Meetings of the Council of Governors

4.1 Admission of the Public

4.1.1 The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors except where it resolves by special resolution that members of the public and representatives of the press be excluded from all or part of a meeting on the grounds that:

- (i) any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
- (ii) for other reasons stated in the resolution and arising from the nature of the business or the proceedings, that the Council of Governors believe are special reasons for excluding the public from the meeting in accordance with the Constitution.

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

4.2 Calling Meetings

4.2.1 Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine and there shall be at least 4 meetings in any year including:

- (i) an annual meeting no later than the 30 September in each year apart from the first year, when the Council of Governors are to receive and consider the Annual Accounts, any report by the Auditor and the Annual Report; and
- (ii) any other meetings required of the Governors in order to fulfil their functions in accordance with the Constitution.

4.2.2 The Secretary may call a meeting of the Council of Governors at any time. If the Secretary refuses to call a meeting after a requisition for that purpose, signed by at least three quarters of the members of the Council of Governors and specifying the business to be transacted at the meeting, has been presented to him, or if, without so refusing, the Secretary does not call a meeting within 5 Clear Days after such requisition has been presented to him at the Trust's Headquarters, such three-quarters or more of the Governors may forthwith call a meeting for the purpose of conducting that business.

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

4.2.4 The Council of Governors may agree that its Governors can participate in its meetings by telephone or video link. Participation in a meeting in this manner shall be deemed to be exceptional but shall constitute presence in person at the meeting for the purposes of SO 4.18 (Quorum).

4.3 Notice of Meetings

4.3.1 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 Chairman or by an officer authorised by the Chairman to sign on his behalf, shall be delivered to, or sent by post to the usual place of residence of every Governor, so as to be available to him at least 14 days before the meeting, save in the case of emergencies.

4.3.2 Before each meeting of the Council of Governors, a public notice of the time and place of the meeting, and if possible, the public part of the Agenda, shall be displayed at the Trust's headquarters and shall be advertised on the Trust's website at least 14 days before the meeting, save in the case of emergencies.

4.3.3 Want of service of the notice on any one Governor shall not affect the validity of a meeting but failure to serve such a notice on more than three Governors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of posting.

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

4.3.5 Agendas will be sent to Governors before the meeting and supporting papers, whenever possible, shall accompany the Agenda, but will certainly be despatched no later than 5 Clear Days before the meeting, save in the case of emergencies. It is the responsibility of the Chairman to ensure that sufficient information is provided to Governors to ensure that rational discussion can take place.

4.3.6 In the event of an emergency giving rise to the need for an immediate meeting failure to comply with the notice periods

referred to in SO 4.3 shall not prevent the calling of or invalidate such meeting provided that every effort is made to contact members of the Council of Governors who are not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.

4.4 Annual Meeting

4.4.1 The Council of Governors shall hold an annual meeting of the Council of Governors in every calendar year so that there is no more than fifteen calendar months between one meeting and the next and shall present to that meeting:

- (i) A report on the proceedings of its meetings held since the last annual meeting;
- (ii) A report on the progress since the last annual meeting in developing the membership strategy including the steps taken to ensure that the actual membership of its Public, Patient, Service User and Carer Constituency is fully representative of the persons who are eligible to be members under the Constitution;
- (iii) A report on any change to the Governors which has taken place since the last annual meeting; and
- (iv) A report containing such comments as it wishes to make regarding the performance of the Trust and the accounts of the Trust for the preceding Financial Year and the future service development plans of the Trust.

4.5 Setting the Agenda

4.5.1 The Council of Governors may determine that certain matters shall appear on every Agenda for a meeting and shall be addressed prior to any other business being conducted.

4.5.2 A member of the Council of Governors desiring a matter to be included on an Agenda, including a formal proposition for discussion and voting on at a meeting, shall make his request in writing to the Chairman or the Secretary at least 21 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 21 Clear

Days before a meeting may be included on the Agenda at the discretion of the Chairman.

4.6 Petitions

4.6.1 Where a petition has been received by the Trust, the Chairman shall include the petition as an item for the Agenda of the next meeting of the Council of Governors.

4.7 Chairman of Meeting

4.7.1 At any Council of Governors meeting, the Chairman, if present, shall preside.

4.7.2 If the Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, the Vice Chairman shall preside.

4.7.3 If the Vice Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director or the Lead Governor as shall be appointed by the Council of Governors shall preside.

4.8 Agenda

4.8.1 Where a Governor has requested inclusion of a matter on the Agenda in accordance with SO 4.5.2 above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this SO 4.8 shall apply in respect of the proposition:

4.8.2 The mover of the proposition shall have a right of reply at the close of any discussion on the proposition or any amendment thereto.

4.8.3 When a proposition is under discussion or immediately prior to discussion it shall be open to a Governor to move:

- (i) an amendment to the proposition;
- (ii) the adjournment of the discussion or the meeting;
- (iii) that the meeting proceed to the next business;
- (iv) the appointment of an ad hoc committee to deal with a specific item of business;

- (v) that the motion be now put;
- (vi) that the public be excluded from the meeting in relation to the discussion concerning the proposition under SO 4.1.1.

4.8.4 In the case of sub-paragraphs SO 4.8.3(iii) and SO 4.8.3(v) above, to ensure objectivity these matters may only be put by a Governor who has not previously taken part in the debate and who is eligible to vote.

4.8.5 No amendment to the proposition shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the proposition.

4.8.6 The mover of a proposition shall have a maximum of five minutes to move and five minutes to reply. Once a proposition has been moved, no Governor shall speak more than once or for more than five minutes.

4.9 Report from the Board of Directors

4.9.1 Unless otherwise agreed in writing, at each meeting of the Council of Governors, the Board of Directors is required to report to the Council of Governors on the Trust's general progress and forward planning unless it is agreed in writing they will not do so.

4.10 Chairman's Ruling

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

4.11 Voting

The Council of Governors will endeavour to ensure that decisions taken are by consensus and without recourse to voting, except where a vote is formally required under the Constitution. Where however consensus is not achieved, the following process of voting will be applied.

4.11.1 A Governor may not vote at a meeting of the Council of Governors unless, within 7 Clear Days prior to the

commencement of the meeting he has made a declaration in the form specified within Schedule A of these Standing Orders, that he is a member of the constituency which elected him and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution.

4.11.2 Subject to SO 4.11.4 below, matters requiring the conduct of a vote shall be determined by a majority of the votes of the Governors present and voting on the question.

4.11.3 Whoever is Chairman of the meeting of the Council of Governors shall, in the case of an equality of votes on any question or proposal, have a casting vote.

4.11.4 A resolution for the removal of the Chairman or a Non-Executive Director shall be passed only in accordance with the provisions of paragraph 26 of the Constitution.

4.11.5 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.

4.11.6 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.

4.11.7 If a Governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).

4.11.8 A Governor may only vote if present at the time of the vote on which the question is to be decided; no Governor may vote by proxy but a Governor is considered to have been present at the meeting if they took part by telephone or video link and so is therefore entitled to vote.

4.12 Special Provisions relating to Termination of Governor's Tenure:

4.12.1 Where a person has been elected or appointed to be a Governor and he becomes disqualified from office under paragraph 15 of the Constitution, he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of the first becoming aware of those

matters which render him disqualified. The Secretary shall forthwith remove him from the Register of the Governors.

4.12.2 If it comes to the notice of the Secretary that the Governor is disqualified pursuant to SO 4.12.1, whether at the time of the Governor's appointment or later, the Secretary shall immediately declare that the individual in question is disqualified and give him notice in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration. In the event that the Governor shall dispute that he is disqualified, the Governor may refer the matter to the dispute resolution procedure set out in paragraph 8.5 of Annex 8 of the Constitution within 28 days of the date upon which the notice was given to the Governor.

4.13 Council of Governors: Termination of Tenure

4.13.1 A Governor's term of office shall be terminated immediately:

- (i) by the Governor giving notice in writing to the Trust of his resignation from office at any time during that term of office; or
- (ii) by the Trust if any grounds exist under paragraph 3 of Annex 5 of the Constitution; or
- (iii) if he has failed to attend two successive meetings of the Council of Governors unless the Council of Governors are satisfied by a majority of three-quarters that:
 - 4.13.1.iii.1 the absence was due to a reasonable cause; and
 - 4.13.1.iii.2 he will be able to start attending meetings of the Council of Governors within such a period as the other Governors consider reasonable; or
- (iv) if a Governor is considered to have acted in a such a manner that his/her continuing as a Governor would or would be likely to:
 - 4.13.1.iv.1 adversely affect the ability of the Trust to fulfil its principal purpose or of its other purposes under this Constitution or otherwise to discharge its duties and functions; or

4.13.1.iv.2 adversely affect the ability of the Trust to work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or

4.13.1.iv.3 adversely affect public confidence in the goods and services provided by the Trust; or

4.13.1.iv.4 otherwise brings the Trust into disrepute; or

(v) if a Governor's actions are considered to be detrimental to the interests of the Trust; or

(vi) if it would not be in the best interests of the Trust for that person to continue in office as a Governor; or

(vii) if a Governor is considered by the Council of Governors to be a vexatious or persistent litigant or complainant with regard to the Trust's affairs and his continuance in office would not be in the best interests of the Trust; or

(viii) if a Governor has failed or refused to undertake and/or satisfactorily complete any training which the Council of Governors has required him to undertake in his capacity as a Governor; or

(ix) if he has in his conduct as a Governor failed to comply with the values and principle of the National Health Service or the Trust; or

(x) where a Governor has otherwise committed a breach of the Code of Conduct for Governors.

4.13.2 If the Governor in question is adjudged to have acted in accordance with any of the grounds specified in paragraph 4.13.1 above, by a majority of three-quarters of the Council of Governors present and voting, then the Governor will vacate his office immediately.

4.13.3 Any decision of the Council of Governors to terminate a Governor's tenure of office may be referred by the Governor concerned to the Dispute Resolution Procedure under paragraph 8.5 of Annex 8 within 14 days of the date upon which notice in writing of the Council of Governor's decision

made in accordance with SO 4.13.2 is communicated to the Governor concerned.

4.13.4 A Governor who resigns under SO 4.13.1(i) above or whose office is terminated under this SO or paragraph 3 of Annex 5 of the Constitution shall not be eligible to stand for re-election to the Council of Governors for a period of three years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of whichever is later.

4.13.5 In the event that an elected Governor's seat falls vacant before the end of the term of office, the provisions as set out at paragraph 4.2 of Annex 5 of the Constitution shall apply.

4.14 Minutes

4.14.1 The Minutes of the proceedings of a meeting shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting where they will be signed by the Chairman presiding at it.

4.14.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.14.3 Minutes of meetings will be taken and circulated in accordance with Governors' wishes.

4.15 Suspension of Standing Orders

4.15.1 Except where this would contravene any statutory provision or any direction made by Monitor, any one or more of the SOs may be suspended at any meeting, provided that at least two-thirds of the Governors are present, including one Staff Governor and one Public, Service Users' and Carers' Governor, and that a majority of those present vote in favour of suspension.

4.15.2 A decision to suspend the SOs shall be recorded in the minutes of the meeting.

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

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

4.16 Variation and Amendment of Standing Orders

4.16.1 Subject always to paragraph 15.3 of Annex 7 of the Constitution, these Standing Orders shall be amended only if:

- (i) a notice of proposal under Standing Order 4.5.2 has been given; and
- (ii) at least two thirds of the total number of Governors is present; and
- (iii) no fewer than half the total number of Governors vote in favour of amendment; and
- (iv) the variation proposed has been approved by the Council of Governors and does not contravene a statutory provision, guidance issued by Monitor, or the Constitution.

4.17 Record of Attendance

4.17.1 The names of the Chairman and Governors present at the meeting shall be recorded in the minutes.

4.18 Quorum

4.18.1 No business shall be transacted at a meeting unless at least one third of the total number of Governors are present with a majority of those present being of Public, Patient, Service User and Carer ConstituencyGovernors.

4.18.2 If at any meeting there is no quorum present within 15 minutes of the time scheduled for its commencement, the meeting shall stand automatically adjourned for a period of seven days and the Chairman shall give or procure the giving of notice to all Governors of the date, time and place of that adjourned meeting. Upon reconvening, those present shall constitute a quorum.

4.18.3 If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest as provided in SO 7, he shall no longer count towards the quorum. If a quorum is then not available for the discussion

and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

5 Lead Governor and Deputy Lead Governor

- 5.1 The Council of Governors shall elect a Lead Governor and a Deputy Lead Governor.
- 5.2 Without prejudice to the rights of any Governor to communicate directly with the Chairman, the Lead Governor shall be responsible for receiving from Governors and communicating to the Chairman any comments, observations and concerns expressed to him by Governors other than at meetings of the Council of Governors regarding the performance of the Trust or any other serious or material matter relating to the Trust or its business.
- 5.3 The Deputy Lead Governor shall be responsible for supporting the Lead Governor in his role and for performing the responsibilities of the Lead Governor whenever he is known to be unavailable.
- 5.4 Each Governor shall communicate any comment, observation or concern which he may have to the Lead Governor in the first instance and only to the Deputy Lead Governor if the Lead Governor is known to be unavailable.
- 5.5 These appointments shall be made from those Governors who have been elected as Governors from the Public, Patient, Service User and Carer Constituency or the Staff Constituency or appointed by a Partner Organisation.
- 5.6 The Lead Governor and the Deputy Lead Governor shall hold office for a period of not exceeding their remaining term of office as a Governor. They may subsequently seek re-election.
- 5.7 Nominations for appointment as Lead Governor and Deputy Lead Governor shall be made in writing by the Governor seeking appointment and must be returned to the principal place of business of the Trust addressed to the Secretary to arrive by a stipulated date.
- 5.8 In the event of there being two or more nominations secret postal ballot shall be held of all the Governors with each Governor having one vote. The ballot will be overseen by the Secretary.

- 5.9 The Governor whose nomination receives the largest number of votes for each position shall be appointed as Lead Governor with the Governor whose nomination receives the second highest number of votes being appointed as Deputy Lead Governor. In the event of the number of votes being equal a draw will take place overseen by the Secretary. The nomination whose name is drawn first will be the Lead Governor. In the event of the second and third highest votes being equal, the name drawn first will be appointed as Deputy Lead Governor.
- 5.10 The result of the ballot shall be communicated to all Governors in writing and formally confirmed at the subsequent meeting of the Council.

6 Committees

- 6.1 Subject to such guidance as may be issued by Monitor, the Council of Governors may establish committees of the Council of Governors to assist it in the proper performance of its functions under the Constitution and the Regulatory Framework, consisting wholly or partly of the Chairman and Governors.
- 6.2 All decisions taken in good faith at the meeting of the Council of Governors or at any meeting of a committee shall be valid even if it is subsequently discovered that there was a defect in the calling of the meeting or the appointment of the Governors attending the meeting.
- 6.3 A committee appointed under SO 6.1 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.
- 6.4 These SOs, 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 "Chairman" to be read as a reference to the Chairman of the committee, and the term "Governor" to be read as a reference to a member of the committee as the context permits.
- 6.5 Each such committee shall have such terms of reference and powers and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with the Regulatory Framework and any guidance issued by Monitor, 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. Such terms of reference shall have effect as if incorporated into the Standing Orders.

- 6.6 Where committees are authorised to establish sub-committees they may not delegate their powers to the sub-committee unless expressly authorised by the Council of Governors.
- 6.7 Any Committee or Sub-Committee established under this SO 6 may call upon outside advisers to assist them with their tasks, subject to the advance agreement of the Board of Directors and requested via the Secretary. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph shall be determined in accordance with the Dispute Resolution Procedure as set out at paragraph 8.4 of Annex 8 of the Constitution.
- 6.8 The Council of Governors shall approve the appointments to each of the committees which it has formally constituted and may determine that appointments to such committees be by a process of election by Governor Members.
- 6.9 Where the Council of Governors is required to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Council of Governors, such appointments shall be made in accordance with applicable statute and regulations and with guidance issued by Monitor.
- 6.10 Where the Council of Governors determines that persons who are neither Governors, nor Directors or Officers of the Trust, shall be appointed to a committee, the terms of such appointment shall be determined by the Council of Governors subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the Board of Directors.

7 Declarations of Interests and Register of Interests

7.1 Declaration of Interests

7.1.1 The Regulatory Framework and the Constitution require each Governor to declare to the Secretary:

- (i) any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in SO 7.2.1; and

- (ii) any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust which is under consideration or is to be considered by the Council of Governors, as described in SOs 7.2.2 and 7.2.3; and
- (iii) any actual or potential family interest, direct or indirect, of which the Governor is aware, as described in SO 7.2.5.

7.1.2 Such a declaration shall be made either at the time of the Governor's election or appointment or within 28 days thereof, or otherwise as soon as he becomes aware of the existence of that interest, and in a form prescribed by the Secretary from time to time.

7.1.3 In addition, if a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter.

7.1.4 Subject to SO 7.2.4, if a Governor has declared a pecuniary interest (as described in SO 7.2.2 and 7.2.3) he shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the Governor's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.

7.1.5 This SO 7 applies to any committee, sub-committee or joint committee of the Council of Governors and applies to any member of any such committee, sub-committee, or joint committee (whether or not he is also a Governor).

7.1.6 The interests of Governors in companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

7.2 Nature of Interests

7.2.1 Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by Monitor:

- (i) directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies); or
- (ii) ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS; or
- (iii) majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS; or
- (iv) a position of authority in a charity or voluntary organisation in the field of health and social care; or
- (v) any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or
- (vi) any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks; or
- (vii) research/funding grants that may be received by an individual or their department; or
- (viii) interests in pooled funds that are under separate management.

7.2.2 A Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- (i) he, or a nominee of his, 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
- (ii) he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

7.2.3 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

- (i) of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body; or
- (ii) of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or
- (iii) of any travelling or other expenses or allowances payable to a Governor in accordance with the Constitution.

7.2.4 Where a Governor:

- (i) 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
- (ii) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
- (iii) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class;
- (iv) the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.

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

7.2.6 If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman. 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.

7.3 Register of Governors

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

7.4 Register of Governors' Interests

7.4.1 The Secretary shall keep a Register of Interests of Governors which shall contain the names of each Governor, whether he has declared any interest, and if so, the interest declared.

8 Standards of Business Conduct

8.1 Members of the Council of Governors shall comply with the Trust's Code of Conduct for Governors, Standards of Business Conduct and Behaviour and any guidance or best practice advice issued by Monitor.

9 Appointments and Recommendations

9.1 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this paragraph of this Standing Order shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.

9.2 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

9.3 Candidates for any staff appointment under the Trust shall, when making such an application, disclose in writing to the Trust whether they are related to any Governor or the holder of any office within the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.

- 9.4 The Chairman and every Governor shall disclose to the Trust Secretary any relationship between himself and a candidate of whose candidature that Governor or Officer is aware. It shall be the duty of the Trust Secretary to report to the Council of Governors any such disclosure made.
- 9.5 On appointment, members of the Council of Governors should disclose to the Council of Governors whether they are related to any other member of the Council of Governors or holder of any office in the Trust.
- 9.6 Where the relationship to a member of the Council of Governors of the Trust is disclosed, SO 7 shall apply.

10 Remuneration and Expenses

- 10.1 Governors are not to receive remuneration.
- 10.2 The Trust will pay travelling expenses to Governors in accordance with the relevant Trust policies for attendance at General Meetings of the Governors, or any other business authorised by the Secretary as being under the auspices of the Council of Governors.
- 10.3 Expenses will be authorised and reimbursed through the Secretary's office on receipt of a completed and signed expenses form provided by the Secretary.
- 10.4 A summary of expenses paid to Governors will be published in the Annual Report.

11 Resolution of Disputes

Dispute Resolution between Board of Directors and Council of Governors

- 11.1 The processes in relation to dispute resolution between the Board of Directors and the Council of Governors will be dealt with in accordance with paragraph 8.4 of Annex 8 of the Constitution

12 Miscellaneous

- 12.1 The Secretary shall provide a copy of these Standing Orders to each Governor and endeavour to ensure that each Governor understands his responsibilities within these Standing Orders.

- 12.2 These Standing Orders including all documents having effect as if incorporated in them shall be reviewed annually by the Board of Directors and the Council of Governors.
- 12.3 Any written notice required by these SOs shall be deemed to have been given on the day the notice was sent to the recipient.
- 12.4 If for any reason these SOs 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 Governors have a duty to disclose any non-compliance with these SOs to the Chairman as soon as possible.
- 12.5 A Governor shall not disclose any matter reported to the Council of Governors notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors shall resolve that it is confidential.

ANNEX 7 STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

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1. Introduction

Statutory Framework

- 1.1 The Nottinghamshire Healthcare NHS Foundation Trust (the “**Trust**”) became a Public Benefit Corporation on XXXXXXXX following authorisation by Monitor pursuant to the National Health Service Act 2006 (the “**2006 Act**”).
- 1.2 The principal place of business of the Trust is at the Trust Headquarters at The Resource, Duncan Macmillan House, Porchester Road, Nottingham, NG3 6AA
- 1.3 The Trust is governed by the 2006 Act, its Constitution and the Authorisation granted by Monitor (the “**Regulatory Framework**”). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework and in particular paragraph 33 of the Constitution requires the Board of Directors to adopt Standing Orders for the regulation of its proceedings and business.
- 1.4 As a Public Benefit Corporation, the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.
- 1.5 The Standing Orders, Scheme of Delegation and Standing Financial Instructions provide a comprehensive business framework. All Directors, and all members of staff, should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.
- 1.6 The Trust shall deal with Monitor in an open and co-operative manner and shall promptly notify Monitor of anything relating to the Trust of which Monitor would reasonably expect prompt notice, including, without prejudice to the foregoing generality, any anticipated failure or anticipated prospect of failure on the part of the Trust to meet its obligations under its Authorisation or any financial or performance thresholds which Monitor may specify from time to time.
- 1.7 The Chairman, Chief Executive or any other person giving information to the public on behalf of the Trust shall ensure that they follow the principles set out by the Committee on Standards in Public Life (the Nolan Committee, now the Wicks Committee) and that they will adhere to the principles set out within the Independent

Commission's Good Governance Standard for Public Service. They will also ensure that they follow the best practice advice set out in the NHS Foundation Trust Code of Governance 2006 published by Monitor.

Delegation of Powers – Scheme of Delegation

- 1.8 Under the Standing Orders relating to the Arrangements for the Exercise of Functions by Delegation (SO 5) the Board of Directors exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee appointed by virtue of SO 5 or by an Officer of the Trust, in each case subject to such restrictions and conditions as the Board of Directors thinks fit. Delegated Powers are covered in a separate document (the Scheme of Delegation). That document has effect as if incorporated into the Standing Orders.

2 Interpretation

- 2.1 Save as otherwise permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive and Secretary).
- 2.2 Any expression to which a meaning is given in the Constitution or the 2006 Act, or any Regulations or Order made under the Act shall have the same meaning in this interpretation unless the context requires otherwise and in addition:

"2006 Act" means the National Health Service Act 2006

"2012 Act" means the Health and Social Care Act 2012

"Accountable Officer" means the NHS Foundation Trust Officer responsible and accountable for funds entrusted to the Trust and discharging the functions specified in Paragraph 25(5) of Schedule 7 of the 2006 Act. The officer shall be responsible for ensuring the proper stewardship of public funds and assets. For the Trust, this shall be the Chief Executive

"Annual Accounts" means those accounts prepared by the Trust pursuant to paragraph 25 of Schedule 7 of the 2006 Act

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

"Applicant NHS Trust" means Nottinghamshire Healthcare National Health Service Trust

"Audit Committee" means a committee of the Board of Directors as established pursuant to paragraph 41 of this Constitution

"Authorisation" means the Authorisation issued to the Trust by Monitor under section 35 of the 2006 Act;

"Board of Directors" means the Board of Directors as constituted in accordance with the Constitution

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

"Chairman" means the person appointed in accordance with the Constitution to ensure that the Board of Directors and Council of Governors successfully discharge their overall responsibilities for the Trust as a whole. The expression "the Chairman" shall be deemed to include the Vice Chairman or any other Non-Executive Director appointed in accordance with SO 3.10.1 if the Chairman is absent from the meeting or is otherwise unavailable

"Chief Executive" means the Chief Executive officer of the Trust and Accountable Officer.

"Clear Days" means a day of the week not including a Saturday, Sunday or Public Holiday

"Constitution" means the Constitution of the Trust, together with the Annexes and Appendices attached hereto as approved by Monitor

"Council of Governors" means the Council of Governors as constituted in accordance with the Constitution, which has the same meaning as the Council of Governors in paragraph 7 to Schedule 7 of the 2006 Act

"Vice Chairman" means a Non-Executive Director appointed by the Council of Governors to undertake the Chairman's duties in the event that the Chairman is absent for any reason

"Director" means a member of the Board of Directors appointed in accordance with the Constitution, and includes both Executive and Non-Executive Directors

"Executive Director" means an Executive Director of the Trust

"Finance Director" means the Chief Finance Officer of the Trust

"Funds held on Trust" means those funds which the Trust holds at its date of Authorisation, receives on distribution by statutory instrument, accepted under powers derived under paragraph 14(2)(c) of Part 2, Schedule 4 of the 2006 Act and those accepted under Section 47(2)(c) of the 2006 Act. Such funds may or may not be charitable

"Member" means a member of the Trust

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

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

"Nominated Officer" means an Officer charged with the responsibility for discharging specific tasks within the Standing Orders and the Standing Financial Instructions

"Non-Executive Director" means a Non-Executive Director of the Trust

"Officer" means an employee or any other person holding a paid appointment or office with the Trust

"Reserve Chairman" means the Non-Executive Director, appointed in advance, who will deputise in the absence of the Chairman and Vice Chairman

"Scheme of Delegation" means the Reservation of Powers to the Board of Directors and Delegation of Powers

"Secretary" means a person appointed by the Trust in accordance with the Constitution to act independently of the Board of Directors, to provide advice on corporate governance issues to the Board of Directors and the Chairman regarding the Trust's compliance with the Regulatory Framework and the SOs

"Senior Independent Director" has the meaning ascribed in paragraph A.3 of the NHS Foundation Trust Code of Governance published as best practice advice by Monitor

"SFIs" means Standing Financial Instructions

"SOs" means these Standing Orders of the Board of Directors

"Trust" means the Nottinghamshire Healthcare NHS Foundation Trust

"Trust Headquarters" means The Resource, Duncan Macmillan House, Porchester Road, Nottingham, NG3 6AA

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

3 The Board of Directors

- 3.1 All business shall be conducted in the name of the Trust.
- 3.2 All funds received in trust shall be in the name of the Trust as corporate trustee.
- 3.3 In relation to Funds held on Trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 3.4 The Trust has the functions conferred on it by its Authorisation issued by Monitor. Directors acting on behalf of the Trust as corporate trustees are acting as quasi-trustees. Accountability for charitable Funds held on Trust is to be made to the Charity Commission.
- 3.5 The powers of the Trust established under statute shall be exercised by the Board of Directors meeting in private session except as otherwise provided for in SO 4.
- 3.6 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. These powers and decisions are set out in the Scheme of Delegation and have effect as if incorporated into the SOs.
- 3.7 Composition of the Board of Directors
- 3.7.1 In accordance with the Constitution, the Board of Directors is to comprise the following:
- (i) a Non-Executive Chairman; and
 - (ii) a maximum of 7 other Non-Executive Directors.
 - (iii) a maximum of 7 Executive Directors including:
 - (iv) the Chief Executive (who is the Accountable Officer);
 - (v) the Finance Director;
 - (vi) and a maximum of five other Directors, one of whom is a registered medical practitioner (within the meaning of the Medical Act 1983) or a registered dentist (within the meaning of the Dentists Act 1984), another of whom is to be a registered nurse or midwife (within the meaning

of the Nursing and Midwifery Order 2001, SI 2002/253) and another of whom shall be the Executive Director accountable to the Board of Directors for the Trust's high security psychiatric services

3.7.2 In the event that the number of Non-Executive Directors (including the Chairman) is equal to the number of Executive Directors, the Chairman (and in his absence Vice Chairman) shall have the casting vote at meetings of the Board of Directors and will in any event have a casting vote when a vote of all members of the Board of Directors present is tied.

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

- (i) he is a member of the Public, Patient, Service User and Carer Constituency; or
- (ii) he is not disqualified by virtue of paragraph 31 of the Constitution.

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

3.7.5 The Board of Directors (in consultation with the Council of Governors) may appoint any independent Non-Executive Director as the Senior Independent Director, for such period not exceeding the remainder of his term as a Non-Executive Director as they may specify on appointing him. The Vice Chairman of the Board of Directors may also be appointed as Senior Independent Director.

3.7.6 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 Chairman. The Board of Directors (in consultation with the Council of Governors) may thereupon appoint another independent Non-Executive Director as Senior Independent Director in accordance with the provisions in SO 3.7.5.

3.7.7 The Senior Independent Director shall perform the role set out in "The NHS Foundation Trust Code of Governance" (2006) issued by Monitor.

3.8 Register of Directors

3.8.1 In accordance with paragraph 36 of the Constitution, the Applicant Trust shall keep and maintain a Register of Directors which shall list:

- (i) the names of the Directors;
- (ii) their capacity on the Board of Directors; and
- (iii) an address through which they may be contacted which may be the Secretary.
- (iv) the declared interests of each Director (see section 8).

3.9 Appointment of the initial Chairman and initial other, Non-Executive Directors

3.9.1 The chairman of the Applicant NHS Trust shall be appointed as the initial Chairman of the Trust if he wishes to be appointed.

3.9.2 The Council of Governors shall appoint, so far as possible, the initial Non-Executive Directors of the Trust, by appointing any of the Non-Executive Directors of the Applicant Trust (other than the Chairman) who wish to be appointed.

3.9.3 An individual appointed as the initial Chairman or as an initial Non-Executive Director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of their respective terms of office as chairman or Non-Executive Director of the Applicant NHS Trust, or 12 months (whichever is the longer), unless they notify the Council of Governors that they do not wish to be appointed. In the case of any vacancies SO 3.10.1 shall apply.

3.9.4 The criteria for qualification for appointment as a Non-Executive Director as set out in SO 3.7.3. and paragraph 31 of the Constitution do not apply to the appointment of the initial Chairman and the initial other Non-Executive Directors.

3.10 Appointment and Removal of the Chairman and other Non-Executive Directors

3.10.1 The Chairman and other Non-Executive Directors are to be appointed by the Council of Governors following a process of open competition. The current Chairman or a Non-Executive

Director may stand for reappointment. Six months before the end of the term of office of the Chairman or a Non-Executive Director (as the case may be), the Council of Governors will adopt a procedure as set out at paragraph 26 and 27 of the Constitution for appointing the Chairman and the Non-Executive Directors which shall provide for the process to be open and fair and in accordance with any guidance issued by Monitor.

3.10.2 Removal of the Chairman or another Non-Executive Director shall be in accordance with the procedure set out in paragraph 26 of the Constitution require approval of three-quarters of the members of the Council of Governors.

3.11 Remuneration and Terms Of Office of the Chairman and Non-Executive Directors

3.11.1 The Chairman and the Non-Executive Directors are to be appointed for a period of office by the Council of Governors at General Meeting.

3.11.2 At the General Meeting referred to at SO 3.11.1, the Council of Governors shall decide the:

- (i) period of office;
- (ii) remuneration and allowances and
- (iii) other terms and conditions of office of the Chairman and other Non-Executive Directors.

3.11.3 Pending the establishment of the Council of Governors, the matters referred to at SO 3.11.2 shall be determined in accordance with terms and conditions of the respective officers as employed by the Trust.

3.12 Appointment and Powers of Vice Chairman

3.12.1 For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman, the Council of Governors shall appoint a Non-Executive Director to be Vice Chairman for such period, not exceeding the remainder of his term as non-executive director of the Applicant NHS Trust, as the Council of Governors may specify on appointing him. The Vice Chairman of the Applicant Trust shall be appointed as the initial Vice Chairman if he wishes to be appointed.

3.12.2 Any Non-Executive Director so appointed may at any time resign from the office of Vice Chairman by giving notice in writing to the Council of Governors. The Council of Governors may thereupon appoint another Non-Executive Director as Vice Chairman in accordance with the provisions of SO 3.12.1.

3.12.3 Where the Chairman of the Trust has died or has ceased to hold office, or where he has been unable to perform his duties as Chairman owing to illness or any other cause, the Vice Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes his duties, as the case may be; and references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform his duties, be taken to include references to the Vice Chairman. Where both the Chairman and Vice Chairman are unable to perform their duties owing to illness, conflict of interest or any other cause, another Non-Executive Director will be selected by the Chief Executive and a Non-Executive Director to be the "Acting Chairman" of the Trust until such time as the Chairman or (as the case may be) the Vice Chairman is able to discharge his functions as Chairman, or a new Chairman is appointed by the Council of Governors in accordance with paragraph 28 of the Constitution.

3.13 Appointment and Removal of Chief Executive and Other Executive Directors

3.13.1 Subject to SO 3.14 below, the Chairman and Non-Executive Directors shall appoint or remove the Chief Executive. The appointment of the Chief Executive is subject to the approval of a majority of the members of the Council of Governors present and voting at a meeting of the Council of Governors.

3.13.2 The initial Chief Executive is to be appointed in accordance with SO 3.14 below.

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

3.14 Appointment and removal of the Chief Executive

3.14.1 The Chief Executive of the Applicant NHS Trust shall be appointed as the initial Chief Executive of the Trust if he wishes to be so appointed.

3.14.2 The appointment of the Chief Executive of the Applicant NHS Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Governors.

3.15 Remuneration and Terms of Office of the Chief Executive and Executive Directors

3.15.1 The Trust shall establish a committee of Non-Executive Directors in accordance with SO 5 to decide the:

- (i) period of office;
- (ii) remuneration and allowances;
- (iii) the other terms and conditions of office of the Chief Executive and other Executive Directors.

3.15.2 Pending the establishment of such a committee of Non-Executive Directors, the matters referred to at SO 3.15.1 shall be determined in accordance with the terms and conditions of the respective officers employed by the Applicant NHS Trust.

3.16 Disqualification

3.16.1 A Director will be subject to the disqualification criteria included at paragraph 31 of the Constitution.

3.17 Joint Directors

3.17.1 Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for Executive Directorship or in relation to which an Executive Director is to be appointed, those persons shall count for the purpose of paragraph 23 of the Constitution as one person.

3.17.2 Where the office of a director of the Board is shared jointly by more than one person:

- (i) either or both of those persons may attend or take part in meetings of the Board;
- (ii) if both are present at a meeting they should cast one vote if they agree;

- (iii) in the case of disagreements no vote should be cast;
- (iv) the presence of either or both of those persons should count as the presence of one person for the purposes of quorum.

4 Meetings of the Trust

4.1 Admission of the Public and the Press

4.1.1 Subject to SO 4.1.4, meetings of the Board of Directors shall be held in public, unless the Board of Directors in their absolute discretion determine that any meeting of the Board of Directors be held in private.

4.1.2 The Chairman shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press but such persons shall be required to withdraw upon the Board of Directors 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 of which would be prejudicial to the public interest” (Section 1(2) Public Bodies (Admission to Meeting) Act 1960).

4.1.3 The Chairman shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board of Directors 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 Board of Directors resolving as follows:

“That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete business without the presence of the public” (Section 1(8) Public Bodies (Admission to Meetings) Act 1960).

4.1.4 Nothing in these SOs shall require the Board of Directors to allow members of the public or representative 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 Board of Directors.

4.2 Calling Meetings

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

4.2.2 The Chairman may call a meeting of the Board of Directors at any time. If the Chairman 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 Board of Directors, and this has been presented to him, or if, without so refusing, the Chairman does not call a meeting within seven days after such requisition has been presented to him, at the Trust's Headquarters, such one third or more members of the Board of Directors may forthwith call a meeting.

4.2.3 The Trust will publicise and hold an annual public meeting, which shall be on or before 30 September every year.

4.3 Notice of Meetings

4.3.1 Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman, or by an Officer of the Trust authorised by the Chairman to sign on his behalf, shall be delivered to every Director, or sent by post to the usual place of residence of every Director, so as to be available to him at least 7 days before the meeting.

4.3.2 Absence of service of the notice on any member of the Board of Directors shall not affect the validity of a meeting.

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

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

4.3.5 In the event of an emergency giving rise to the need for an immediate meeting, SOs 4.3.1 to 4.3.4 shall not prevent the calling of such a meeting without the requisite 7 day`s notice provided that every effort is made to make personal contact with every Director who is not absent from the United Kingdom and the Agenda for the meeting is restricted to matters arising in that emergency.

4.4 Agendas

4.4.1 Agendas will be sent to members of the Board of Directors six 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. Failure to serve such a notice on more than three members of the Board of Directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.

4.4.2 In the event that a meeting of the Board of Directors is to be held in public, 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 Headquarters at least three days before the meeting.

4.5 Setting the Agenda

4.5.1 The Chairman, or in his absence the Vice Chairman, shall determine the agenda for each meeting of the Board of Directors, being advised in this regard by the Chief Executive and the Secretary.

4.5.2 A Director desiring a matter to be included on an Agenda shall make his request to the Chairman at least ten Clear Days before the meeting, subject to SO 4.3. Requests made less than ten Clear Days before a meeting may be included on the Agenda at the discretion of the Chairman. Agendas will be sent to members of the Board of Directors before the meeting and supporting papers, whenever possible, shall accompany the Agenda, but will certainly be dispatched no later than 3 Clear Days before the meeting, save in the case of emergencies. 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.

4.6 Petitions

4.6.1 Where a petition has been received by the Trust, the Chairman shall include the petition as an item for the Agenda of the next Board of Directors meeting.

4.7 Chairman of Meeting

4.7.1 At any meeting of the Board of Directors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting, the Vice Chairman, if there is one and he is present, shall preside. If the Chairman and Vice Chairman are absent, such Non-Executive Director (and who is not also an Officer of the Trust) as the members of the Board of Directors present shall choose, shall preside.

4.7.2 If the Chairman is absent temporarily on the grounds of a declared conflict of interest, the Vice Chairman, if present, shall preside. If the Chairman and Vice Chairman are absent, or are disqualified from participating, such Non-Executive Director as the members of the Board of Directors present shall choose, shall preside.

4.8 Chairman's Ruling

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

4.9 Notices of Motion

4.9.1 Subject to the provisions of SO 4.11 and SO 4.12, a member of the Board of Directors wishing to move or amend a motion shall send a written notice to the Chairman.

4.9.2 The notice shall be delivered at least 10 Clear Days before the meeting. The Chairman shall include in the agenda for the meeting all notices so received that are in order and permissible under these SOs and the appropriate Regulations. Subject to SO 4.3.3, this SO shall not prevent any motion being moved without notice on any business mentioned on the agenda for the meeting.

4.10 Emergency Motions

4.10.1 Subject to the agreement of the Chairman, and subject also to the provision of SO 4.11, a member of the Board of Directors may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board of Directors at the commencement of the business of the meeting as an additional item included in the agenda. The Chairman's decision to include the item shall be final.

4.11 Motions: Procedure at and during a meeting

4.11.1 Who may propose

- (i) A motion may be proposed by the Chairman of the meeting or any member of the Board of Directors present. It must also be seconded by another member of the Board of Directors.

4.11.2 Contents of motions

- (i) The Chairman may exclude from the debate at his or discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:
 - (A) the reception of a report;
 - (B) consideration of any item of business before the Board of Directors;
 - (C) the accuracy of minutes;
 - (D) that the Board of Directors proceed to next business;
 - (E) that the Board of Directors adjourn; or
 - (F) that the question be now put.

4.11.3 Amendments to motions

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

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

4.11.4 Rights of reply to motions

- (i) Amendments
 - (A) 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.
- (ii) Substantive/original motion
 - (A) The member of the Board of Directors who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

4.11.5 Withdrawing a motion

- (i) A motion, or an amendment to a motion, once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.

4.11.6 Motions once under debate

- (i) When a motion is under debate, no motion may be moved other than:
 - (A) an amendment to the motion;
 - (B) the adjournment of the discussion, or the meeting;
 - (C) that the meeting proceed to the next business;
 - (D) that the question should be now put;

- (E) the appointment of an 'ad hoc' committee to deal with a specific item of business;
 - (F) a motion under SO 4.1.2 resolving to exclude the public (including the press); and
 - (G) that a member be not further heard.
- (ii) In the cases of a motion under SO 4.11.6(i)(C) or SO 4.11.6(i)(D), in the interests of objectivity, such a motion should only be put forward by a member of the Board of Directors who has not taken part in the debate and who is eligible to vote.
 - (iii) If a motion under SO 4.11.6(i)(C) or SO 4.11.6(i)(D) is carried, the Chairman 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.
 - (iv) The mover of a motion shall have a maximum of five minutes to move and five minutes to reply. Once a motion has been moved, no member of the Board of Directors shall speak more than once or for more than five minutes.

4.12 Motion to Rescind a Resolution

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

4.12.2 When any such motion has been dealt with by the Board of Directors, it shall not be competent for any member of the Board of Directors other than the Chairman to propose a motion to the same effect within six months, however the Chairman may do so if he considers it appropriate. This provision shall not apply to motions moved in pursuance of a report or recommendations of a committee or the Chief Executive.

4.13 Voting

4.13.1 Every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chairman of the meeting shall have a second or casting vote.

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

4.13.3 If at least one-third of the members of the Board of Directors present so request, the voting (other than by paper ballot), on any question may be recorded to show how each Director present voted or abstained.

4.13.4 If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).

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

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

4.14 Minutes

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

4.14.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion

appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting. Minutes shall be retained in the Trust Secretary's office.

4.14.3 Minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public as required by Code of Practice on Openness in the NHS.

4.15 Suspension of Standing Orders

4.15.1 Except where this would contravene any statutory provision or any guidance or best practice advice issued by Monitor, any one or more of the SOs may be suspended at any meeting, provided that at least two-thirds of the Directors are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.

4.15.2 A decision to suspend SOs shall be recorded in the minutes of the meeting.

4.15.3 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Chairman and the Directors.

4.15.4 No formal business may be transacted while SOs are suspended.

4.15.5 The Audit Committee shall review every decision to suspend SOs.

4.16 Variation and Amendment of Standing Orders

4.16.1 Subject always to paragraph 15.3 of Annex 7 of the Constitution, these SOs shall be amended only if:

- (i) relevant notice of a meeting has been served in accordance with SO 4.3;
- (ii) a notice of motion under SO 4.9 has been given;
- (iii) no fewer than half the total of the Trust's Non-Executive Directors vote in favour of amendment;
- (iv) at least two-thirds of the Board of Directors are present; and

- (v) the variation proposed does not contravene the Regulatory Framework, any statutory provisions or any guidance made by Monitor.

4.17 Record of Attendance

- 4.17.1 The names of the Chairman and the Directors present at the meeting shall be recorded in the minutes.

4.18 Quorum

- 4.18.1 No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors are present including at least one Executive Director and one Non-Executive Director and the Chairman.

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

- 4.18.3 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 8) he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Nominations and Remuneration Committee).

4.19 Meetings: Electronic Communication

- 4.19.1 In this Standing Order “communication” and “electronic communication” shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.

- 4.19.2 A Director in electronic communication with the Chairman and all other parties to a meeting of the Board of Directors or of a committee or sub-committee of the Board of 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 he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.

4.19.3 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 Chairman of the meeting is physically present.

4.19.4 Meetings held in accordance with this SO are subject to SO 4.18 (Quorum). For such a meeting to be valid, a quorum MUST be present and maintained throughout the meeting.

4.19.5 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.

5 Arrangements for the Exercise of Functions by Delegation

5.1 Subject to SO 3.6 and such guidance as may be given by Monitor, the Board of Directors may make arrangements for the exercise of any of its functions by a committee or sub-committee appointed by virtue of SO 5.4 below, or by a Director or an officer in each case subject to such restrictions and conditions as the Board of Directors considers appropriate.

5.2 Notwithstanding the provisions of SO 5.1, the provisions of paragraphs 3.2 to 3.4 of the Constitution apply.

5.3 Emergency Powers

5.3.1 The powers which the Board of Directors has retained to itself within these SOs may in emergency be exercised by the Chief Executive and the Chairman after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chairman shall be reported to the next formal meeting of the Board of Directors for ratification.

5.4 Delegation to Committees

5.4.1 The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees or subcommittees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board of Directors.

5.5 Delegation to Officers

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

5.5.2 The Chief Executive shall prepare a Scheme of Delegation identifying his proposals, which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.

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

5.5.4 The arrangements made by the Board of Directors as set out in the Scheme of Delegation shall have effect as if incorporated in these SOs.

5.6 Duty to Report Non-Compliance with Standing Orders

5.6.1 If for any reason these SOs are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All members of

the Board of Directors and staff have a duty to disclose any non-compliance with these SOs to the Secretary as soon as possible.

6 Committees

6.1 Appointment of Committees

- 6.1.1 Subject to SO 3.6 and such guidance issued by Monitor, the Board of Directors may and, if directed by Monitor, shall appoint committees of the Trust consisting wholly or partly of Directors of the Trust or other Health Service Bodies or wholly of persons who are not Directors of the Trust or other health service bodies.
- 6.1.2 A committee appointed under SO 6.1.1 may, subject to such guidance as may be given by Monitor, the Board of Directors or the other Health Service Bodies in question, appoint sub-committees consisting wholly or partly of Directors (whether or not they are Directors of the Trust in question) or wholly of persons who are not Directors of the Trust or the committee of the Trust or the other Health Service Bodies in question.
- 6.1.3 The SOs of the Board of Directors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board of Directors, in which case the term "Chairman" is to be read as a reference to the Chairman of the committee as the context permits, and the term "member" is to be read as a reference to a member of the committee also as the context permits. (There is no requirement to hold meetings of committees, established by the Trust in public.)
- 6.1.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide in accordance with any relevant legislation and/or regulations, and such guidance or best practice advice issued by Monitor. Such terms of reference shall have effect as if incorporated into the SOs.
- 6.1.5 Where committees are authorised to establish sub-committees they may not delegate Executive powers to the sub-committee unless expressly authorised by the Board of Directors.

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

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

- (i) Audit Committee;
- (ii) Nominations and Remuneration Committee;
- (iii) Quality and Risk Committee;
- (iv) Finance and Performance Committee;
- (v) Mental Health Act Hospital Managers' Committee;
- (vi) Charitable Funds Committee;
- (vii) Workforce, Equality and Diversity Committee; and

6.1.8 The terms of reference of those Committees in SO 6.1.7 above shall be agreed by the Board of Directors.

6.1.9 The Board of Directors may also operate as a committee in accordance with SO 6.1.2. Any decisions taken by the Board of Directors in committee must be brought to the next meeting of the Board of Directors.

6.2 Confidentiality

6.2.1 A member of a committee shall not disclose a matter dealt with, by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.

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

7 Interface between the Board of Directors and the Council of Governors

- 7.1 The Board of Directors will cooperate with the Council of Governors as far as possible in order to comply with the Regulatory Framework in all respects and in particular in relation to the following matters which are set out specifically within the Constitution.
- 7.2 The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to Monitor.
- 7.3 The Directors are to present to the Council of Governors at a general meeting the Annual Accounts, any report of the Auditor on them, and the Annual Report.
- 7.4 The Annual Report is to give:
- 7.4.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its Public, Service Users' and Carers' Constituency is representative of those eligible for such membership; and
 - 7.4.2 any other information which the Monitor requires.
- 7.5 In order to comply with the Regulatory Framework in all respects and in particular in relation to the matters which are set out above, the Council of Governors may request that a matter which relates to paragraphs 42 and 43 of the Constitution is included on the Agenda for a meeting of the Board of Directors.
- 7.6 If the Council of Governors so desires, such a matter as described within SO 7.5 to be included on an Agenda item, they shall make their request in writing to the Chairman at least 14 Clear Days before the meeting of the Board of Directors, subject to SO 4.3. The Chairman shall decide whether the matter is appropriate to be included on the Agenda. Requests made less than 14 Clear Days before a meeting may be included on the Agenda at the discretion of the Chairman.

8 Declarations of Interests and Register of Interests

- 8.1 The Regulatory Framework requires members of the Board of Directors to declare to the Secretary:
 - 8.1.1 any pecuniary interest in any contract, proposed contract or other matter which is under consideration concerning the Trust or is to be considered by the Board of Directors; and
 - 8.1.2 any interests including but not limited to any personal or family interests which are relevant and material to the business of the Trust irrespective of whether those interests are direct or indirect, actual or potential.
- 8.2 All existing members of the Board of Directors should declare such an interest as soon as the Director in question becomes aware of it. Any members of the Board of Directors appointed subsequently should do so on appointment.
- 8.3 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time, setting out any interests required to be declared outside a meeting in accordance with the Constitution or the SOs and delivering it to the Secretary on appointment or as soon thereafter as the interest arises, but within seven Clear Days of becoming aware of the existence of a relevant and material interest.
- 8.4 In addition, if a Director is present at a meeting of the Board of Directors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter.
- 8.5 If a Director has declared a pecuniary interest in accordance with SO 8.9 below he shall not take part in the consideration or discussion of the matter in respect of which an interest has been disclosed and shall be excluded from the meeting whilst that proposed contract is under consideration. At the time the interests are declared, they should be recorded in the Board of Director's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 8.6 Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by Monitor:

- 8.6.1 Directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies);
 - 8.6.2 ownership, part-ownership or Directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
 - 8.6.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
 - 8.6.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
 - 8.6.5 any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services;
 - 8.6.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks;
 - 8.6.7 any other commercial interest in the decision before the meeting.
- 8.7 Any travelling or other expenses or allowances payable to a Director in accordance with the Constitution shall not be treated as a pecuniary interest.
- 8.8 Members of the Board of Directors of companies likely or possibly seeking to do business with the NHS should be published in the Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

8.9

A Director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- 8.9.1 he, or a nominee of his, 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
- 8.9.2 he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or

who has a direct pecuniary interest in the other matter under consideration.

8.10 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

8.10.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body; or

8.10.2 of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

8.11 Where a Director:

8.11.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and

8.11.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and

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

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

8.12 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of the Constitution and the SOs to be also an interest of the other.

8.13 If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman. 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 should also be considered.

8.14 Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 18 of Schedule 7 of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this SO.

8.15 SO 7 applies to any committee, sub-committee of the Board of Directors and applies to any member of any such committee or sub-committee (whether or not he is also a Director).

8.16 Register of Interests

8.16.1 The Register of Interests shall contain the names of each Director, whether he has declared any interests and, if so, the interests declared in accordance with the Constitution or these SOs.

8.16.2 It is the obligation of the Director to inform the Secretary in writing within seven Clear Days of becoming aware of the existence of a relevant or material interest. The Secretary must amend the appropriate Register of Interests upon receipt of new or amended information as soon as is practical and, in any event, within fourteen Clear Days.

8.16.3 The Register of Interests will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register of Interests to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the Register of Interests must be provided to Members free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the Register of Interests.

8.16.4 The details of Directors' interests recorded in the Register of Interests will be kept up to date by means of a regular review as necessary of the Register of Interests by the Secretary during which any changes of interests recently declared will be incorporated.

9 Standards of Business Conduct

9.1 Policy

9.1.1 Directors and Officers should comply with the NHS Foundation Trust Code of Governance 2006, the Trust's Code of Business Conduct, the Trust's guidance booklet "What is Good Governance" and any guidance and/or best practice advice issued by the Monitor. This section of SOs should be read in conjunction with these documents.

9.2 Interest of Directors and Employees in Contracts

9.2.1 If it comes to the knowledge of Director or an officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he shall, at once, give notice in writing to the Chief Executive or Secretary of the fact that he is interested therein. In the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

9.2.2 A Director or officer must also declare to the Chief Executive or Secretary any other employment or business or other relationship of his, or of a cohabiting spouse or partner, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust in accordance with SO 8. The Trust shall require such interests to be recorded in the Register of Directors interests.

9.3 Canvassing of, and Recommendations by, Directors in Relation to Appointments

9.3.1 Canvassing of Directors or members of any committee of the Board of Directors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of these SOs shall be included in application forms or otherwise brought to the attention of candidates.

9.3.2 A Director of the Board of Directors shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this SO shall not preclude a Director from giving written testimonial of

a candidate's ability, experience or character for submission to the Trust in relation to any appointment.

9.3.3 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

9.4 Relatives of Directors or Officers

9.4.1 Candidates for any staff appointment shall when making an application disclose in writing whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.

9.4.2 The Directors and every member and Officer of the Trust shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that member or Officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.

9.4.3 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Board of Directors whether they are related to any other member of the Board of Directors or holder of any office in the Trust.

9.4.4 Where the relationship to an Officer or another Director to a Director of the Trust is disclosed, SO 8 shall apply.

9.5 External Consultants

9.5.1 SO8 will apply equally to all external consultants or other agents acting on behalf of the Trust. The Trust's Scheme of Delegation should be adhered to at all times.

10 Tendering and Contract Procedure

10.1 Duty to comply with Standing Orders

10.1.1 The procedure for making all contracts by or on behalf of the Trust shall be clearly set out within the Trust's SFIs (except where SO 4.16 is applied).

11 Disposals

- 11.1 Competitive Tendering or Quotation procedures shall not apply to the disposal of:
- 11.1.1 any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in a reserve) by the Chief Executive or his Nominated Officer;
 - 11.1.2 obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust;
 - 11.1.3 items to be disposed of with an estimated sale value of less than a lower value specified in standing financial instructions and reviewed periodically but at least once annually;
 - 11.1.4 items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;
 - 11.1.5 land or buildings concerning which DOH guidance has been issued but subject to compliance with such guidance; or
 - 11.1.6 any matter which Monitor has issued alternate specific guidance in relation to.

12 In-House Services

- 12.1 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided on an in-house basis. The Trust may also determine from time to time that in-house services should be market tested by competitive tendering.
- 12.2 The Trust shall set out within its Standing Financial Instructions procedures that shall apply in all cases where the Trust determines that in-house services should be subject to competitive tendering.

13 Custody of Seal and Sealing of Documents

- 13.1 Custody of Seal

13.1.1 The common seal of the Trust shall be kept by the Secretary in a safe at Trust Headquarters. The seal shall only be released from the safe to enable it to be affixed to a document in accordance with these Standing Orders.

13.2 Sealing of Documents

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

13.2.2 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 Chief Executive and not also from the originating department and shall be attested by them.

13.2.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Finance Director (or an Officer nominated by him/her) and authorised and countersigned by the Chief Executive (or an Officer nominated by him/her who shall not be within the originating Directorate).

13.3 Register of Sealing

13.3.1 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealings shall be made to the Audit Committee at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

13.3.2 Every contract for building and engineering works, which exceeds the sum of £250,000 shall be executed under the common seal of the Trust.

13.3.3 The Officer responsible for the Register of the opening of Tender/Quotation envelopes shall retain this under secure custody and will make it readily available to external and internal audit for inspection as required.

13.3.4 Trust officers issuing and receiving the tender/quotation documents shall retain those documents and envelopes under secure custody, for the following periods:

- (i) for documents under seal, 12 years; and
- (ii) for documents under hand, 6 years.

14 Signature of Documents

14.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.

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

15 Miscellaneous

15.1 Standing Orders to be given to Members and Officers

15.1.1 It is the duty of the Chief Executive to ensure that existing Directors and Officers and all new appointees are notified of and understand their responsibilities within Standing Orders and SFIs. Updated copies shall be issued to staff designated by the Chief Executive. New designated Officers shall be informed in writing and shall receive copies, where appropriate, of SOs.

15.2 Documents having the standing of Standing Orders

15.2.1 Standing Financial Instructions and the Scheme of Delegation shall have the effect as if incorporated into SOs.

15.3 Review of Standing Orders

15.3.1 Standing Orders shall be reviewed annually by the Trust. The requirement for review extends to all documents having the effect as if incorporated in SOs.

15.4 Corporate Documents

15.4.1 Corporate documents specific to the setting up of the Trust shall be held in a secure place by the Chief Executive.

Annex 8 Further Provisions

1. Eligibility for Membership of the Trust

- 1.1 Subject to the provisions of paragraphs 2 to 4 below, an individual shall not be eligible for membership of the Trust if he or she:
- 1.1.1 is under 12 years of age at the date of his application or invitation to become a Member (as the case may be);
 - 1.1.2 fails or ceases to fulfil the criteria for membership of any of the Public, Service Users or Carers Constituency or the Staff Constituency;
 - 1.1.3 demonstrated aggressive or violent behaviour at any hospital or facility or against any of the Trust's employees or other persons who exercise functions for the purposes of the Trust and following such behaviour he has been asked to leave, has been removed or excluded from any hospital or facility in accordance with the relevant Trust policy for withholding treatment from violent/aggressive patients;
 - 1.1.4 has been confirmed as a "vexatious complainant" in accordance with the Trust's policy for handling complaints;
 - 1.1.5 has been removed as a Member of the Trust or another NHS Foundation Trust;
 - 1.1.6 is deemed to have acted in a manner contrary to the interests of the Trust.
- 1.2 Where the Trust is on notice that a Member may be disqualified from membership, or may no longer be eligible to be a Member, the Company Secretary shall carry out all reasonable enquires to establish if that is the case and if satisfied, the Company Secretary shall give the Member 14 days written notice to show cause why his name should not be removed from the Register of Members. On receipt of any such information supplied by the Member, the Company Secretary may, if he considers it appropriate, remove the

Member from the Register of Members. In the event of any dispute the Secretary shall refer the matter for dispute resolution in accordance with paragraph 8.5 below.

- 1.3 All Members of the Trust shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a Member.

2 Determination of Eligibility for Membership of the Public, Patient, Service User and Carer Constituency

- 2.1 For the purposes of determining whether an individual lives in one of the Areas of the Trust (as defined in the table in Annex 1 of this Constitution), an individual shall be deemed to do so if:
 - 2.1.1 his name appears on the Electoral Roll at an address within the relevant Area of the Trust and the Trust has no reasonable cause to conclude that the individual is not living at that address; or
 - 2.1.2 the Trust is otherwise satisfied that the individual lives in the Area of the Trust.
- 2.2 An individual who is a member of the Public, Patient, Service User and Carer Constituency shall cease to be eligible to continue as a Member if he ceases to live in the Area of the Public, Patient, Service User and Carer Constituency of which he is a member save as may otherwise be provided in paragraphs 2.3 and 2.4 below.
- 2.3 Where a Member of a Public, Patient, Service User and Carer Constituency ceases to live permanently in the Area of the Public, Patient, Service User and Carer Constituency of which he is a Member, he shall forthwith advise the Trust that he is no longer eligible to continue as a Member and the Secretary shall forthwith remove his name from the register of Members unless the Secretary is satisfied that the individual concerned lives in another Area of a Public, Patient, Service User and Carer Constituency of the Trust. Where the Secretary is satisfied that such an individual continues to live in an Area of a Public, Patient, Service User and Carer Constituency of the Trust he shall, if the individual so requests,

thereafter treat that individual as a member of that other Area of the Public, Patient, Service User and Carer Constituency and amend the register of Members accordingly provided the Secretary has given that individual not less than 14 days' notice of its intention to do so.

- 2.4 Where a Member ceases to live temporarily in the Area of the Public, Patient, Service User and Carer Constituency of which he is a Member, the Trust may at its absolute discretion permit that individual nonetheless to remain on the register of Members for that Area of the Public, Patient, Service User and Carer Constituency if the Trust is satisfied that the absence is of a temporary duration only and for good cause, and that the Member will either return to live in that Area of the Public, Patient, Service User and Carer Constituency of which he is a Member or will live in some other part of the Area of the Trust.

3 Determination of Eligibility for Membership of the Staff Constituency

- 3.1 Subject to paragraph 3.2 below, a member of a Staff Class will cease to be eligible to be a Member of that Staff Class if they no longer meet the eligibility requirements of paragraph 8 of the Constitution and of Annex 5.
- 3.2 Notwithstanding paragraph 3.1 above, where an individual ceases to be eligible for membership of a Staff Class, but is nevertheless eligible for membership of some other Staff Class then the Trust may at its absolute discretion give notice to that Member of its intention to transfer him to that other Staff Class on the expiration of a period of time or upon a date specified in the said notice and shall after the expiration of that notice or date specified amend the register of Members accordingly.

4 Application for Membership

- 4.1 An individual may become a Member by application to the Trust in accordance with this Constitution and the provisions of paragraph 4.2 below, save in the case of those who are invited by the Trust to

become a member of a Staff Class of the Staff Constituency in accordance with paragraph 8 of the Constitution.

4.2 Where an individual wishes to apply to become a Member of the Trust, the following procedure shall apply:

4.2.1 the Trust shall upon request supply the individual with a form of application for membership in a form determined by the Trust;

4.2.2 upon receipt of the form of application referred to in paragraph 4.2.1 above, duly completed and signed by the applicant (or in the Trust's discretion signed on behalf of the applicant) the Secretary shall as soon as is reasonable practicable and in any event within 28 working days of receipt of the duly completed form consider the same;

4.2.3 unless the applicant is ineligible for membership of the Trust or is disqualified from membership, the Secretary shall cause his name to be entered forthwith on the Trust's register of Members and shall give notice in writing to the applicant of that fact;

4.2.4 upon the applicant's name being entered on the Trust's register of Members the individual shall thereupon become a Member;

4.2.5 the information to be included in the Trust's Register of Members shall include the following details relating to that member:

- 4.2.5.1 full name and title;
- 4.2.5.2 date of birth;
- 4.2.5.3 full postal address;
- 4.2.5.4 home telephone number (if any);
- 4.2.5.5 email address (if any);
- 4.2.5.6 constituency and class of which he is a member;
- 4.2.5.7 date upon which he became a member;
- 4.2.5.8 gender and ethnicity, and
- 4.2.5.9 affiliation to any health and social care group.

- 4.3 Where an individual is invited by the Trust to become a Member, the following procedure shall apply:
- 4.3.1 the Trust shall take all reasonable steps to satisfy itself that the individual is eligible to become a member of a Staff Class of the Staff Constituency relevant to him before inviting him to become a Member of the Trust and that it has all the information needed to complete the register of Members in accordance with paragraph 4.2.5 above;
 - 4.3.2 the Trust having so satisfied itself, it shall thereupon invite that individual to become a Member pursuant to paragraph 8 of the Constitution and if necessary shall request the individual to provide such further information, if any, as it may need to complete the necessary entry in the register of Members;
 - 4.3.3 unless the individual has within 28 days of the date upon which the Trust dispatches its invitation to him to become a Member, advise the Trust that he does not wish to become a Member, the Secretary shall thereupon enter that individual's name on the register of Members and he shall thereupon become a Member provided that the Trust has been provided with the information, if any, requested pursuant to paragraph 4.3.2 above to enable him to complete the relevant entry in the register of Members;
 - 4.3.4 if the individual has failed to provide the information requested by the Trust within 28 days of being invited by the Trust to provide it in accordance with paragraph 4.3.2 above, the Trust shall give notice in writing to the applicant that the information has not been provided and that unless and until the information is provided that individual's name shall not be entered on the register of Members.
- 4.4 No individual who is ineligible or disqualified from membership shall be entered or remain on the register of Members.
- 4.5 For the avoidance of doubt, an individual shall become a Member on the date upon which his name is entered on the Trust's Register of Members and shall cease to be a Member upon the date on which

his name is removed from the register of Members as provided for in this Constitution.

- 4.6 The Secretary shall procure that the Register of Members and all other registers to be maintained in accordance with this Constitution or in accordance with the 2006 Act are regularly reviewed and updated and that the register of Members in particular is reviewed and updated as appropriate and no less often than every 28 days.
- 4.7 Where in the reasonable opinion of the Trust a Member is no longer eligible or is disqualified from membership of the Trust it shall be entitled to remove the name of that individual from the register of Members and that individual shall thereupon cease to be a member provided always that this power shall not be exercised until the Trust has given not less than 14 days' written notice to the Member addressed to him at the address given in the register of Members of its intention to remove him from the register and that Member has not within that period notified the Trust of his wish to continue as Member and provided proof satisfactorily to the Trust of his continued eligibility.

5 Expulsion from membership of the Trust

- 5.1 A Member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted:
- 5.1.1 any Member may complain to the Secretary that another Member has acted in a way detrimental to or contrary to the interests of the Trust, or is otherwise disqualified as set out in paragraph 5.1 above; and
- 5.1.2 subject to paragraphs 5.2 to 5.6 below, if a complaint is made, the Council of Governors will consider the complaint, having taken such steps as it considers appropriate, to ensure that each Member's point of view is heard and may either:

- 5.1.2.1 dismiss the complaint and take no further action;
or
 - 5.1.2.2 arrange for a resolution to expel the Member complained of to be considered at the next meeting of the Council of Governors.
- 5.2 If a resolution to expel a Member is to be considered at a meeting of the Council of Governors, details of the complaint must be sent to the Member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- 5.3 At the meeting Council of Governors will consider evidence in support of the complaint and such evidence as the Member complained of may wish to place before them.
- 5.4 If the Member complained of fails to attend the meeting without due cause the meeting may proceed in their absence. The decision to proceed in these circumstances will be at the sole discretion of the person chairing the meeting in question.
- 5.5 A person expelled from membership will cease to be a Member upon the declaration by the chairman of the meeting that the resolution to expel them is carried.
- 5.6 No person who has been expelled from membership pursuant to the provisions of paragraph 5.1 above is to be re-admitted as a Member except by a resolution of the Council of Governors carried by votes of two-thirds of the members of the Council of Governors present and voting at a general meeting of the Council of Governors.

6 Termination of Membership

- 6.1 A Member shall cease to be a Member on:
 - 6.1.1 death; or
 - 6.1.2 resignation by notice in writing to the Secretary; or

- 6.1.3 ceasing to fulfil the requirements of paragraphs 7, 8, 9 or 10 of this Constitution, as the case may be; or
- 6.1.4 being disqualified pursuant to paragraph 1 above, or being expelled pursuant to paragraph 5 above.
- 6.1.5 having moved away or otherwise become uncontactable by reasonable means.

7 Members' Meetings

- 7.1 The Trust shall hold a Members' Meeting for all the Members (called the "Annual Members' Meeting") within eight months of the end of each Financial Year of the Trust.
- 7.2 Any Members' Meetings other than the Annual Members' Meeting shall be called a "Special Members' Meeting".
- 7.3 Both the Annual Members' Meetings and Special Members' Meetings shall be open to all Members of the Trust, members of the Council of Governors and, members of the Board of Directors, representatives of the Trust's Auditors, but not to members of the public. The Trust may invite representatives of the media and any experts, advisors or other persons whose attendance they consider to be in the best interests of the Trust to attend any meeting referred to in paragraphs 7.1 and 7.2 above.
- 7.4 All Members' Meetings are to be convened by order of the Board of Directors.
- 7.5 The Board of Directors shall present to the Members at the Annual Members' Meeting:
 - 7.5.1 a report on steps taken to secure that (taken as a whole) the actual membership of the Trust is representative of those eligible for such membership;
 - 7.5.2 the progress of the membership plan;

- 7.5.3 any proposed changes to the policy for the composition of the Council of Governors and of the Non-Executive Directors; or
 - 7.5.4 the results of any election and appointments of Governors, and any other reports or documentation it considers necessary or otherwise required by the Monitor or the 2006 Act.
- 7.6 The Trust shall give notice of all Members' Meetings:
- 7.6.1 by notice in writing to all Members;
 - 7.6.2 by notice prominently displayed at the Trust's headquarters and at all of the Trust's facilities;
 - 7.6.3 by notice on the Trust's website at least 14 clear days before the date of the Members' meeting; and
 - 7.6.4 to the Council of Governors, the Board of Directors, and to the Trust's Auditors stating whether the meeting is an Annual Members' Meeting or a Special Members' Meeting including the time, date, place of the meeting, and the business to be dealt with at the meeting.
- 7.7 The Chairman or in his absence the Vice Chairman or in their absence the Reserve Chairman shall preside at all Members' Meetings of the Trust. If none of the Chairman, the Vice Chairman or the Reserve Chairman is present, the Lead Governor or in his absence the Deputy Lead Governor will preside. In the event that not of the above are present, Governors present shall elect one of their number to be Chairman and if there is only one Governor is present and willing to act that person shall be Chairman. If no Governor is willing to act as Chairman or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be Chairman.

8 Governors and Directors: Communication and Conflict

8.1 Summary

This paragraph describes the processes intended to ensure a successful and constructive relationship between the Council of Governors and the Board of Directors. It emphasises the importance of informal and formal communication, and confirms the formal arrangements for communication within the Trust. It suggests an approach to informal communications, and sets out the formal arrangements for resolving conflicts between the Council of Governors and the Board of Directors.

8.2 Informal Communications

8.2.1 Informal and frequent communication between the Governors and the Directors is an essential feature of a positive and constructive relationship designed to benefit the Trust and the services it provides.

8.2.2 the Chairman shall use his reasonable endeavours to encourage effective informal methods of communication including:

8.2.2.1 participation of the Board of Directors in the induction, orientation and training of Governors;

8.2.2.2 development of special interest relationships between Non-Executive Directors and Governors;

8.2.2.3 discussions between Governors and the Chairman and/or the Chief Executive and/or Directors through the office of the Chief Executive or his nominated officer; and

8.2.2.4 involvement in membership recruitment and briefings at public events organised by the Trust.

8.3 Formal Communication

8.3.1 Some aspects of formal communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively.

8.3.2 Formal communications initiated by the Council of Governors and intended for the Board of Directors will be conducted as follows:

8.3.2.1 specific requests by the Council of Governors will be made through the Chairman to the Board of Directors;

8.3.2.2 any Governor has the right to raise specific issues to be put to the Board of Directors at a duly constituted meeting of the Council of Governors through the Chairman but if the Chairman declines to raise any such issue the said Governor may nonetheless still raise it provided two thirds of the Governors present approve his request to do so. The Chairman shall then raise the matter with the Board of Directors and provide the response to the Council of Governors;

8.3.2.3 joint meetings will take place between the Council of Governors and the Board of Directors as and when appropriate as determined by the Board of Directors in its absolute discretion.

8.3.3 The Board of Directors may request the Chairman to seek the views of the Council of Governors on such matters as the Board of Directors may from time to time determine.

8.3.4 Communications between the Council of Governors and the Board of Directors may occur with regard to, but shall not be limited to:

8.3.4.1 the Board of Directors proposals for the strategic direction of the Trust and the Annual Report and Forward Plan;

8.3.4.2 the Board of Directors' proposals for developments;

8.3.4.3 Trust performance;

8.3.4.4 involvement in service reviews and evaluation relating to the Trust's services; and

8.3.4.5 proposed changes, plans and developments for the Trust other than those that may be covered by paragraph 8.3.2.2 above.

8.3.5 The Board of Directors shall also present to the Council of Governors the Annual Accounts, Annual Report and any report of the Auditors in accordance with the terms of this Constitution and of the 2006 Act.

8.3.6 The following formal methods of communication may also be used as appropriate with the consent of both the Council of Governors and the Board of Directors:

8.3.6.1 attendance by the Board of Directors at a meeting of the Council of Governors; or

8.3.6.2 provision of formal reports or presentations by Executive Directors to a meeting of the Council of Governors; or

8.3.6.3 inclusion of appropriate minutes for information on the agenda of a meeting of the Council of Governors; or

8.3.6.4 reporting the views of the Council of Governors to the Board of Directors through the Chairman, the Vice Chairman or the Senior Independent Director.

8.4 Resolving Conflict between the Council of Governors and the Board of Directors

8.4.1 The Council of Governors and the Board of Directors are committed to developing and maintaining a constructive and positive relationship. The aim, at all times, is to resolve any potential or actual differences of opinion quickly, through discussion and negotiation.

8.4.2 If the Chairman cannot achieve resolution of a disagreement or dispute between the Council of Governors and the Board of Directors through informal efforts the Chairman will follow the dispute resolution procedure described in paragraphs 8.4.2.1 and 8.4.2.2 below. The aim is to resolve the matter at the first available opportunity and only to follow the dispute resolution procedure if initial action fails to achieve resolution:

8.4.2.1 The Chairman will call a joint meeting (“Resolution Meeting”) of equal numbers of Governors and

Directors, to take place as soon as possible, but no later than twenty days following the date of the request by the Chairman. The Resolution Meeting will be held in private. The aim of the Resolution Meeting will be to achieve resolution of the conflict. The Chairman will have the right to appoint, in his absolute discretion, an independent facilitator to assist the process. Every reasonable effort must be made to reach resolution.

8.4.2.2 If the Resolution Meeting fails to resolve the conflict, the dispute will be referred back to the Board of Directors who shall make the final decision.

8.5 Resolving Disputes about the Entitlement to Membership of the Trust and Eligibility for Membership of the Council of Governors

8.5.1 Where an individual is held by the Trust to be ineligible and/or disqualified from membership of the Trust and disputes the Trust's decision in this respect, the matter shall be referred to the Chief Executive (or such other Director of the Trust as the Chief Executive may, in his absolute discretion, nominate) as soon as reasonably practicable thereafter, and in any case, within 14 days of the Trust's decision.

8.5.2 The Chief Executive (or his nominated representative) shall:

8.5.2.1 review the original decision having regard to any representations made by the individual concerned and such other material, if any, as the Chief Executive considers appropriate;

8.5.2.2 then either confirm the original decision or make some other decision as appropriate based on the evidence which he has considered; and

8.5.2.3 communicate his decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.

8.5.3 Where a Governor is declared ineligible or disqualified from office or his term of office as a Governor has been terminated (for any reason other than expiry of his term of officer or as a consequence of his own resignation) and that person disputes the decision, he shall as soon as reasonably practicable be

entitled to attend a meeting with the Chairman and Chief Executive, who shall use their reasonable endeavours to facilitate such a meeting, to discuss the decision with a view to resolving any dispute which may have arisen but the Chairman and Chief Executive shall not be entitled to rescind or vary the decision which has already been taken.

8.6 Review of Process

8.6.1 The provisions set out in paragraph 8 above will be reviewed regularly in joint meetings of the Council of Governors and Board of Directors.

9 Indemnity

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

9.2 The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors, the Board of Directors and the Secretary.

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

10 Dissolution of the Trust

10.1 The Trust may not be dissolved except by order of the Secretary of State for Health or Monitor, in accordance with the provisions of the 2006 Act and 2012 Act.

11 Notices

- 11.1 Save where a specific provision of the Constitution otherwise requires, any notice required by this Constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose.
- 11.2 In this paragraph, "electronic communication" shall have the meaning set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 11.3 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice served pursuant to paragraph 11.1 above shall be deemed to have been received 48 hours after the envelope containing it was posted, or in the case of a notice contained in an electronic communication, 48 hours after it was sent.