

North Essex Partnership University NHS Foundation Trust

Constitution

(March 2015)

(V10.13.15 Agreed by the Board of Directors on 28.01.15 and the Council of Governors on 10.03.15)



Humanity



Strive for
Excellence



Commercial Head,
Community Heart



Our Cause,
Our Passion



Creative
Collaboration



Keep it simple

CONSTITUTION INDEX

Constitution

1. Name
2. Principal purpose
3. Powers
4. Membership and constituencies
5. Application for membership
6. Public Constituency
7. Staff Constituency
8. Restriction of membership
9. Termination of membership
10. Annual meetings of members
11. Council of Governors – composition
12. Election of Governors and tenure
13. Council of Governors – Appointed Governors and tenure
14. Council of Governors – disqualification and removal
15. Council of Governors – Duties of governors
16. Vacancies of Elected Governors
17. Council of Governors – meetings of Governors
18. Council of Governors – standing orders
19. Council of Governors – referral to the Panel
20. Council of Governors – conflicts of interest of governors
21. Council of Governors – travel expenses
22. Board of Directors
23. Board of Directors – general duties
24. Board of Directors – qualification for appointment as a Non Executive Director
25. Board of Directors – appointment and removal of Chairman and other Non Executive Director
26. Board of Directors – appointment of Deputy Chairman
27. Board of Directors – appointment and removal of the Chief Executive and other Executive Directors
28. Board of Directors – disqualification
29. Board of Directors – meetings
30. Board of Directors – standing orders

31. Board of Directors – conflicts of interest of Directors
32. Board of Directors – remuneration and terms of office
33. Registers
34. Admission to change of and removal from the registers
35. Registers – inspection and copies
36. Documents available for public inspection
37. Auditor
38. Audit committee
39. Annual accounts
40. Annual report, forward plans and non NHS work
41. Presentation of Annual Accounts and Reports to Governors and Members
42. Instruments
43. Indemnities
44. Amendments to this Constitution
45. Mergers etc and Significant Transactions
46. Interpretation and Definitions

Annexes

Annex 1 – The Public Constituency

Annex 2 – The Staff Constituency

Annex 3 – Composition of the Council of Governors

Annex 4 – The Model Rules for Elections

Annex 5 – Additional provisions – Council of Governors

Annex 6 – Standing Orders for the Council of Governors and Board of Directors

Annex 7 – Declarations required by Section 60 of the 2006 Act

Annex 8 – Proceedings at Annual Meeting of Members

Annex 9 – Significant Transactions

CONSTITUTION

1. NAME

The name of the foundation trust is North Essex Partnership University NHS Foundation Trust ('the Trust').

2. PRINCIPAL PURPOSE

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

3. POWERS

- 3.1. The powers of the Trust are set out in the 2006 Act. These powers include the provision of education and training, research and the provision of accommodation and goods and services for purposes related to the provision of healthcare.
- 3.2. All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 3.3. Subject to paragraph 3.4 below, any of these powers may be delegated to a committee of directors or to an executive director.
- 3.4 Where the Trust is exercising the functions of the managers referred to in section 45 of the Mental Health Act 2007, those functions may only be exercised by any three or more persons authorized by the Board of Directors each of whom must not be an executive director of the Board of Directors or an employee of the Trust.

4. MEMBERSHIP AND CONSTITUENCIES

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

- 4.1. The ten Public Constituencies set out in Annex 1
- 4.2. The Staff Constituency

5. APPLICATION FOR MEMBERSHIP

- 5.1. An individual who is eligible to become a member of the Trust may do so on application to the Trust.
- 5.2. An applicant will become a member when the Trust has received the application, and the name of the applicant has been entered into the register of members.

6. PUBLIC CONSTITUENCY

- 6.1. Subject to paragraphs 8 and 9, an individual who lives in one of the ten areas specified in Annex 1 as an area for a Public Constituency may become or continue as a member of the Trust.
- 6.2. Those members (excluding those eligible to become members of the Staff Constituency) who live in any of the areas specified as public constituencies are referred to collectively as a Public Constituency. The minimum number of members in each area of the Public Constituency is specified in Annex 1.

7. STAFF CONSTITUENCY

- 7.1. Subject to paragraphs 8 and 9, an individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
 - 7.1.1. 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
 - 7.1.2. He has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 7.2. Subject to paragraphs 8 and 9, individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may be invited by the Trust to become members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 7.3. Any individual who although employed or exercising functions for the Trust is not eligible to become a member of the Staff Constituency by reason of the provisions in 7.1 and 7.2 may if eligible become a member of the Public Constituency until he becomes eligible to be a member of the Staff Constituency.
- 7.4. Those members who are eligible for membership of the Trust by reason of the provisions in 7.1 and 7.2 are referred to collectively as the Staff Constituency.
- 7.5. The Staff Constituency shall be divided into three classes. Each class is described in Annex 2 and is a separate class of the Staff Constituency. For the purpose of deciding the membership of each class of the Staff Constituency on any date, "Place of Work" in Annex 2, in the case of a

member who is an employee of the Trust, shall mean the place of business specified in his Particulars of Employment on the date when he started to work for the Trust (excluding any day of induction or training), or subsequently on the first working day of the calendar year in which the membership of each class has to be decided, and in the case of a member who is not an employee of the Trust (including but not limited to a seconded staff member), shall mean the place of business where he was working for the Trust on the day on which his invitation to become a member was dispatched, or subsequently on the first working day of the calendar year in which the membership of each class has to be decided.

- 7.6. The minimum number of members in each of the three classes of the Staff Constituency is specified in Annex 2.
- 7.7. An individual who is eligible to become a member of the Staff Constituency, and invited by the Trust to become a member of the Staff Constituency 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 within 14 days of being invited to become a member.
- 7.8. An individual who was able to become a member of the Staff Constituency pursuant to paragraph 7.1 above and who has previously opted out of becoming a member may nonetheless apply in writing to the Trust to become a member.

8. RESTRICTION ON MEMBERSHIP

- 8.1. An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 8.2. An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 8.3. An individual may not become a member of the Trust unless he has attained the age of 14 years.

9. TERMINATION OF MEMBERSHIP

- 9.1. An individual will cease to be a member of the Trust if he:
 - 9.1.1. Gives notice in writing to the Secretary that he no longer wishes to be a member, or
 - 9.1.2. Dies, or
 - 9.1.3. Is expelled from membership by resolution of the Council of Governors, or

9.1.4. Ceases to be eligible for membership under the terms of this Constitution.

9.2 If the Secretary is in any doubt as to whether an individual has ceased to be eligible for membership under the terms of this constitution, the Secretary will give the relevant individual 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, the Secretary may, if he considers it appropriate, remove the member from the register of members. If the individual continues to dispute his removal, the Secretary will refer the matter to the Council of Governors as provided by paragraph 34.6 below.

10. ANNUAL MEETINGS OF MEMBERS

The Trust shall hold an annual meeting of its members in the first nine months of every financial year which shall be open to the public and to which the provisions of Annex 8 shall apply.

11. COUNCIL OF GOVERNORS – COMPOSITION

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

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

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

11.4. Elected governors shall be elected in accordance with paragraph 12 below and appointed governors shall be appointed as provided in paragraph 13 below.

12. COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS AND TENURE

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

12.2. The Model Election Rules, as may be published from time to time by the Department of Health or the Foundation Trust Network, and as adapted to reflect the Trust's decisions as to options within the rules form part of this constitution. The Model Election Rules current at the date of adoption of the changes to this Constitution are attached at Annex 4.

12.3. A subsequent variation of the Model Election Rules, other than a unilateral variation by the Trust, shall not constitute an amendment of the terms of this Constitution for the purpose of paragraph 44 of the constitution.

- 12.4. An election, if contested, shall be by secret ballot in accordance with the Model Election Rules.
- 12.5. The forms of declaration required by Section 60 of the 2006 Act are set out in Annex 7.
- 12.6. An elected governor shall hold office for such period not exceeding 3 years, as may be specified in the notice of the poll published for the election at which he is elected.
- 12.7. An elected governor shall cease to hold office if he ceases to be a member of the area of the constituency or class by which he was elected.
- 12.8. An elected governor shall be eligible for re-election at the end of a term of office unless the additional term of office for which he would serve if re-elected, would result in his holding office as an elected governor for more than 10 years in aggregate whether successively or cumulatively, but ignoring any period prior to the 1 October 2007.
- 12.9. Upon election each governor shall sign an undertaking agreeing to be bound by the Code of Conduct for governors as varied from time to time.

13. COUNCIL OF GOVERNORS – APPOINTED GOVERNORS AND TENURE

- 13.1. The appointed governors shall be chosen by the relevant sponsoring organisation referred to in Annex 3 and for a term and from a date specified in the written notice confirming its entitlement to make the appointment which shall be sent to his appointing body or organization by the Trust Secretary.
- 13.2. The appointed governors shall be appointed by written notice to the Trust delivered or sent to the Trust's head office signed by the chief officer of the body or organisation appointing him or in the case of a joint appointment by the chief officers of a majority of those bodies or organisations. Subject to paragraphs 13.3 and 44, the term of office for each appointed governor shall take effect from the first date on which it was able to commence under the notice given by the Trust Secretary to his appointing body or organization but an appointed governor may be reappointed for a further term of office unless the additional term of office for which he would serve if reappointed, would result in his holding office as an appointed governor for more than 10 years in aggregate whether successively or cumulatively, but ignoring any period prior to the 1 October 2007.
- 13.3. An appointed governor may be removed as a governor by written notice from his appointing body or organisation in the manner referred to in paragraph 13.2, and in that event another governor may be appointed in his place for the remainder of his term of office in the manner set out in paragraph 13.2. Any removal or appointment of an appointed governor shall take effect upon its receipt by the Trust in accordance with this paragraph 13. An appointed governor shall also cease to be a governor forthwith if his appointing organisation ceases to be an appointing organisation. An appointed governor may resign his office before the expiry of his term in accordance with paragraph 14.3.

- 13.4. Upon appointment each governor shall sign an undertaking agreeing to be bound by the Code of Conduct for governors as varied from time to time.

14. COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL

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

14.1.1. A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

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

14.1.3. A person who within the preceding five years has been convicted in the British 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.

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

- 14.3 A governor shall cease to be a governor only upon the conclusion of the process for determining that event under the standing orders of the Council of Governors or upon the expiry of his term of office without his being reelected or reappointed except in the case of his written resignation or his removal as an appointed governor by written notice from his appointing body or organisation given under paragraph 13.3. A written resignation or written notice shall take effect immediately upon its being received at the Trust's head office, unless the resignation or notice states that it shall take effect on a specified later date. In the latter case, the date specified must be within the governor's current term of office and must not be more than three months after the date of receipt at the Trust's head office. In the event that the date specified is more than three months after the date of receipt at the Trust's head office the resignation or notice shall take effect three months after receipt. A resignation or notice specifying a later date may not be withdrawn once received by the Trust.

15. COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS

- 15.1. The general duties of the Council of Governors are:

15.1.1 To hold the non-executive directors individually and collectively to account for the performance of the Board and

15.1.2 To represent the interests of the members of the Trust as a whole and the interests of the public.

- 15.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in that capacity as such
- 15.3 The Board of Directors and the Council of Governors shall consult together when required as to the manner in which the Council is to be assisted by the Trust in the carrying out its general duties

16. VACANCIES OF ELECTED GOVERNORS

- 16.1. Subject to paragraph 16.2, an election to fill any vacancy in the elected governors shall take place as and when the Secretary after consultation with the Chairman shall decide but shall be held in any event not more than fifteen calendar months after the date on which the vacancy arose. If the election then held is to fill one vacancy in an area of the Public Constituency, the governor then elected shall hold office for the unexpired period of the term of office of the governor who has ceased to be governor, but if the election then held is to fill more than one vacancy in an area of the Public Constituency, a governor then elected to fill a vacancy shall hold office for such period not exceeding 3 years, as may be specified in the notice of the poll published for the election at which he is elected
- 16.2. An election to fill a vacancy will be held immediately if:
- 16.2.1. There would otherwise be no elected governor to represent the area of the constituency or class in the constituency in question; or
- 16.2.2. The total number of governors elected by the Public Constituency would cease to represent more than half of the members of the Council of Governors; or
- 16.2.3. The Chairman so directs; or
- 16.2.4. The Lead Governor after consultation with the elected governor or governors for the area of that constituency or the class of that constituency so requests by written notice to the Trust Secretary; or
- 16.2.5. The Council of Governors so resolves by a simple majority at a duly convened meeting of the Council.
- 16.3. The powers under paragraphs 16.2.3, 16.2.4, and 16.2.5 to require an election to be held to fill a vacancy may be exercised at any time after the vacancy has occurred and shall not lapse through the passage of time and if there is more than one vacancy in any constituency or in any class in any constituency, those powers may be used to fill whichever vacancy the Chairman or the Lead Governor or the Council of Governors as the case may be, may decide, and any request made by any of them shall lead to an election being held for that vacancy.

17. COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS

- 17.1. The Chairman of the Trust or, in his absence the Deputy Chairman, shall preside at meetings of the Council of Governors except as otherwise provided pursuant to the Standing Orders to be adopted under paragraph 18 below.
- 17.2 Formal meetings of the Council of Governors shall be open to members of the public except where the Council shall resolve
- 17.2.1 That members of the public be excluded from the meeting (whether for the whole or part of the proceedings) on the ground that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or those proceedings; and/or
- 17.2.2 That in the interests of public order the meeting be adjourned for a period to be specified by the Council and continue thereafter without the presence of the public to enable the Council to complete its business.
- 17.3 Nothing in paragraph 17.2 shall require the Council to allow any member of the public to record proceedings in any manner whatsoever, other than in writing, or to make any oral or verbal report of proceedings as they take place, without the prior agreement of the Council.
- 17.4 For the purposes of obtaining information about the performance of the Trust 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 may require one or more of the directors to attend a meeting
- 17.5 The standing orders of the Council of Governors shall make provision for the convening of and the proceedings at any meeting to be held under paragraph 17.4

18. COUNCIL OF GOVERNORS – STANDING ORDERS

The Council of Governors has adopted standing orders for the practice and procedure of the Council, which are included in Annex 6 and which may be altered at any time and from time to time as provided by paragraph 44.

19. COUNCIL OF GOVERNORS – REFERRAL TO THE PANEL

- 19.1 A governor may refer to a Panel in accordance with section 39A of the 2006 Act a question as to whether the Trust has failed or is failing to act in accordance with its constitution or to act in accordance with the provisions made by or under chapter 5 of the 2006 Act but only if more than one half of the number of governors voting in person or by proxy at a meeting of the Council of Governors, vote to approve the referral.
- 19.2 In paragraph 19.1 a "Panel" shall mean a panel of persons appointed by Monitor to consider a question of the kind described in that paragraph.

19.3 The standing orders of the Council of Governors shall make provision as to the manner in which any referral under the preceding paragraph shall take place.

20. COUNCIL OF GOVERNORS – CONFLICTS OF INTEREST OF GOVERNORS

If a governor has an interest of any kind, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed transaction or arrangement 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. The standing orders for the Council of Governors shall make further provision regarding the matters referred to above, including for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of, or any right to vote upon the matter in respect of which an interest has been disclosed

21. COUNCIL OF GOVERNORS – TRAVEL EXPENSES

The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust, and the aggregate amount of those expenses shall be stated in each Annual Report of the Trust.

22. BOARD OF DIRECTORS

22.1. The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

22.2. The Board of Directors is to comprise:

22.2.1. A non-executive Chairman

22.2.2. Not more than 7 other non-executive directors; and

22.2.3. Not more than 7 executive directors.

But so that the number of the non-executive directors including the Chairman shall always be equal to or exceed the number of executive directors.

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

22.4. The Chief Executive shall be the Accounting Officer.

22.5. One of the executive directors shall be the Finance Director.

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

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

- 22.8. In the event that at any meeting of the Board of Directors there is an equality of votes on any issue or matter, the chairman of the meeting shall have a second or casting vote

23. BOARD OF DIRECTORS – GENERAL DUTY

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

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

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

- 24.1. He is a member of the Public Constituency, or:
- 24.2 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 in either case he is not disqualified by virtue of paragraph 28 below.

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

- 25.1. The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chairman of the Trust and the other non-executive directors.
- 25.2. Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.
- 25.3. The Council of Governors shall adopt a procedure 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

26. BOARD OF DIRECTORS – APPOINTMENT OF DEPUTY CHAIRMAN

- 26.1. The Council of Governors shall by a resolution passed at a meeting of the Council appoint one of the non-executive directors to be Deputy Chairman of the Trust, and in similar manner may remove the person so appointed from that position and appoint another non-executive director in his place.
- 26.2. Before a resolution for any such appointment is passed, the Chairman shall be entitled to advise the Council of Governors which of the non-executive directors is recommended by the Board of Directors for that appointment; that recommendation will not be binding upon the Council, but will be presented to the Council at its meeting before it comes to its decision

- 26.3. For so long as there is no person who has been appointed by the Council of Governors to be Deputy Chairman, the Board shall be entitled to appoint a non-executive director to be Deputy Chairman and to remove the person so appointed from that position and to appoint another non-executive director in his place, and any non-executive director appointed under this subparagraph shall hold office as Deputy Chairman until an appointment to that office is made by the Council under paragraph 26.1
- 26.4. The Deputy Chairman appointed under this paragraph 26 shall in the absence or unavailability of the Chairman or in the event of a vacancy in the office of Chairman be entitled to exercise all the rights and powers conferred upon the Chairman by this constitution including but not limited to those set out in the standing orders which comprise Annex 6
- 26.5. A Deputy Chairman appointed under this paragraph may at any time resign the office of Deputy Chairman by written notice to the Trust Secretary

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

- 27.1. The non-executive directors shall appoint or remove the Chief Executive.
- 27.2. The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 27.3. A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

28. BOARD OF DIRECTORS - DISQUALIFICATION

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

- 28.1. A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 28.2. 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.
- 28.3. 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.
- 28.4. A person who is a non-executive director and who is not a member of the Public Constituency.
- 28.5. A person whose tenure of office as a chairman or as a member or director of a health service or local authority body has been terminated on the grounds that his appointment is not in the interests of public service, or for non-attendance at meetings, or for non-disclosure of a conflicting interest.

- 28.6. A person who has had his name removed from any list prepared under section 91, 106,123 or 146 of the 2006 Act, and has not subsequently had his name included in such a list.
- 28.7. A person who has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health retirement, from any paid employment with a health service body or local authority body.
- 28.8 A person who is a member of the Council of Governors.
- 28.9 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 Code of Conduct for Directors.
- 28.10 A person who is an executive or non-executive director or governor of another NHS body.
- 28.11 A person who has acted in a manner inconsistent with the Terms of Authorisation, or the standing orders or standing financial instructions of the Trust, or the Code of Conduct for Directors.
- 28.12 A person who has failed to comply with the provisions of the standing orders adopted by the Board of Directors as to a conflict of interests.
- 28.13 A person where disclosures revealed by a Disclosure and Barring Service check against such person are such that it would be inappropriate for him to become or continue as a director or would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute.
- 28.14 A person who is the subject of a Sexual Offenders Order under the Sexual Offences Act 2003.
- 28.15 A person who is disqualified from acting as a company director under the Company Directors Disqualification Act 1986.
- 28.16 A person who is a member of the Local Authority Overview and Scrutiny Committee for Health having powers by virtue of regulations made under sections 244 and 245 of the 2006 Act or of a Local Health Watch or of a Health and Wellbeing Board
- 28.17 A person who is a member of the governing body of a Clinical Commissioning Group
- 28.18 A person who is included in any barred list established under the Safeguarding Vulnerable Adults Act 2006 or any equivalent list maintained under the laws of Scotland or Northern Ireland
- 28.19 A person who has displayed aggressive or violent behaviour at any NHS establishment or against any of the Trust's employees or persons exercising functions for the Trust

29. BOARD OF DIRECTORS - MEETINGS

29.1 Formal meetings of the Board of Directors shall be open to the public except where the Board shall resolve:

29.1.1 That members of the public be excluded from the meeting (whether for the whole or part of the proceedings) on the ground that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or those proceedings; and/or

29.1.2 That in the interests of public order the meeting be adjourned for a period to be specified by the Board and continue thereafter without the presence of the public to enable the Board to complete its business.

29.2 Nothing in paragraph 29.1 shall require the Board of Directors to allow any member of the public to record proceedings in any manner whatsoever, other than in writing, or to make any oral or verbal report of proceedings as they take place, without the prior agreement of the Board.

29.3 Before holding a meeting the Board of Directors must send a copy of the agenda for each formal meeting of the Board to the Council of Governors and as soon as practical after holding a meeting the Board of Directors must send a copy of the draft minutes of the meeting to the Council of Governors

29.4 Nothing in this paragraph 29 shall require a meeting of any committee of the Board of Directors to be open to the public or that committee to comply with the provisions of paragraph 29.3 or to prevent members of the Board from meeting together informally for discussions during which no decision is taken, or to require the Board to comply with the provisions of the preceding paragraph 29.3 in relation to those meetings.

29.5 Except as may be required by law or permitted by paragraphs 35 or 36 below, nothing in this paragraph 29 shall afford any person any right to inspect the accounting or other records or documents of the Trust by reason of being a governor or a member.

30. BOARD OF DIRECTORS – STANDING ORDERS

The Board of Directors has adopted standing orders for the practice and procedure of the Board of Directors, which are included in Annex 6 and which may be altered at any time and from time to time in accordance with paragraph 44

31. BOARD OF DIRECTORS – CONFLICTS OF INTEREST OF DIRECTORS

31.1 The duties that a director of the Trust has by virtue of being a director in particular include

- 31.1.1 A duty to avoid a situation in which he has (or can have) a direct or indirect interest which conflicts (or possibly may conflict) with the interests of the Trust; and
- 31.1.2 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
- 31.2 The duty referred to in paragraph 31.1.1. is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest or the matter has been authorised in accordance with the Constitution
- 31.3 A director who is in a situation described in paragraph 31.1.1. shall take as soon as practical such steps as are needed to place himself in a situation which is not as so described
- 31.4 The duty referred to in paragraph 31.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest and for the purposes of that paragraph “third party” means a person other than the Trust or a person acting on its behalf
- 31.5 If a director has in any way a direct or indirect interest in any proposed transaction or arrangement or matter in which the Trust is to or may become involved he must declare the nature and extent of that interest to the other directors at the beginning of any meeting in which the transaction or arrangement or matter is to be discussed
- 31.6 If a declaration made under this paragraph 31 proves to be or becomes inaccurate or incomplete, a further declaration must be made as soon as the director becomes aware of its being inaccurate or incomplete
- 31.7 A director shall be treated as having an indirect interest in a transaction or arrangement or matter if the spouse or a partner or parent or child or brother or sister or nominee of the director or a company or other organisation of which he is a director or a shareholder has an interest in the transaction arrangement or matter to which if it were the interest of the director the provisions of this paragraph 31 would apply
- 31.8 This paragraph 31 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 arrangement or matter in question
- 31.9 A director shall not be required to declare an interest
- 31.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- 31.9.2 If or to the extent that the directors are already aware of it; or
- 31.9.3 If or to the extent that it concerns terms of the director’s appointment that have been or are to be considered by a meeting of the Board of Directors or by a committee of the directors appointed for the purpose under the Constitution
- 31.10 If a director is in doubt as to whether he is in a situation described in paragraph 31.1.1 or has an interest for the purposes of paragraph 31.5 he shall refer the question to the Chairman and the decision of the Chairman

that he is in such a situation or has such an interest, shall be final and binding on the director.

- 31.11 The standing orders for the Board of Directors shall make further provision for the disclosure of interests including arrangements for the exclusion of a director declaring any interest from any discussion or consideration of or any right to vote upon the matter in respect of which an interest has been disclosed.

32. BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE

- 32.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.
- 32.2 A non-executive director shall not hold office for a term of more than three years but shall be eligible for reappointment unless the aggregate of his terms of office from the date of the Trust's establishment as a Foundation Trust exceeds or would exceed nine years.
- 32.3 The Board of Directors shall establish a committee of non-executive directors to decide the remuneration and allowances, and other terms and conditions of office, of the Chief Executive and other executive directors.

33. REGISTERS

The Trust shall have:

- 33.1 A register of members showing, in respect of each member, the area of the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 33.2 A register of members of the Council of Governors;
- 33.3 A register of interests of governors;
- 33.4 A register of directors; and
- 33.5 A register of interests of the directors.

34 ADMISSION TO CHANGE OF AND REMOVAL FROM THE REGISTERS

- 34.1 The Trust shall appoint a person to act as the Secretary to the Trust ('the Secretary') who shall be responsible for the obligations of the Trust which are set out in paragraphs 33, 34, 35 and 36 of this Constitution.
- 34.2 The entry of the name of a person as a member of the Trust in the register of members shall be conclusive evidence of that person's membership of the Trust at a particular time and of the area of the constituency and of the class of the constituency of which that person is then a member.

- 34.3 Any inadvertent failure by the Trust to give notice to any member of any proposed meeting or election shall not invalidate the proceedings at that meeting or that election.
- 34.4 The entry of the name of a person as a member of the Council of Governors in the register of members of the Council shall be conclusive evidence of that person's membership of the Council of Governors at a particular time and of the manner of his or her election appointment or nomination.
- 34.5 Any inadvertent failure by the Trust to give notice to any member of the Council of Governors of any proposed meeting shall not invalidate the proceedings at that meeting.
- 34.6 The Secretary shall make such changes to the registers referred to in paragraph 33 based on such information or evidence as the Secretary shall in his discretion decide including but not limited to the addition or removal of the name of any person from the register of members or the register of the Council of Governors and all such changes shall be reported to the next meeting of the Council of Governors who shall confirm that change or direct the Secretary to make a further change
- 34.7 Any change made by the Secretary to any of the registers (other than the removal of a governor from the register of members of the Council of Governors) whether made prior to or following a direction by a meeting of the Council of Governors shall take effect from the moment it is made
- 34.8 Any change made by the Secretary to the register of members of the Council of Governors which involves the removal of a governor from that register shall only be made upon a governor ceasing to be a governor either under paragraph 13.3 or upon the conclusion of the process referred to in paragraph 14.3 or on the expiry of his term of office without his being reelected or reappointed
- 34.9 Each governor and each director shall advise the Secretary as soon as practicable of anything which may come to his attention and which might affect the accuracy of the matters recorded in any of the registers referred to in paragraph 33.

35 REGISTERS – INSPECTION AND COPIES

- 35.1 The Trust shall make the registers specified in paragraph 33 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 35.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if the member so requests.
- 35.3 So far as the registers are required to be made available:

35.3.1 They are to be available for inspection free of charge at all reasonable times; and

35.3.2 A person who requests a copy of or extract from the registers is to be provided with a copy or extract.

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

36 DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

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

36.1.1 A copy of the current Constitution;

36.1.2 A copy of the current authorization

36.1.3 A copy of the latest annual accounts and of any report of the auditor on them

36.1.4 A copy of the latest annual report

36.2 The Trust shall also make available the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times.

36.2.1 A copy of any order made under sections 65D (appointment of Trust special administrator) , 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (Trust's coming out of special administration), or 65LA (Trust to be dissolved) of the 2006 Act.

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

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

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

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

36.2.6 A copy of any notice published under sections 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 resubmitted final report) of the 2006 Act.

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

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

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

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

36.3 A person who requests a copy of or extract from the registers is to be provided with a copy or extract.

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

37 AUDITOR

37.1 The Trust shall have an auditor.

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

38 AUDIT COMMITTEE

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

39 ANNUAL ACCOUNTS

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

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

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

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

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

39.6 Monitor may with the approval of the Secretary of State, direct the Trust

39.6.1 to prepare accounts in respect of such period or periods as may be specified in the direction;

39.6.2 that any accounts prepared by it by virtue of paragraph 39.6.1 are to be audited in accordance with such requirement as may be specified in the direction.

39.7 In preparing its Annual Accounts or any accounts by virtue of paragraph 39.6 the Trust must comply with any directions given by Monitor with the approval of the Secretary of State as to the methods and principles according to which those accounts must be prepared, and /or the content and form of those accounts

39.8 The Trust must lay a copy of the Annual Accounts and of any report of the Auditor on them before Parliament and send copies of the Annual Accounts and any report of the Auditor on them to Monitor within such period as Monitor may direct.

39.9 The Trust must send a copy of any accounts prepared by virtue of paragraph 39.6 above and of any report of the Auditor on them to Monitor within such period as Monitor may direct.

40 ANNUAL REPORT, FORWARD PLANS, AND NON-NHS WORK

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

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

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

40.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.

40.5 Each forward plan must include information about the activities other than the provision of goods and services for the purposes of the health service in England which the Trust proposes to carry on, and the income it expects to receive from doing so

40.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in paragraph 40.5, the Council must determine by resolution at a general meeting 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 notify the Board of Directors of its determination

40.7 If 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 purpose of the health service in England, it may implement the proposal only if more than one half of the number of

governors voting in person or by proxy at a meeting of the Council of Governors, vote in favour of its implementation

41 PRESENTATION OF ANNUAL ACCOUNTS AND REPORTS TO GOVERNORS AND MEMBERS

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

41.1.1 The annual accounts

41.1.2 Any report of the auditor on them

41.1.3 The annual report

41.2 These documents shall also be presented to the members of the Trust at the Annual Members Meeting by at least one member of the Board of Directors in attendance

41.3 The Trust may combine a meeting of the Council convened for the purposes of sub-paragraph 41.1 with the Annual Members Meeting

41.4 The Annual Report shall contain such information as Monitor may prescribe

42 INSTRUMENTS

42.1 The Trust shall have a seal.

42.2 No deed shall be executed by the Trust except under the authority of the Board of Directors.

43. INDEMNITIES

The Trust shall give a limited indemnity to the directors in respect of certain legal claims in such terms as the Board of Directors may from time to time decide and a limited indemnity to the governors in respect of certain legal claims in such terms as the Board of Directors after consultation with the Council of Governors may from time to time decide. The terms of such indemnities may be reviewed by the Trust in the light of any change in the law.

44. AMENDMENTS TO THE CONSTITUTION

44.1 The Trust may make an amendment of its Constitution only if:

44.1.1 More than one half of the directors present and voting at a meeting of the Board of Directors vote to approve that amendment and

- 44.1.2 More than one half of the number of governors voting in person or by proxy at a meeting of the Council of Governors vote to approve that amendment;
- 44.2 An amendment made under paragraph 44.1 shall take effect as soon as the conditions in that paragraph are satisfied or on the date for its taking effect specified in both resolutions whichever shall be the later but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act
- 44.3 Without prejudice to the generality of paragraph 44.1 an amendment of the Constitution may provide for a variation of the area of any part of the Public Constituency, or of the Staff Constituency, or the increase or reduction of the number of governors for any part of the Public Constituency or Staff Constituency, or for the variation of any class of any constituency, or for the reduction or termination of the term of office of any governor, or for the removal of any organisation as an appointing organisation.
- 44.4 Where an amendment is to be made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council has as part of the Trust), at least one member of the Council must attend the next Annual Members Meeting and present the amendment and the Trust must give the members an opportunity to vote on whether they approve the amendment.
- 44.5 If more than one half of the number of members voting at the meeting approve an amendment to which paragraph 44.4 refers, the amendment continues to have effect, but otherwise that amendment shall cease to have effect, and the Trust shall thereupon take such steps as are necessary as a result.
- 44.6 Amendments by the Trust of its Constitution are to be notified to Monitor but 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 accords with Schedule 7 of the 2006 Act

45. SIGNIFICANT TRANSACTIONS

- 45.1 The Trust may only enter into a Significant Transaction if more than one half of the number of governors voting in person or by proxy at a meeting of the Council of Governors, vote in favour of the Trust entering into that transaction.
- 45.2 For the purposes of paragraph 45.1 "Significant Transaction" shall have the meaning set out in Annex 9.

46 INTERPRETATION AND DEFINITIONS

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

Words importing the masculine gender only shall include the feminine gender, and words importing the singular shall import the plural and vice-versa in each case.

The following expressions shall bear the following meanings:

The Trust is North Essex Partnership University NHS Foundation Trust.

The 2006 Act is the National Health Service Act 2006 as amended by the 2012 Act

The 2012 Act is the Health and Social Care Act 2012

Annual Members Meeting is the meeting referred to in paragraph 10 of the Constitution

Constitution means this constitution and all annexes to it

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

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

The **Accounting Officer** for the Trust is the Chief Executive of the Trust.

The **Lead Governor** and the **Deputy Lead Governor** is in each case the person appointed as such under the standing orders of the Council of Governors

The **Model Election Rules** are the rules for elections for Foundation Trusts published from time to time by the Department of Health or the Foundation Trust Network, and adopted by the Trust.

Clear Day is a day of the week which is not a Saturday Sunday or public holiday in England

British Islands are the territories of the United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Channel Islands.

ANNEX 1 – THE PUBLIC CONSTITUENCY

There shall be ten areas of the Public Constituency as follows:-

Name of the constituency	Area of the constituency	Number of governors to be elected	Minimum number of members
Colchester	The district council area of Colchester	4	4
Tendring	The district council area of Tendring	4	4
Braintree	The district council area of Braintree	4	4
Chelmsford	The district council area of Chelmsford	4	4
Maldon	The district council area of Maldon	2	4
Harlow	The district council area of Harlow	2	4
Epping Forest	The district council area of Epping Forest	3	4
Uttlesford	The district council area of Uttlesford	2	4
Suffolk	The district council areas of Babergh, Ipswich, St Edmundsbury, Forest Heath, Mid Suffolk, Suffolk Coastal, and Waveney	2	4
South Essex	The district council areas of Basildon, Brentwood, Castle Point, and Rochford, and the unitary authorities of Thurrock and Southend	2	4

ANNEX 2 – THE STAFF CONSTITUENCY

The Staff Constituency will be divided into three classes as follows:

Class	Description	Minimum Number of members
West Essex Region	All persons described in paragraphs 7.1 or 7.2 of the Constitution whose Place of Work as defined in paragraph 7.5 is located within the district council areas of Epping Forest, Harlow or Uttlesford	10
Mid Essex Region	All persons described in paragraphs 7.1 or 7.2 of the Constitution whose Place of Work as defined in paragraph 7.5 is located within the district council areas of Braintree (except in the electoral ward of Halstead), Chelmsford or Maldon	10
North East Essex Region	All persons described in paragraphs 7.1 or 7.2 of the Constitution whose Place of Work as defined in paragraph 7.5 is located within the district council areas of Colchester or Tendring or the said electoral ward of Halstead or the county council area of Suffolk	10

The minimum membership of the Staff Constituency will be 30

ANNEX 3 – COMPOSITION OF THE COUNCIL OF GOVERNORS

The Council of Governors will comprise the following Elected and Appointed Governors:

Public (Elected) Governors - 29		Appointed Governors – 7	
Public Constituency		Appointing Organisations	
Colchester constituency	4	Essex County Council.	1
Tendring constituency	4	Tendring & Colchester Minority Ethnic Partnership	1
Braintree constituency	4	Anglia Ruskin University	1
Chelmsford constituency	4	Colchester Mind	1
Maldon constituency	2	Essex Respite Association	1
Uttlesford constituency	2	HM Prison & Young Offenders Institute Chelmsford	1
Harlow constituency	2	University of Essex	1
Epping Forest constituency	3		
Suffolk constituency	2		
South Essex constituency	2		
Staff Constituency Governors 9			
West Essex Region	3		
Mid Essex Region	3		
North East Essex Region	3		

ANNEX 4 – MODEL ELECTION RULES

MODEL ELECTION RULES 2014

PART 1: INTERPRETATION

1. Interpretation

PART 2: TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

PART 3: RETURNING OFFICER

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election
9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination forms
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination forms
17. Withdrawal of candidates
18. Method of election

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (public and patient constituencies)

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll
24. Issue of voting information by returning officer
25. Ballot paper envelope and covering envelope
26. E-voting systems

The poll

27. Eligibility to vote
28. Voting by persons who require assistance
29. Spoilt ballot papers and spoilt text message votes
30. Lost voting information
31. Issue of replacement voting information
32. ID declaration form for replacement ballot papers (public and patient constituencies)
33. Procedure for remote voting by internet
34. Procedure for remote voting by telephone
35. Procedure for remote voting by text message

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

36. Receipt of voting documents
37. Validity of votes
38. Declaration of identity but no ballot (public and patient constituency)
39. De-duplication of votes
40. Sealing of packets

PART 6: COUNTING THE VOTES

41. Interpretation of Part 6
42. Arrangements for counting of the votes
43. The count
44. Rejected ballot papers and rejected text voting records
45. First stage
46. The quota
47. Transfer of votes
48. Supplementary provisions on transfer
49. Exclusion of candidates
50. Filling of last vacancies
51. Order of election of candidates

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

52. Declaration of result for contested elections
53. Declaration of result for uncontested elections

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll
55. Delivery of documents
56. Forwarding of documents received after close of the poll
57. Retention and public inspection of documents
58. Application for inspection of certain documents relating to election

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

59. Countermand or abandonment of poll on death of candidate

PART 10: ELECTION EXPENSES AND PUBLICITY

Expenses

60. Election expenses
61. Expenses and payments by candidates
62. Expenses incurred by other persons

Publicity

63. Publicity about election by the corporation
64. Information about candidates for inclusion with voting information
65. Meaning of "for the purposes of an election"

PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES

66. Application to question an election

PART 12: MISCELLANEOUS

67. Secrecy
68. Prohibition of disclosure of vote
69. Disqualification
70. Delay in postal service through industrial action or unforeseen event

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 Health and Social Care 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 the twenty fifth day before the day of the close of the poll.
Notice of the poll	Not later than the fifteenth day before the day 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 shall be a full 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 of the corporation; 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) he or she wishes to stand as a candidate,
- (b) his or her declaration of interests as required under rule 11, is true and correct, and
- (c) his or her 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 shall inform the corporation of any vacancy that remains unfilled.

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 is to be a method of polling, the telephone voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
 - (c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

20. The ballot paper

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons

remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

21. The declaration of identity (public 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 spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers"):

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

- 29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a "spoilt text message vote"), that voter may apply to the returning officer for a replacement voter ID number.

- 29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.

- 29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter's

identity.

29.8 After issuing a replacement voter ID number in respect of a 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)

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

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

39. De-duplication of votes

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

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

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

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

- 39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
 - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
 - (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
 - (d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

- 40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:
- (a) the disqualified documents, together with the list of disqualified documents inside it,
 - (b) the ID declaration forms, if required,
 - (c) the list of spoiled ballot papers and the list of spoiled text message votes,
 - (d) the list of lost ballot documents,
 - (e) the list of eligible voters, and
 - (f) the list of tendered voting information

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

41. Interpretation of Part 6

41.1 In Part 6 of these rules:

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

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

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

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

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

“non-transferable vote” means a ballot document:

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

or

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

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

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

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

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

“quota” means the number calculated in accordance with rule 46,

“*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,

“*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,

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

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

“*transfer value*” means the value of a transferred vote calculated in accordance with rules 47.4 or 47.7.

42. Arrangements for counting of the votes

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

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

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

43. The count

43.1 The returning officer is to:

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

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

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

44. Rejected ballot papers and rejected text voting records

44.1 Any ballot paper:

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

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

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

44.3 Any text voting record:

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

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

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

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

45. First stage

- 45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.
- 45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.
- 45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

46. The quota

- 46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.
- 46.2 The result, increased by one, of the division under rule 46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- 46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules 47.1 to 47.3 has been complied with.

47. Transfer of votes

- 47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:
 - (a) according to next available preference given on those ballot documents for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- 47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule 47.1.
- 47.3 The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.4 The vote on each ballot document transferred under rule 47.3 shall be at a value (“the transfer value”) which:
 - (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and

- (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

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

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

47.6 The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

47.7 The vote on each ballot document transferred under rule 47.6 shall be at:

- (a) a transfer value calculated as set out in rule 47.4(b), or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

47.8 Each transfer of a surplus constitutes a stage in the count.

47.9 Subject to rule 47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

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

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

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

48. Supplementary provisions on transfer

48.1 If, at any stage of the count, two or more candidates have surpluses, the

transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:

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

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

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

48.3 All ballot documents transferred under rule 47 or 49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.

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

49. Exclusion of candidates

49.1 If:

- (a) all transferable ballot documents which under the provisions of rule 47 (including that rule as applied by rule 49.11) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule 50, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule 49.12 applies, the candidates with

the then lowest votes).

- 49.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule 49.1 into two sub-parcels so that they are grouped as:
- (a) ballot documents on which a next available preference is given, and
 - (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).
- 49.3 The returning officer shall, in accordance with this rule and rule 48, transfer each sub-parcel of ballot documents referred to in rule 49.2 to the candidate for whom the next available preference is given on those ballot documents.
- 49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- 49.5 If, subject to rule 50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule 49.1 into sub-parcels according to their transfer value.
- 49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- 49.7 The vote on each transferable ballot document transferred under rule 49.6 shall be at the value at which that vote was received by the candidate excluded under rule 49.1.
- 49.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- 49.9 After the returning officer has completed the transfer of the ballot documents in the sub-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 49.1.
- 49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
 - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and

- (d) compare:
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules 47.5 to 47.10 and rule 48.

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

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

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

50. Filling of last vacancies

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

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

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

51. Order of election of candidates

51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule 47.10.

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

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

the greatest number of votes at that stage shall be deemed to be the largest.

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

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

52. Declaration of result for contested elections

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

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

52.2 The returning officer is to make:

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule 44.1,
- (f) the number of rejected text voting records under each of the headings in rule 44.3,

available on request.

53. Declaration of result for uncontested elections

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

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

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

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

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

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

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

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

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

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

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

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

59. Countermand or abandonment of poll on death of candidate

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

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

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

PART 10: ELECTION EXPENSES AND PUBLICITY

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

In addition to the provisions of paragraph 14.1 above a person is not eligible to become or to continue to be a governor if:

- He refuses to sign a declaration in the form specified by the Secretary of particulars of his qualification to vote as a member of the Trust and that he is not prevented from being a member of the Council of Governors.
- He has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health retirement, from any paid employment with a health service body, or a Local Authority body.
- He is a person whose tenure of office as the 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 the health service or for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
- He is an executive or non-executive director of the Trust, or a governor, non-executive director, chairman, chief executive or other executive director of another NHS Foundation Trust or NHS Trust.
- He is under 16 years of age.
- He is a registered sex offender pursuant to the Sex Offenders Act 2003.
- He is undergoing a period of disqualification from a statutory health or social care register.
- He resigns in writing to the Trust, but a person who has so resigned, shall not, solely by reason of that resignation, be ineligible subsequently to stand for election as or to be appointed a governor.
- He fails to attend two consecutive meetings of the Council of Governors excluding any absence during his suspension under the standing orders of the Council or his leave of absence granted by the Chairman as provided in the Code of Conduct
- In the case of an elected governor, he ceases to be a member of the area of the constituency or class of the constituency by which he was elected.
- In the case of an appointed governor, the appointing organisation terminates the appointment of the individual.
- He has failed, without reasonable cause, to undertake training which the Council of Governors requires all governors to undertake.
- He has failed to sign and deliver to the Secretary a statement, in the form required by the Secretary, confirming acceptance of the Code of Conduct for governors.
- He fails to discharge his responsibilities as a governor.
- He refuses to sign a statement of continued eligibility to act as governor within 7 clear days prior to each Council of Governors meeting.

- He has failed to abide by the Trust's Code of Conduct and standing orders for governors in such form as the Trust may publish from time to time.
- In the case of Public Governors, he has been employed by the Trust in the previous 12 months.
- He has had his name removed from any list prepared under sections 91, 106, 123 or 146 of the 2006 Act, and has not subsequently had their name included in such a list.
- The Council of Governors decides in accordance with the procedure laid down by the standing orders of the Council of Governors that disclosures revealed by a Disclosure and Barring Service check are such that it would be inappropriate for him to become or continue as a governor or would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute.
- He fails to consent to a Disclosure and Barring Service check being made on him, or to supply information which would enable such a check to be made, where in either case it is appropriate for such a check to be made
- He is a member of the governing body of a Clinical Commissioning Group
- He is a person who is included in any barred list established under the Safeguarding Vulnerable Adults Act 2006 or any equivalent list maintained under the laws of Scotland or Northern Ireland
- He is a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986

ANNEX 6

**NORTH ESSEX PARTNERSHIP UNIVERSITY NHS
FOUNDATION TRUST**

North Essex Partnership University NHS Foundation Trust

Standing Orders for the Council of Governors

(October 2014)

NORTH ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST
STANDING ORDERS FOR THE COUNCIL OF GOVERNORS

CONTENTS:

- 1. INTRODUCTION**
 - 2. DEFINITIONS**
 - 3. THE COUNCIL OF GOVERNORS**
 - 4. MEETINGS OF THE COUNCIL OF GOVERNORS**
 - Admission of the Public
 - Calling Meetings
 - Notice of Meetings
 - Annual Meeting
 - Setting the Agenda
 - Petitions
 - Chairman of Meeting
 - Agenda Proposals
 - Chairman's Ruling
 - Voting
 - Breach of the Constitution or Code of Conduct
 - Minutes
 - Suspension of Standing Orders
 - Variation and Amendment of Standing Orders
 - Record of Attendance
 - Quorum
 - Requirement for Meeting with a Director
 - Referral to Monitor's Panel
 - 5. LEAD GOVERNOR AND DEPUTY LEAD GOVERNOR**
 - 6. COMMITTEES**
 - 7. INTERESTS OF GOVERNORS**
 - 8. STANDARDS OF BUSINESS CONDUCT**
 - 9. APPOINTMENTS AND RECOMMENDATIONS**
 - 10. MISCELLANEOUS**
- SCHEDULE A: DECLARATION FORM FOR GOVERNORS**

SCHEDULE B: SPECIFIC POWERS OF COUNCIL OF GOVERNORS

SCHEDULE C: EXTRACTS FROM THE CONSTITUTION

SCHEDULE D: PROCEEDINGS AT ANNUAL MEETINGS OF MEMBERS

1. INTRODUCTION

- 1.1 The North Essex Partnership University NHS Foundation Trust (“the Trust”) became a Public Benefit Corporation on 01 October 2007 following authorisation by the Independent Regulator of NHS Foundation Trusts (now known and hereinafter referred to as “Monitor”) pursuant to the National Health Service Act 2006 (“the 2006 Act”).
- 1.2 The principal place of business of the Trust is currently at Stapleford House, 103 Stapleford Close, Chelmsford, Essex CM2 0QX.
- 1.3 The Trust is governed by the 2006 Act as amended by the Health & Social Care Act (“the 2012 Act”), and its Constitution and its Authorisation or the licence granted to it 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.

2. DEFINITIONS

- 2.1 In these Standing Orders:

Council

means the Council of Governors of the Trust as constituted in accordance with the Constitution.

Board

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

Chairman

is the Chairman of the Board appointed under paragraph 25 of the Constitution.

Chief Executive

means the Chief Executive of the Trust.

Clear Day

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

Constitution

means the Constitution of the Trust.

Deputy Chairman

means the Deputy Chairman appointed under paragraph 26 of the Constitution

Deputy Lead Governor

means the Deputy Lead Governor appointed under Standing Order 5 below

Governor

means a Governor of the Trust elected or appointed as provided by the Constitution but does not include the Chairman.

Lead Governor

means the Lead Governor appointed under Standing Order 5 below.

Member

means a member of the Trust

Non-Executive Director

means a member of the Board who does not hold an executive office of the Trust.

Officer

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

Secretary

means a person appointed by the Trust in accordance with Standing Order 2.11.1 of the Standing Orders of the Board of Directors

Senior Independent Director

means the Non-Executive Director appointed by the Board to be the Senior Independent Director

- 2.2 Anything required or permitted by these Standing Orders to be done by the Chairman may be done by the Deputy Chairman if the Chairman is absent or unavailable for any reason, or if there is a vacancy in the office of Chairman, and as regards the powers exercisable by, or the decisions to be taken by, the Chairman at any meeting of the Council, may be done by the chairman of that meeting
- 2.3 Anything required or permitted by these Standing Orders to be done by the Lead Governor may be done by the Deputy Lead Governor if the Lead Governor is absent or unavailable for any reason, or there is a vacancy in the office of Lead Governor
- 2.4 Words importing the plural include the singular and words importing the masculine gender include the feminine gender and vice versa in each case

3. THE COUNCIL OF GOVERNORS

- 3.1 Certain powers and decisions may only be exercised by the Council in formal session. These powers and decisions are set out in the Constitution and have effect as if incorporated into these Standing Orders. A list of these powers is contained in Schedule B to these Standing Orders.
- 3.2 The general duties of the Council are:
- 3.2.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board and
- 3.2.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

4. MEETINGS OF THE COUNCIL OF GOVERNORS

4.1 Admission of the Public

The public and representatives of the media shall be afforded facilities to attend all formal meetings of the Council except where it resolves:

4.1.1 That members of the public be excluded from the meeting (whether for the whole or part of the proceedings) on the ground that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or those proceedings; and/or

4.1.2 That in the interests of public order the meeting be adjourned for a period to be specified by the Council and continue thereafter without the presence of the public to enable the Board to complete its business.

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

4.2 Calling Meetings

4.2.1 Meetings of the Council shall be held at such times and places as the Council may determine and there shall be at least four meetings in any calendar year including an Annual Meeting and any other meetings required of the Governors in order to fulfil their functions in accordance with the Constitution.

4.2.2 The Chairman may call a meeting of the Council at any time. If a meeting of the Council has not been called within 5 Clear Days after a requisition for that purpose addressed to the Chairman, signed by at least ten Governors and specifying the business to be transacted at the meeting, has been presented to the Chairman at the Trust Headquarters, ten or more of the Governors may forthwith call a meeting for the purpose of conducting that business.

4.3 Notice of Meetings

4.3.1 Before each meeting of the Council, a notice of the meeting, specifying so far as possible 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 served upon every Governor at least 10 Clear Days before the meeting save in the case of the need to conduct urgent business. The decision as to whether there is a need to conduct urgent business shall be taken by the Chairman after consultation with the Lead Governor and his decision shall be binding on all Governors

4.3.2 In the case of a meeting called by Governors under Standing Order 4.2.2, the notice shall be signed by those Governors.

4.3.3 Any notice or other document to be served upon a Governor under these Standing Orders shall be manually delivered or sent by post to the Governor at his usual place of residence which he shall have last notified to the Trust, or where served electronically, to the address which he shall have last notified to the Trust as the address to which a notice or other document may be sent by electronic means. A notice or other document where manually delivered or sent by electronic means, shall be presumed to have been served on the next Clear Day following the day of delivery and where sent by post on the second Clear Day after the day of posting.

4.3.4 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 five Governors or more will invalidate the meeting.

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 3 Clear Days before the meeting, save in the case of the need to conduct urgent business as to which the provisions of Standing Order 4.3.1 shall apply

4.4 Annual Meeting

4.4.1 The Council shall hold an annual meeting of the Council in every calendar year in the first nine months of every financial year of the Trust

4.4.2 The Annual Meeting shall be convened and held in the manner provided by Annex 8 of the Constitution a copy of which is contained in Annex D to these Standing Orders

4.5 Setting the Agenda

4.5.1 The Council 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 Governor desiring a matter to be included on an agenda, including a formal proposition for discussion and voting on at a meeting, shall send a request in writing addressed to the Chairman at the Trust Headquarters so as to be received by him at least 5 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 5 Clear Days before a meeting may be included on the agenda at the discretion of the Chairman.

4.5.3 A matter may be included on the agenda and a proposition may be moved only if it relates to an issue arising from and relevant to the role and responsibilities of the Council which are set out in the Constitution or these Standing Orders

4.5.4 Where a meeting is called on a requisition by Governors, no business shall be transacted at the meeting other than that specified in the requisition and in the case of a requisition applying for a meeting with a director under paragraph 17.3 of the Constitution, or referral to a panel appointed by Monitor under paragraph 19 of the Constitution, the provisions of Standing Order 4.17 or of Standing Order 4.18 respectively shall apply to the conduct of the business at that meeting

4.6 Petitions

4.6.1 Where a petition has been received by the Trust at least 10 Clear Days before a Council meeting, the Chairman shall include the petition as an item for the agenda of that meeting.

4.7 Chairman of Meeting

4.7.1 Subject to the provisions of Standing Orders 4.7.2, 4.7.3, and 4.7.4 the Chairman shall preside at any Council meeting.

4.7.2 If the Chairman is absent from the meeting or is otherwise unable for any reason to chair the meeting, the Deputy Chairman shall take the place of the Chairman and preside at the meeting but only for so long as the Chairman is absent from or otherwise unavailable to chair the meeting

4.7.3 If neither the Chairman or the Deputy Chairman is able to chair the meeting, the Council shall elect one of the non-executive directors to preside at the meeting but only for so long as neither the Chairman nor the Deputy Chairman is available to chair the meeting

4.7.4 Notwithstanding anything in this Standing Order 4.7, paragraph 6.2 of Annex 8 of the Constitution shall apply to determine the chairman of the proceedings for the business of considering and voting on the amendment of the Constitution at a meeting to which the provisions of that paragraph apply

4.8 Agenda Proposals

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

4.8.1 Except in circumstances to which Standing Order 4.17 or Standing Order 4.18 apply, the proposition must be seconded by a Governor present at the meeting and in the absence of a seconder the proposition shall be deemed to have been defeated and the meeting shall proceed to the next item of business

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:

- 4.8.3.1 an amendment to the proposition;
- 4.8.3.2 the adjournment of the discussion or the meeting;
- 4.8.3.3 that the meeting proceed to the next business;
- 4.8.3.4 the appointment of an ad hoc committee to deal with a specific item of business;
- 4.8.3.5 that the proposition now be put;
- 4.8.3.6 that the public be excluded from the meeting in relation to the discussion concerning the proposition under Standing Order 4.1.1.

4.8.4 An amendment to a proposition shall be admitted if, in the opinion of the chairman of the meeting, the amendment does not negate the substance of the resolution or proposition and if more than one half of the number of the Governors voting in person or by proxy at the meeting vote in favour of it

4.8.5 A proposed amendment referred to in Standing Order 4.8.4 shall be put to the vote before the substantive proposition is voted on

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

4.9 **Chairman's Ruling**

4.9.1 Statements of Governors made at meetings of the Council 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.

4.10 **Voting**

4.10.1 A Governor may not vote at a meeting of the Council unless within 7 Clear Days prior to the commencement of the meeting he has made a declaration in the form specified in Schedule A of these Standing Orders.

4.10.2 Subject to Standing Order 4.10.4 below, any resolution or proposition put to a meeting of the Council shall be approved if more than one half of the number of Governors voting in person or by proxy at the meeting, vote in favour of the resolution or proposition

4.10.3 No person shall have a casting vote if there shall be an equality of votes on any question or proposition which, except for a vote under Standing Order 5, shall thereupon be deemed to have been rejected.

4.10.4 A resolution for the removal of the Chairman or a non-executive Director shall be passed only if three-quarters of the total number of Governors vote in person or by proxy at a meeting of the Council in favour of it.

4.10.5 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, to which shall be added those votes validly cast by proxy, but a paper ballot may also be used if a majority of the Governors present so request. If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question shall be recorded to show how each Governor voted, and if a Governor so requests, his vote shall be recorded by name on any vote (other than a paper ballot)

4.10.6 Subject to Standing Orders 4.10.7 and 4.10.8 a Governor may only vote if present at the time of the vote

4.10.7 A Governor shall be entitled to appoint another Governor or the chairman of the meeting as his proxy to vote on his behalf but subject always to the conditions set out in Standing Order 4.10.8

4.10.8.1 A proxy shall be in such form as the Trust shall require and shall be issued to every Governor with the agenda or the papers for the meeting and must be completed and signed by the Governor and returned to the Secretary so as to be received by him at least one Clear Day before the time and date fixed for the meeting

4.10.8.2 A proxy appointing another Governor to vote on his behalf may be in general form or may direct that Governor to vote for or against the resolution specified in the form of proxy, and if in general form, the Governor so appointed may also vote on any ancillary or procedural resolution put to the meeting which relates to the resolution for which he is appointed a proxy

4.10.8.3 A Governor may only appoint the chairman of the meeting to vote on his behalf where the agenda or papers for a meeting of the Council include the election of the Lead Governor or the Deputy Lead Governor under Standing Order 5, or set out the express terms of any resolution to be considered and decided by a vote of the Governors, and the form of proxy must direct the chairman to vote for or against a particular candidate for election under Standing Order 5.2, or for or against a resolution specified in the agenda or papers for the meeting as identified in the form of proxy, and to the extent that it fails to do so, the proxy shall be invalid and ignored

4.10.8.4 A Governor may revoke a proxy given by him at any time by a notice in any form given to the Secretary before the meeting

4.10.8.5 A Governor who appoints another person by proxy to vote on his behalf at a meeting of the Council may nevertheless attend that meeting, but if he shall do so, the proxy shall be of no effect

4.10.8.6 A Governor who is not personally present and who appoints another person by proxy to vote on his behalf, shall not be counted as being present for the purpose of any other provision of these Standing Orders

4.10.8.7 The Secretary shall not be on enquiry as to the validity of any proxy or of any purported revocation of any proxy

4.11 Breach of the Constitution or Code of Conduct:

4.11.1 The following paragraphs of this Standing Order 4.11 set out the intended process for deciding whether a Governor may have committed a breach of the Code of Conduct for Governors or may have ceased to be eligible to continue in office as a Governor under the provisions of the Constitution of the Trust, but nothing in this Standing Order 4.11 shall affect or restrict the rights and remedies of the Trust in respect of the conduct of a Governor including but not limited to the right of the Trust at any time to take such action or proceedings in any court of law or tribunal as it may be advised.

4.11.2 Subject to Standing Order 4.11.15.1 below, the Chairman shall consult with the Lead Governor regarding any information which may come to the Chairman's attention and which might reasonably suggest that a Governor may have committed a breach of the Code of Conduct for Governors or may have ceased to be eligible to continue in office as a Governor under the provisions of the Constitution of the Trust.

4.11.3 Subject to Standing Order 4.11.15.1 below, after consulting with the Lead Governor regarding that information, the Chairman may take no further action or require the Governor to attend a meeting with him or may require the Senior Independent Director to take such action as may be required to enable that information to be investigated, and in either of the last two events he shall notify the Governor in question in writing of the alleged information, detailing the specific behaviour whereby the Governor is considered to have committed a breach of the Code of Conduct for Governors and or to have ceased to be eligible to continue in office as a Governor, and shall invite his response within a defined appropriate and reasonable timescale not being less than 10 Clear Days.

4.11.4 If the Chairman has required the Governor to attend a meeting with him, the Governor shall be required to use all reasonable endeavours to arrange a date for that meeting as soon as possible, and to attend it when arranged, and if the Governor shall fail to do so, the Chairman may fix a final date for that meeting and take such further action as he may decide if the Governor fails to attend the meeting with him by the date specified. After that meeting has been held, the Chairman shall decide whether to take any further action under this Standing Order or to take no further action and in the latter event, he shall advise the Governor that no further action is being taken.

4.11.5 The Chairman may require the Senior Independent Director to investigate the matter, either without or after holding a meeting with the Governor, and if the Chairman does so, he shall notify the Governor of that fact in writing and shall place before the Senior Independent Director all the information which he has and believes to be relevant regarding the Governor's alleged breach of the Code of Conduct for Governors, and or ineligibility to continue in office, but not any information which has been made known to him solely by the Governor, and shall request the Senior Independent Director to investigate the allegation as quickly in all the circumstances as he can, and to take such further statements from persons with relevant information as to the circumstances as the Senior Independent Director shall in his absolute discretion decide and those persons are willing to provide.

4.11.6 After obtaining all the information which he believes he is able to collect regarding the allegation, the Senior Independent Director shall decide without undue delay whether no further action should be taken or whether the matter should be investigated further, and if he decides that further investigation is required, he shall present that information to the Governor in question and ask him to respond within 10 Clear Days either in writing or at a meeting with the Senior Independent Director as the Governor may choose.

4.11.7 After considering the response of the Governor, or if there is no response within 10 Clear Days (or such further period not exceeding 10 more Clear Days as the Senior Independent Director may in his absolute discretion allow) the Senior Independent Director shall then decide without undue delay either to take no further action or to convene a meeting of the Standards Committee and request it to consider and decide whether the Governor in question has committed a breach of the Code of Conduct for Governors and or has ceased to be eligible to continue in office as a Governor under the provisions of the Constitution of the Trust or that no further action should be taken against the Governor, and in either event he shall write a letter to the Governor advising him of his decision.

4.11.8 If the Senior Independent Director shall decide to convene a meeting of the Standards Committee, he shall endeavour to arrange that meeting as soon as possible, and shall inform the Governor in question in writing of the date and time of that meeting and invite him also to attend and to address the meeting in person, and the Governor shall be entitled to be accompanied at the meeting by an adviser who has no legal qualification, or by a friend, either of whom may address the meeting if the Standards Committee shall give its approval.

4.11.9 The proceedings at any meeting of the Standards Committee shall be conducted in accordance with its terms of reference which shall be approved by the Council of Governors and which shall be reviewed and may be amended as the Council of Governors may from time to time decide, but there shall be not less than three members of the Standards Committee present at a meeting and its members shall not include the Lead Governor, or

if he has been consulted by the Chairman at any stage in the place of the Lead Governor, the Deputy Lead Governor.

4.11.10 The Standards Committee shall consider the statements submitted to it by the Senior Independent Director and any oral statement made by him and the Governor but it shall not be entitled or required to hear any oral evidence from any other person, and after considering those statements, the Standards Committee shall decide, by a simple majority of those of its members as are present and vote, whether the Governor in question has committed a breach of the Code of Conduct for Governors and or has ceased to be eligible to continue in office as a Governor under the provisions of the Constitution of the Trust, and if there shall be an equality of votes on any matter put to the vote, that vote shall be declared in favour of the Governor.

4.11.11 The Standards Committee may decide that no further action should be taken, or that a warning should be given to the Governor as to his future conduct or that the Governor has ceased to be eligible to continue, or should not continue in office as a Governor, and shall announce its decision to the Governor at the conclusion of the hearing, or if the Governor is not present, in writing to the Governor within 2 Clear Days.

4.11.12 If the Standards Committee shall decide that the Governor has ceased to be eligible to continue, or should not continue in office as a Governor, then subject to any appeal which he may make under Standing Order 4.11.13 he shall cease to be a Governor.

4.11.13 The Governor may appeal a decision under Standing Orders 4.11.11 or 4.11.12 by giving written notice to the Chairman within 5 Clear Days of being advised of the decision of the Standards Committee and if he does so, and if the decision of the Standards Committee was that the Governor had ceased to be eligible to be a governor, or should no longer continue in office, the Governor shall be suspended from office pending the outcome of the appeal.

4.11.14 An appeal by the Governor under Standing Order 4.11.13 shall be referred to a chairman or non-executive director of another Foundation Trust who shall be a person agreed by both the Senior Independent Director and the Governor lodging the appeal and who shall act as an independent assessor to decide whether the decision of the Standards Committee which is the subject of the appeal was fair and reasonable. The independent assessor shall consider the written statements presented to the Standards Committee by the Senior Independent Director and by the Governor and shall then report to the Standards Committee and to the Governor his or her opinion as to whether the decision of the Standards Committee was fair and reasonable and should stand or if not, which of the alternative actions mentioned in Standing Order 4.11.11 should be taken and his or her decisions shall be final and binding on the Trust, the Standards Committee and the Governor.

4.11.15.1 Notwithstanding the provisions of Standing Orders 4.11.2 and 4.11.3, the Chairman shall also be entitled, on becoming aware

of any information which is mentioned in Standing Order 4.11.2, to convene a meeting of the Standards Committee as a matter of urgency to consider whether the Governor in question should be suspended from office pending the completion of an investigation under Standing Order 4.11.3 on the grounds that if the information which has come to his attention were to be correct, the Governor's continuation as a governor would be to the detriment of the Trust's business or reputation.

4.11.15.2 The Governor in question shall be notified in writing of the request for his suspension and the date and time of the meeting of the Standards Committee at which the decision as to his suspension is to be taken, and invited to address the meeting in person.

4.11.15.3 If the Standards Committee shall decide by simple majority of its members present and voting that the Governor in question should be suspended from office on the grounds referred to in Standing Order 4.11.15.1, they shall also decide the period of that suspension which shall not in any event exceed two months without further resolution of the Standards Committee to that effect and that Governor shall thereupon cease to be entitled to or required to perform the role of a governor for that period of suspension but shall otherwise continue to comply with the Code of Conduct for Governors.

4.11.16 If the Governor is a Staff Governor, no investigation or proceedings under this Standing Order 4.11 shall be initiated or continue while any action or proceedings under the Staff Disciplinary Policy of the Trust against that Governor remain outstanding, and may then only proceed when they have been disposed of

4.12 **Minutes**

4.12.1 The Minutes of the proceedings of a meeting shall be drawn up by the Secretary and submitted for agreement at the next meeting where they will be signed by the chairman of the meeting.

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

4.13 **Suspension of Standing Orders**

4.13.1 Except where this would contravene any statutory provision, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Governors are present, there is a majority of Governors who are members of the Public Constituency of the Trust, and that a majority of those present vote in favour of suspension.

4.13.2 A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.

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

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

4.14 **Amendment of Standing Orders**

These Standing Orders may be amended only as provided by paragraph 44 of the Constitution

4.15 **Record of Attendance**

4.15.1 The names of the chairman of the meeting and Governors present at the meeting shall be recorded in the minutes.

4.16 **Quorum**

4.16.1 No business shall be transacted at a meeting unless there are present at least 15 governors of which more than one half shall be Governors elected for the Public Constituency

4.16.2 If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting, if called on requisition, shall be dissolved but otherwise shall stand adjourned for 5 Clear Days and upon reconvening, those present shall constitute a quorum.

4.16.3 If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest as provided in Standing Order 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.

4.17 **Requirement for Meeting with a Director**

4.17.1 A Governor requiring a director to attend a meeting under paragraph 17.3 of the Constitution shall send an application in writing addressed to the Chairman at the Trust Headquarters so as to be received by him at least 5 Clear Days before the meeting. The application shall state whether it is proposed to be transacted in the presence of the public and shall specify the name or names of the director or directors of the Trust who is or are required to attend the meeting and in general terms the functions of the Trust or duties of directors on which information is sought. An application made less than 5

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

4.17.2 An application made under Standing Order 4.17.1 need not be seconded but the information to be provided by the director or directors shall be limited to the matters referred to in the application and any further information which is mentioned in Standing Order 4.17.6

4.17.3 The director or directors named in the application shall attend the meeting at which it is to be considered and shall be entitled to have any other director or Officer of the Trust present at the meeting to assist him or them and each of them shall be entitled to address the meeting to provide the information sought regarding the functions of the Trust or duties of the directors

4.17.4 When an application under this Standing Order first comes to be considered at the meeting of the Council, the Chairman shall announce whether the director or directors named in the application consent to it and to provide the information requested so far as it is apparent from the details specified in the application submitted under Standing Order 4.17.1

4.17.5 If the director or directors do not consent to the application, it shall take effect only more than one half of the number of Governors voting in person or by proxy at the meeting of the Council vote in favour of it

4.17.6 If the director or directors consent to the application or it is approved by the Council under Standing Order 4.17.5, the director or directors shall then provide the information requested in the application and any further information which derives from discussion of that information and can reasonably be said to be relevant to the matters referred to in the application

4.17.7 The director or directors shall not be required to disclose any information on the ground that to do so would be prejudicial to the public interest by reason of the confidential nature of that information or that that information would be exempt information if applied for under the Freedom of Information Act 2000 as amended

4.17.8 The Chairman's ruling as to whether information is relevant to the matters referred to in the application or whether any matter would be prejudicial to the public interest or is exempt information under the preceding Standing Order shall be final and binding on the meeting

4.18 **Referral to Monitor's Panel**

4.18.1 A Governor desiring a referral to the Panel appointed by Monitor as provided by paragraph 19.1 of the Constitution shall send an application in

writing addressed to the Chairman at the Trust Headquarters asking for such a referral to be approved by a general meeting of the Council and the application shall include all the details of the allegations which the Governor wishes to place before the meeting of the Council of the failure of the Trust to act in accordance with the Constitution or to act in accordance with a provision made by or under Chapter 5 of the 2006 Act as the case may be

4.18.2 If a regular meeting of the Council is to be held within the 25 Clear Days following that application being received by the Chairman it shall be considered at that regular meeting but otherwise it shall have effect as a requisition validly made under Standing Order 4.2.2 without the need for the approval or signature of any other Governor, and shall be considered at a separate meeting called as thereby required

4.18.3 The Trust shall have a right to send to each Governor prior to the meeting of the Council a reply in writing to the allegations made by the Governor in his application and a right for one or more of its directors and/or Officers to attend and speak at the meeting in response to the allegations before the proposition is put to the vote

4.18.4 The provisions of Standing Order 4.8 shall otherwise apply to an application by a Governor to make a referral to the Panel

4.18.5 An application for a referral shall take effect only if more than one half of the number of Governors voting in person or by proxy at the meeting of the Council of Governors vote in favour of that application

4.18.6 If the application for a referral is approved under the preceding Standing Order the Trust shall give all reasonable assistance to the Council to enable the referral to be made and to the members of the Panel in considering the referral

5. LEAD GOVERNOR AND DEPUTY LEAD GOVERNOR

5.1 The Governors shall appoint a Lead Governor and a Deputy Lead Governor at the first meeting of the Council held after the Annual meeting of the Council in each year.

5.2 These appointments shall be made from those Governors who have been elected as Governors from the public constituency of members but with the exception of those in office as Lead Governor or Deputy Lead Governor on the 1 January 2013, a Governor shall not be eligible for election as Lead Governor if at the time of his election or appointment he will have already served five years or more (whether successively or cumulatively) as Lead Governor, and a Governor shall not be eligible for election as Deputy Lead Governor if at the time of his election or appointment he will have already

served five years or more (whether successively or cumulatively) as Deputy Lead Governor.

- 5.3 The Lead Governor and the Deputy Lead Governor so appointed shall hold office until the first meeting of the Council held after the Annual meeting of the Council in the following year but shall be eligible for re-appointment at that time.
- 5.4 Applications for nomination for appointment as Lead Governor and Deputy Lead Governor shall be sent out with the Notice for the meeting at which the elections are to be held. Each nomination 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 2 Clear Days before the meeting.
- 5.5 There shall be separate forms of nomination for appointment to the position of Lead Governor and the position of Deputy Lead Governor and eligible Governors may be nominated for both positions.
- 5.6 In the event of there being two or more nominations for either appointment a secret ballot or secret ballots shall be held of all the Governors present at the meeting with each Governor present having one vote for each contested appointment.
- 5.7 A ballot for the position of Lead Governor shall be held first and the result of that ballot shall be announced to the Governors present before any ballot for the position of Deputy Lead Governor is held.
- 5.8 A ballot for the position of Deputy Lead Governor shall be held after the name of the appointed Lead Governor has been announced and any nomination of the Lead Governor for the position of Deputy Lead Governor shall become invalid.
- 5.9 The meeting shall adjourn while a ballot is taken and the Governor whose nomination receives the largest number of votes for the position in question shall be appointed.
- 5.10 In the event of an equality of votes for the position of either Lead Governor or Deputy Lead Governor, the Governor to be appointed in either case from the candidates with equal votes shall be decided by lot, which shall be conducted by the Secretary.
- 5.11 Without prejudice to the right 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 regarding the performance of the Trust or any other serious or material matter relating to the Trust or its business, and communicating to a Governor or Governors observations which the Chairman may wish him to communicate to him or them from time to time, and chairing meetings of the Council in the circumstances referred to in these

Standing Orders. The Lead Governor shall also act as the point of contact with Monitor if and when Monitor may so require

- 5.12 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.
- 5.13 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.
- 5.14 Any comment observation or concern received by the Lead Governor as to the Chairman shall be communicated to the Deputy Chairman
- 5.15 If the Lead Governor or the Deputy Lead Governor shall cease to be a Governor for any reason, or shall resign from his position as Lead Governor or Deputy Lead Governor, or shall be removed from his position as Lead Governor or Deputy Lead Governor under the provisions of Standing Order 5.16, an election to fill his position shall take place in accordance with the preceding provisions of this Standing Order at the next meeting of the Governors and that meeting may also hold an election to fill the position of Deputy Lead Governor if he shall then have been elected to fill the position of Lead Governor.

5.16 **Continuing conflicts of interest involving the Lead Governor and Deputy Lead Governor**

5.16.1 A Governor appointed to the position of Lead Governor or Deputy Lead Governor who is subject to a continuing conflict of interest as defined in Standing Order 5.16.2 shall not exercise the functions duties and powers of the position of Lead Governor or Deputy Lead Governor until the conflict of interest is ended by the Governor or by the Trust. The remainder of this Standing Order 5.16 describes the process by which the Trust shall end such a continuing conflict of interest.

5.16.2 For the purposes of this Standing Order 5.16 a Governor appointed to the position of Lead Governor or Deputy Lead Governor is subject to a continuing conflict of interest if he occupies a directing position in a business competitor of the Trust, and references to a continuing conflict of interest shall be interpreted accordingly.

5.16.3 For the purposes of this Standing Order 5.16 a directing position is any position whose occupant is involved in deciding the business strategy and marketing decisions of a business competitor of the Trust. Directing positions shall include, but are not limited to, those of the directors, company and trust secretaries, chairman and trustees of companies and trusts.

5.16.4 For the purposes of this Standing Order 5.16 a business competitor of the Trust is any company, partnership or organisation other than the Trust, whether incorporated or unincorporated and whether public or private, which provides health care or social care services in consideration of monetary payment or other valuable reward, or which is associated with any other company, partnership or organisation

providing such services for such consideration, or any person who is a self-employed provider of such services for such consideration.

- 5.16.5 With effect from 7th October 2014, every Governor appointed or reappointed to the position of Lead Governor or Deputy Lead Governor shall, within fourteen days of his appointment or reappointment to the position, state in writing to the Chairman that he is not or is no longer subject to a continuing conflict of interest as defined in Standing Order 5.16.2, if that is the case.
- 5.16.6 Any report that the Lead Governor or Deputy Lead Governor is allegedly subject to a continuing conflict of interest shall be communicated to the Chairman.
- 5.16.7 On receiving such a report, or in the event that a Governor appointed or reappointed to the position of Lead Governor or Deputy Lead Governor fails to state in writing to the Chairman within fourteen days of his appointment or reappointment that he is not or is no longer subject to a continuing conflict of interest as defined in Standing Order 5.16.2, the Chairman shall forthwith convene a meeting of the Standards Committee of the Council (referred to in the rest of this Standing Order 5.16 as “the Committee”) to consider the possible continuing conflict of interest, unless a report is about a Governor newly appointed for the first time to one of the positions of Lead Governor or Deputy Lead Governor. In the latter case the Chairman shall not convene a meeting of the Committee until fourteen days have elapsed from the date of the Governor’s appointment as Lead Governor or Deputy Lead Governor, but shall convene a meeting of the Committee immediately thereafter if the Governor fails to state in writing to the Chairman within the same period of fourteen days that he is not or is no longer subject to a continuing conflict of interest as defined in Standing Order 5.16.2, if that is the case, as required by Standing Order 5.16.5.
- 5.16.8 In the rest of this Standing Order 5.16, the governor who is the subject of the report, or who has failed to confirm that he is not subject to a continuing conflict of interest as required by Standing Order 5.16.5, is referred to as “the Governor concerned”; and the other Governor appointed to the position of Lead Governor or Deputy Lead Governor at that time is referred to as “the other Lead Governor”.
- 5.16.9 When convening a meeting of the Committee to consider the possible continuing conflict of interest, the Chairman shall use reasonable endeavours to ensure that the Governor concerned may attend it and shall inform the Governor concerned in writing of the date, time and place of the meeting.
- 5.16.10 On convening the Committee, the Chairman shall give whatever information he has about the possible continuing conflict of interest in writing to the Committee, the Governor concerned, and the Trust Secretary. He shall request the committee to proceed under this Standing Order 5.16 to decide whether or not such a conflict of interest exists.

- 5.16.11 The Committee may investigate the possible continuing conflict of interest before it meets to consider the matter. A written summary of any evidence it obtains shall be given to the Governor concerned at least three Clear Days before the meeting.
- 5.16.12 The Committee shall conduct the meeting to consider the possible continuing conflict of interest in accordance with its Terms of Reference from the Council of Governors. The Governor concerned may attend the meeting and may be accompanied by an adviser who has no legal qualification, or by a friend, either of whom may address the meeting with the Committee's approval.
- 5.16.13 If the Governor concerned fails to attend the meeting, the Committee may at its absolute discretion either proceed in his absence, or adjourn the meeting to another date and time. If the meeting is adjourned, the Committee shall forthwith arrange to inform the Governor concerned of the date, time and place of the adjourned meeting.
- 5.16.14 At the meeting the Governor concerned may give oral or written evidence on his own behalf. Either the Governor concerned or the committee may call witnesses to give oral evidence. Any witness evidence received must be material to the continuing conflict of interest; no other witness evidence shall be allowed or received. The Governor concerned may be questioned by the members of the Committee about his evidence and any other evidence available to the Committee. In the event that any other witness appears before the Committee, that witness may be questioned by the Committee, and by either the Governor concerned or any advisor or friend who accompanies him.
- 5.16.15 The Committee shall then consider the evidence in the absence of the Governor concerned, and shall decide by simple majority vote of its members whether or not the Governor concerned is or is not subject to a continuing conflict of interest. If the votes cast are equal, the matter shall be decided in favour of the Governor concerned.
- 5.16.16 If the Committee decides that the Governor concerned is not subject to a continuing conflict of interest, it shall so inform the Chairman and the other Lead Governor.
- 5.16.17 If the Committee decides that the Governor concerned is subject to a continuing conflict of interest, the Committee shall then, after consulting together, and at its discretion also with the Governor concerned, specify the action to be taken by the Governor concerned to end the conflict of interest. The Committee shall require the Governor concerned to take that action within either twenty eight days of the meeting, or (provided that the Governor concerned agrees) a shorter period. The Committee shall inform the Chairman, the Trust Secretary, and the other Lead Governor that the Governor concerned is not entitled to exercise the functions duties and powers of the position of Lead Governor or Deputy Lead Governor until he takes the action required to end the conflict of interest.

5.16.18 If the Committee requires the Governor concerned to take action as specified in Standing Order 5.1.617, it shall arrange to meet again after the expiry of the time allowed for the Governor concerned to take the action, to decide whether or not the Governor concerned has taken the action required. The Committee shall inform the Governor concerned in writing of the date, time and place of the meeting.

5.1.619 That meeting shall be conducted in accordance with Standing Orders 5.16.12 to 5.16.14 above.

5.16.20 The Committee shall then consider the evidence in the absence of the Governor concerned, and shall decide by simple majority vote of its members whether or not the Governor concerned has or has not taken the action required of him to end the conflict of interest. If the votes cast are equal, the matter shall be decided in favour of the Governor concerned.

5.16.21 If the Committee decides that the Governor concerned has taken the action required, it shall inform him, the Chairman, the Trust Secretary and the other Lead Governor that the Governor concerned is now entitled to exercise the functions, duties and powers of the position of Lead Governor or Deputy Lead Governor.

5.16.22 If the Committee decides that the Governor concerned has not taken the action required, the Governor concerned shall immediately cease to hold the position of Lead Governor or Deputy Lead Governor. The Committee shall inform the Governor concerned, the Chairman, the Trust Secretary and the other Lead Governor accordingly.

5.16.23 The Committee's decisions under this Standing Order 5.16 are final and not subject to any appeal. They shall be given in writing to the Governor concerned, the Chairman, the Trust Secretary, and the other Lead Governor as soon as possible.

5.16.24 Decisions of the Committee under this Standing Order 5.16 and action by the Chairman under Standing Order 5.16.7 shall be reported to the next meeting of the Council.

5.16.25 The Terms of Reference for the Committee from the Council may make further provision for the conduct of meetings under this Standing Order 5.16.

6. COMMITTEES

6.1 The Council may appoint committees of the Council 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 A committee appointed under Standing Order 6 may, subject to such directions as may be given by the Council, appoint sub-committees consisting wholly or partly of members of the committee.

- 6.3 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council 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 but nothing in the Constitution or these Standing Orders shall require any meeting of a committee to be held in public or afford any member of the public a right to be present at such a meeting
- 6.4 Each such committee shall have such terms of reference and powers and be subject to such conditions as the Council shall decide and shall be in accordance with the Regulatory Framework but the Council shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council at a formal meeting.
- 6.5 Where committees are authorised to establish sub-committees they may not delegate their powers to the sub-committee unless expressly authorised by the Council.
- 6.6 The Council shall approve the appointments of the Governors to each of the committees which it has formally constituted and may remove any Governor so appointed and appoint another Governor in his place.
- 6.7 Where the Council is required to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Council, such appointments shall be made in accordance with applicable statute and regulations
- 6.8 Where the Council 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 subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the Board

7. INTERESTS OF GOVERNORS

- 7.1.1 A Governor shall avoid a situation in which he has (or can have) a direct or indirect interest which conflicts (or possibly may conflict) with his position or role or responsibilities as a governor
- 7.1.2 A Governor shall not accept a benefit from a third party by reason of being a governor or doing (or not doing) anything in that capacity
- 7.2 The duty referred to in Standing Order 7.1.1. is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest or the matter has been authorised in accordance with the Constitution or these Standing Orders

- 7.3 A Governor who is in a situation described in Standing Order 7.1.1 shall take as soon as practical such steps as are needed to place himself in a situation which is not as so described
- 7.4 The duty referred to in Standing Order 7.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest and for the purposes of that paragraph “third party” means a person other than the Trust or a person acting on its behalf
- 7.5 A Governor who has in any way a direct or indirect interest in any current or proposed transaction or arrangement or matter in which the Trust is or may become involved shall declare the nature and extent of that interest to the Council in such manner as the Secretary may from time to time prescribe, at the beginning of any meeting in which the transaction or arrangement or matter is to be discussed
- 7.6 A Governor shall be treated as having an indirect interest in a transaction or arrangement or matter if the spouse or a partner or parent or child or brother or sister or nominee of the Governor or a company or other organisation of which he is a director or a shareholder has an interest in the transaction arrangement or matter to which if it were the interest of the Governor the provisions of this Standing Order 7 would apply
- 7.7 A Governor shall not be required to declare an interest
- 7.7.1 if the Governor was not aware of the interest or not aware of the transaction or arrangement or matter, or
- 7.7.2 if the interest cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 7.7.3 if and to the extent that the nature and extent of the interest has previously been declared to the Council
- 7.8 If any declaration made under Standing Order 7.5 proves to be or becomes inaccurate or incomplete the Governor shall make a further declaration to the Council to correct the declaration first made immediately on becoming aware of the inaccuracy or inadequacy of the his previous declaration
- 7.9 If a Governor is in doubt as to whether he is in a situation described in Standing Order 7.1.1 or has an interest for the purposes of Standing Order 7.5 he shall refer the question to the Chairman who shall consult with the Lead Governor (or if the Lead Governor is unavailable for any reason or the governor in question is the Lead Governor, then the Deputy Lead Governor) and after that consultation, the decision of the Chairman as to whether the Governor is in such a situation, or has such an interest, shall be final and binding on the Governor
- 7.10 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

Each Governor shall comply with the Code of Conduct for Governors as amended from time to time.

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

10 MISCELLANEOUS

10.1 The Secretary shall provide a copy of these Standing Orders to each Governor.

10.2 These Standing Orders including all documents having effect as if incorporated in them shall be reviewed annually by the Board and the Council.

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

Schedule A

Declaration to the Secretary of North Essex Partnership University NHS Foundation Trust

I hereby declare that at the date of this declaration I am not prevented from being a member of the Council of Governors under the provisions in the Constitution, which are reproduced in Schedule C.

Schedule B

Specific Powers of Council of Governors

(to be exercised by the Council in general meeting)

- The appointment of the Chairman and the non-executive directors of the Trust
- The appointment of the Deputy Chairman of the Trust
- Decisions regarding the remuneration allowances and other terms and conditions of office of the chairman and non-executive directors
- The approval or rejection of the appointment of the chief executive of the Trust proposed by its non-executive directors
- The removal of the chairman or any non-executive director of the Trust subject to the provisions of these Standing Orders of the Council
- The appointment and or removal of the external auditors of the Trust
- The approval and review of the membership strategy of the Trust after it has been determined by the Board
- The receipt and consideration of the annual accounts of the Trust and the report of the external auditors on them and the annual report of the Trust
- The communication to the Trust of the views of the Council on the forward planning of the Trust
- The approval of any amendment of the Constitution
- The approval of any Significant Transaction of the Trust as that expression is defined in Annex 9 of the Constitution
- The approval of certain proposals of the Trust as to income to be derived from activities other than the provision of goods or services for the purposes of the health service in England

Schedule C

(Copy of paragraph 14.1 and Annex 5 of the Constitution)

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

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

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

14.1.3 A person who within the preceding five years has been convicted in the British 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.

Annex 5

ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

In addition to the provisions of paragraph 14.1 above a person is not eligible to become or to continue to be a governor if:

- He refuses to sign a declaration in the form specified by the Secretary of particulars of his qualification to vote as a member of the Trust and that he is not prevented from being a member of the Council of Governors.
- He has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health retirement, from any paid employment with a health service body, or a Local Authority body.
- He is a person whose tenure of office as the 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 the health service or for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
- He is an executive or non-executive director of the Trust, or a governor, non-executive director, chairman, chief executive or other executive director of another NHS Foundation Trust or NHS Trust.
- He is under 16 years of age.
- He is a registered sex offender pursuant to the Sex Offenders Act 2003.
- He is undergoing a period of disqualification from a statutory health or social care register.
- He resigns in writing to the Trust, but a person who has so resigned, shall not, solely by reason of that resignation, be ineligible subsequently to stand for election as or to be appointed a governor.
- He fails to attend two consecutive meetings of the Council of Governors excluding any absence during his suspension under the standing orders of the Council or his leave of absence granted by the Chairman as provided in the Code of Conduct
- In the case of an elected governor, he ceases to be a member of the area of the constituency or class of the constituency by which he was elected.
- In the case of an appointed governor, the appointing organisation terminates the appointment of the individual.
- He has failed, without reasonable cause, to undertake training which the Council of Governors requires all governors to undertake.
- He has failed to sign and deliver to the Secretary a statement, in the form required by the Secretary, confirming acceptance of the Code of Conduct for governors.
- He fails to discharge his responsibilities as a governor.

- He refuses to sign a statement of continued eligibility to act as governor within 7 clear days prior to each Council of Governors meeting.
- He has failed to abide by the Trust's Code of Conduct and standing orders for governors in such form as the Trust may publish from time to time.
- In the case of Public Governors, he has been employed by the Trust in the previous 12 months.
- He has had his name removed from any list prepared under sections 91, 106, 123 or 146 of the 2006 Act, and has not subsequently had their name included in such a list.
- The Council of Governors decides in accordance with the procedure laid down by the standing orders of the Council of Governors that disclosures revealed by a Disclosure and Barring Service check are such that it would be inappropriate for him to become or continue as a governor or would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute.
- He fails to consent to a Disclosure and Barring Service check being made on him, or to supply information which would enable such a check to be made, where in either case it is appropriate for such a check to be made
- He is a member of the governing body of a Clinical Commissioning Group
- He is a person who is included in any barred list established under the Safeguarding Vulnerable Adults Act 2006 or any equivalent list maintained under the laws of Scotland or Northern Ireland
- He is a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986

Schedule D

Annex 8 of the Constitution – Proceedings at Annual Meetings of Members

- 1 The Trust shall hold an annual meeting of the Council and an annual meeting of its members in the first nine months of every financial year in each case and subject to paragraph 3 the business of that meeting or those meetings shall be the presentation of:
 - 1.1 the Annual Report of the Trust for the year most recently ended;
 - 1.2 its Annual Accounts for the year most recently ended; and
 - 1.3 the opinion of the Auditors of the Trust on those Accounts
- 2 Subject to paragraph 3 the annual meeting of the Council and the annual meeting of the members of the Trust may be held as separate meetings or as a combined meeting of the Council and of the members as the Trust may from time to time decide
- 3 Where the agenda for the Annual Meeting of the members includes a proposal for the consideration and approval of an amendment to the Constitution in relation to the powers or duties of the Council (or otherwise with respect to the role that the Council has as part of the Trust), the provisions of paragraph 6.2 shall apply to the proceedings of the meeting while that proposal is under consideration
- 4 Annual meetings of the Council of Governors and of the members whether combined or separate shall be open to the public but the Chairman may at any time decide
 - 4.1 That discussion on any subject shall be prohibited or shall terminate if in his reasonable opinion publicity would be prejudicial to the public interest by reason of the confidential nature of the subject or for other special reasons; and/or
 - 4.2 That in the interests of public order the meeting adjourn for a period to be specified and continue thereafter without the presence of the public to enable the meeting to complete its business.
5. Before each annual meeting, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Trust Secretary or by an officer authorised by the Chairman, shall be served upon every governor and every member at least 10 Clear Days before the meeting save in the case of emergencies. Any notice or other document to be served upon a governor or a member shall be manually delivered or sent by post to the governor or the member at his usual place of residence which he shall have last notified to the Trust, or where served electronically, to the address which he shall have last notified to the Trust as the address to which a notice or other document may be sent by electronic means. A notice or other document where manually delivered or sent by electronic means, shall be presumed to have been served on the next Clear Day following the day of delivery and where sent by post on the second Clear Day after the day of posting. Want of service of the notice on any one or more of the governors or members shall not affect the validity of a meeting
- 6.1 Subject to paragraph 6.2 the Chairman of the Trust shall preside at every annual meeting, but if the Chairman is absent from the meeting or is otherwise unable for any reason to chair the meeting, the Deputy Chairman, or another non-executive director nominated by the Chairman or by the Deputy Chairman, in that order of priority in each case according to the presence and interests and availability of each of them, shall take the place of the Chairman and preside at the meeting but only for so long as the person in immediate priority to him, is absent or otherwise unable to chair the meeting

- 6.2 Where the agenda of the meeting includes any proposal for the consideration and approval of an amendment to the Constitution in relation to the powers or duties of the Council (or otherwise with respect to the role that the Council has as part of the Trust), the meeting shall be chaired by the Lead Governor, or if he is absent or unavailable for any reason the Deputy Lead Governor, or if he is also absent or unavailable to chair the meeting, a governor elected for that purpose by the governors present at the meeting, and the chairman so appointed shall present the proposed amendment to the meeting and preside over the proceedings and the vote of the members present at the meeting whilst the business of the consideration and approval of that amendment is being conducted
- 7 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. On a proposal or resolution requiring voting only by governors, a governor may vote in person or by proxy. On a proposal or resolution requiring voting by members, a member may only vote if personally present at the time of the vote.
- 8 A member may not vote at an annual meeting of the Council unless prior to the commencement of the meeting he shall have produced such evidence of his being a member as the Trust may in its absolute discretion decide from time to time and has notified to members
- 9 Every question or proposition at a meeting shall be determined by a majority of the votes of the governors or of the members voting on the question.
- 10 The quorum for an Annual Meeting of the Council of Governors shall be as specified by the standing orders for the Council and for an Annual Meeting of the members shall be any five members and in the case of a combined meeting shall be both as specified by the standing orders for the Council together with five additional members who are not governors
- 11 Statements made at an annual meeting by a governor or by a member 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.
- 12 It shall not be necessary to send to any member a copy of the Annual Accounts or the opinion of the auditors thereon or the Annual Report of the Trust or any other document which is referred to in, but does not accompany, the notice convening the meeting but all of those documents shall be sent to any governor or any member upon written request made by him to the Trust Secretary and shall be available for inspection by any governor or member free of charge at the place of the meeting for at least thirty minutes before the time at which the meeting is scheduled to commence and at the following places for ten Clear Days before the meeting is to be held
- 12.1 The headquarters of the Trust; and
12.2 The website of the Trust

Appendix 6

North Essex Partnership University NHS Foundation Trust

Standing Orders Adopted by the Board of Directors

(October 2014)

NORTH ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

STANDING ORDERS ADOPTED BY THE BOARD OF DIRECTORS

1. INTERPRETATION
2. THE BOARD OF DIRECTORS
3. MEETINGS OF THE BOARD OF DIRECTORS
4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION
5. COMMITTEES
6. INTERFACE BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS
7. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS
8. STANDARDS OF BUSINESS CONDUCT
9. TENDERING AND CONTRACT PROCEDURE
10. DISPOSALS
11. IN-HOUSE SERVICES
12. CUSTODY OF SEAL AND SEALING OF DOCUMENTS
13. SIGNATURE OF DOCUMENTS
14. MISCELLANEOUS

APPENDIX 1

1. Invitation to Tender
2. Receipt, Safe Custody and Record of Formal Tenders
3. Opening Formal Tenders
4. Admissibility and Acceptance of Formal Tenders
5. Lists of Approved Firms

INTRODUCTION

Statutory Framework

The **NORTH ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST** (the “Trust”) became a Public Benefit Corporation on 01 October 2007 following authorisation by the Independent Regulator of NHS Foundation Trusts (Independent Regulator and the office now known as Monitor) pursuant to the National Health Service Act 2006 (‘the 2006 Act’).

The principal place of business of the Trust is at the Trust Headquarters.

The Trust is governed by the 2006 Act, as amended by the Health and Social Care Act 2012, and its Constitution and the Authorisation granted by the Independent Regulator (‘the Regulatory Framework’). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework and in particular paragraph 30 of the Constitution requires the Board of Directors of the Trust to adopt Standing Orders for the regulation of its proceedings and business.

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.

The Trust is also required to comply with the Compliance Framework, the NHS Foundation Trust Code of Governance, the Audit Code for NHS Foundation Trusts, the Prudential Borrowing Code for NHS Foundation Trusts, and the NHS Foundation Trust Financial Reporting Manual as updated from time to time and any other relevant guidance issued by Monitor or any other relevant body.

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

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 and that they will adhere to the principles set out within the Independent Commission’s Good Governance Standard for Public Service and within the NHS Foundation Trust Code of Governance published by Monitor that sets out the overarching framework for compliance with the Regulatory Framework

Delegation of Powers

Under the Standing Orders relating to the Arrangements for the Exercise of Functions by Delegation (SO 4) the Board of Directors makes 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 another person or persons, in each case subject to SO 2.6 and to such restrictions and conditions as the Board of Directors thinks fit.

1. INTERPRETATION

- 1.1. Save as otherwise provided 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 the Secretary.
- 1.2. Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:

"Accounting Officer"

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

"Authorisation"

means the Terms of Authorisation provided by Monitor.

"Board of Directors"

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

"Council of Governors"

means the Council of Governors 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 under paragraph 25 of the Constitution. The expression "the Chairman" shall be deemed to include the chairman of a meeting of the Board of Directors if the Chairman is absent from that meeting or is otherwise unavailable.

"Chief Executive"

means the chief executive officer of the Trust.

"Clear Day"

means any day other than a Saturday Sunday or public holiday in England.

"Constitution"

means the Constitution of the Trust, as approved by Monitor.

"Deputy Chairman"

means

the non-executive Director appointed to be Deputy Chairman under paragraph 26 of the Constitution

"Director"

means a person appointed as a Director in accordance with the Constitution.

"Finance Director"

means the Director of Resources or the Director who may from time to time be the chief financial officer of the Trust.

"Funds held on Trust"

means those funds which the Trust held on the date of incorporation, receives on distribution by statutory instrument or chooses subsequently to accept under powers derived under the 2006 Act and shall include the income and interest derived from the holding of such funds all or some of which may or may not be charitable.

"Member"

means a member of the Trust.

"Monitor"

means the corporate body of that name

"Nominated Officer"

means an Officer charged with the responsibility for discharging specific tasks under the Scheme of Delegation

"Officer"

means an employee of the Trust or any other person who holds a paid appointment or office with the Trust including those whose appointment is seconded to the Trust and who are employees of third parties contracted to the Trust while in either case acting for the Trust.

"Scheme of Delegation"

means the Reservation of Powers to the Board of Directors and Delegation of Powers approved by the Board of Directors under SO 4.4.

"Secretary"

means a person appointed by the Board of Directors in accordance with SO 2.11.1

"SFIs"

means Standing Financial Instructions to be prepared by the Director of Resources and approved by the Board of Directors.

"SOs"

means these Standing Orders and SO means one of them.

"the 2006 Act"

means the National Health Service Act 2006.

"the 2012 Act"

means the Health and Social Care Act 2012

"Trust"

means the North Essex Partnership University NHS Foundation Trust.

"Trust Headquarters"

means Stapleford House 103 Stapleford Close Chelmsford CM2 0QX.

- 1.3. Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice-versa.
- 1.4. Any reference to an Act shall where appropriate include any Act amending or consolidating that Act and any Regulation or Order made under any such Act.

2. THE BOARD OF DIRECTORS

General

- 2.1 The general duty of the Directors and of every director individually is to promote the success of the Trust so as to maximise the benefits for the members of the Trust as a whole and for the public. All business shall be conducted in the name of the Trust.
- 2.2 All funds received in trust shall be held in the name of the Trust as corporate trustee.
- 2.3 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.
- 2.4 The Trust has the functions conferred on it by the Regulatory Framework, and the 2006 Act as amended by the 2012 Act. 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 to the Charity Commission. Accountability for non-charitable Funds held on Trust is only to Monitor
- 2.5 The powers of the Trust shall be exercised by the Board of Directors but except for those powers and decisions which the Board of Directors has resolved shall be reserved to itself, the Board of Directors may make arrangements for the exercise of any of its functions by a Director or Officer or other person as provided by SO 4 or by a committee or subcommittee as provided by SO 5
- 2.6 Those powers and decisions which the Board of Directors has resolved shall be reserved to itself and any functions not delegated under SO 4 or under SO 5, shall be exercised by the Board of Directors at a meeting duly convened and held as provided by SO 3 but subject always to the emergency powers conferred by SO 4.2.1

2.7 Composition of the Board of Directors

2.7.1 In accordance with the Constitution the Board of Directors is to comprise:

2.7.1.1 the following non-executive Directors: the Chairman, and a maximum of seven other non-executive Directors.

2.7.1.2 the following executive Directors: the Chief Executive who shall be the Accounting Officer, the Finance Director, and a maximum of five other executive Directors, one of whom shall be a registered medical practitioner, and another of whom shall be a registered nurse or midwife but so that the number of the non-executive Directors including the Chairman shall always be equal to or exceed the number of executive Directors.

2.7.2 Only a Member of a public constituency specified in Annex 1 of the Constitution is eligible for appointment as a non-executive Director

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

2.8 Appointment and Removal of the Chairman and other non-executive Directors

2.8.1 The Chairman and other non-executive Directors are to be appointed and removed in accordance with the Constitution of the Trust and the guidance issued by Monitor.

2.9 Terms of Office of the Chairman and non-executive Directors

2.9.1 The Chairman and the non-executive Directors shall be appointed with terms and conditions of office decided by the Council of Governors at a General Meeting.

2.10 Appointment and Powers of Deputy Chairman

2.10.1 The Council of Governors shall by a resolution passed at a meeting at the Council, be entitled to appoint one of the non-executive Directors to be Deputy Chairman of the Trust, and in similar manner, to remove the person so appointed from that position and to appoint another non-executive Director in his place

2.10.2 Before a resolution for any such appointment is passed, the Board of Directors shall be entitled to decide which of the non-executive Directors it recommends for that appointment; immediately after any such decision is taken, the Chairman shall advise the Council of Governors of the recommendation of the Board of Directors, which will not be binding upon the Council, but will be presented to the Council at its meeting before it comes to its decision

2.10.3 For so long as there is no person who has been appointed by the Council of Governors to be Deputy Chairman, the Board of Directors shall be entitled to appoint a non-executive Director to be Deputy Chairman and to remove the person so appointed from that position and to appoint another non-executive Director in his place, and any non-executive Director appointed under this SO 2.10.3 shall hold office as Deputy Chairman until an appointment to that office is made by the Council of Governors under SO 2.10.1

2.10.4 The Deputy Chairman appointed under this SO 2.10 shall in the absence or unavailability of the Chairman, or if there is a vacancy in the office of chairman, be entitled to exercise all the rights and powers conferred upon the Chairman by the Constitution including but without limit those set out in these SOs and in the Standing Orders of the Council of Governors

2.10.5 A Deputy Chairman appointed under this paragraph may at any time resign the office of Deputy Chairman by written notice to the Trust Secretary

2.11 Secretary

2.11.1 The Board of Directors shall appoint a Secretary of the Trust to act independently of the Board of Directors, to provide advice on corporate governance issues to the Board of Directors and the Chairman and to monitor

the Trust's compliance with the Regulatory Framework, the SOs, and NHS Executive guidance

2.12 Disqualification

2.12.1 A Director will be subject to the disqualification criteria included in paragraph 28 of the Constitution.

3 MEETINGS OF THE BOARD OF DIRECTORS

3.1 Admission of the Public and the Press

3.1.1 Subject to Standing Order 3.16, the public and representatives of the media shall be afforded facilities to attend the meetings of the Board of Directors but shall be required to withdraw upon the Board of Directors resolving as follows:

“That representatives of the media 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, or to the risk of any publicity which would be prejudicial to the Trust or its business or any of its employees or service users or carers or contractors”.

3.1.2 The Chairman shall give such directions as he thinks fit in regard to the arrangements for meetings and where applicable 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) and continue thereafter without the presence of the public to enable the Board to complete its business”.

3.1.3 Nothing in these SOs shall require the Board of Directors to allow any member of the public or representative of the media if present to record **or** broadcast proceedings in any manner whatsoever, other than in writing, or to make any oral or verbal report of proceedings as they take place without the prior agreement of the Board of Directors.

3.1.4 Matters discussed at a meeting following the exclusion of the public and representatives of the media shall be confidential to the Board of Directors and shall not be disclosed by any person attending the meeting without the consent of the chairman of the meeting

3.2 Calling Meetings

3.2.1 Meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.

3.2.2 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 the

Directors, and specifying the business to be transacted at the meeting, has been presented to him, or if, without so refusing, the Chairman or the Deputy Chairman does not call a meeting within 5 Clear Days after such requisition addressed to the Chairman has been presented to the Trust's Headquarters, such one third or more members of the Board of Directors may forthwith call a meeting.

3.3 Notice of Meetings

- 3.3.1 Before each meeting of the Board of Directors, a notice of the meeting, specifying so far as possible 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 served upon every Director at least 3 Clear Days before the meeting save in the case of any emergency.
- 3.3.2 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.
- 3.3.3 A notice or other document to be served upon a Director under these Standing Orders shall be manually delivered or sent by post to the Director at his usual place of residence which he shall have last notified to the Trust, or where served electronically, to the address which he shall have last notified to the Trust as the address to which a notice or other document may be sent by electronic means. A notice or other document where manually delivered or sent by electronic means, shall be presumed to have been served on the next Clear Day following the day of delivery and where sent by post on the second Clear Day after the day of posting. Want of service of the notice on any one Director shall not affect the validity of a meeting but failure to serve such a notice on more than three Directors will invalidate the meeting.
- 3.3.4 An agenda of the business to be transacted with supporting papers will be sent to Directors before the meeting, whenever possible, but failure to do so shall not invalidate the proceedings of the meeting.

3.4 Setting the Agenda

- 3.4.1 The Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Directors and shall be addressed prior to any other business being conducted.
- 3.4.2 A Director desiring a matter to be included on an agenda shall make his request in writing to the Chairman at least 5 Clear Days before the meeting. The request shall include appropriate supporting information.. Requests made less than 5 Clear Days before a meeting may be included on the agenda at the discretion of the Chairman.
- 3.4.3 Subject to Standing Order 3.16, a copy of the agenda for every meeting shall be also sent to each of the governors at the same time as it is sent to the Directors and may be sent in any manner permitted under Standing Order 3.3.3

3.5 Petitions

- 3.5.1 Where a petition has been received by the Trust not less than 10 Clear Days before a meeting of the Board of Directors the Chairman shall include the petition as an item for the agenda of that meeting.

3.6 Chairman of Meeting

- 3.6.1 At any meeting of the Board of Directors, the Chairman shall preside. If the Chairman is absent or unavailable for any reason the Deputy Chairman shall preside as provided by Standing Order 2.10.4. If the Deputy Chairman is also absent or unavailable for any reason, such non-executive Director as is present and has no conflict of interest and is selected by the members of the Board of Directors present shall preside.

3.7 Resolutions

Where a Director has requested inclusion of a matter on the agenda in accordance with SO 3.4.2 as a resolution to be formally proposed for discussion and voting on at the meeting, the following provisions of this SO shall apply to the resolution:

- 3.7.1 the resolution must be seconded by a Director present at the meeting and in the absence of a seconder the resolution shall be deemed to have been defeated and the meeting shall proceed to the next item of business
- 3.7.2 the proposer of a resolution shall have a right of reply at the close of any discussion on the proposition or any amendment thereto.
- 3.7.3 when a resolution is under discussion or immediately prior to discussion it shall be open to a member of the Board of Directors to propose:
- 3.7.3.1 an amendment to the resolution;
 - 3.7.3.2 the adjournment of the discussion or the meeting;
 - 3.7.3.3 that the meeting proceed to the next business;
 - 3.7.3.4 the appointment of an ad hoc committee to deal with a specific item of business;
 - 3.7.3.5 that the resolution be now put; or
 - 3.7.3.6 a resolution resolving to exclude the public(including the press).
- 3.7.4 No amendment to the resolution shall be admitted if, in the opinion of the Chairman, the amendment negates the substance of the resolution.
- 3.7.5 The mover of a resolution shall have a maximum of 3 minutes to move and 3 minutes to reply. Once a resolution has been proposed, no member of the Board of Directors shall speak more than once or for more than 3 minutes. The Chairman may in his absolute discretion waive any condition in this SO 3.7.5

3.8 Chairman's Ruling

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

3.9 Voting

3.9.1 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 event of an equality of votes on any issue or matter, the Chairman shall have a second or casting vote.

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

3.9.3 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 shall be recorded to show how each Director present voted or abstained.

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

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

3.9.6 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.

3.10 Minutes

3.10.1 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.

3.10.2 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 Secretary's office.

3.10.3 Subject to Standing Order 3.16, a draft copy of the minutes of every meeting shall be sent to every governor in any manner permitted by Standing Order 3.3.3 and also sent to such persons as may be directed by the Board of Directors. The minutes of that meeting after approval by the Board of

Directors shall also be made available to any member of the public on request as required by the Code of Practice on Openness in the NHS

3.11 Suspension of Standing Orders

3.11.1 Except where this would contravene any statutory provision, any one or more of the Standing Orders 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 Directors present vote in favour of suspension.

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

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

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

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

3.12 Variation and Amendment of Standing Orders

3.12.1 These Standing Orders shall be amended only as provided by paragraph 44 of the Constitution

3.13 Record of Attendance

3.13.1 The names of the Directors and all others in attendance (other than members of the public and the media) who are present at a meeting of the Board of Directors shall be recorded in the minutes.

3.14 Quorum

3.14.1 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

3.14.2 An Officer in attendance for an executive Director but without formal acting up status shall not count towards the quorum.

3.14.3 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 as provided in Standing Order 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. 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

3.15 Meetings: Electronic Communication

- 3.15.1 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.
- 3.15.2 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 Directors shall be regarded for all purposes as being present and 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.
- 3.15.3 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 is physically present.
- 3.15.4 Meetings held in accordance with this SO are subject to SO 3.14. For such a meeting to be valid, a quorum must be present and maintained throughout the meeting.
- 3.15.5 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.

3.16 Informal meetings and Meetings as a Committee

Notwithstanding anything in these Standing Orders, the Directors may meet informally or as a Committee of the Board at any time and from time to time and shall not be required to admit any member of the public or any representative of the media to any such meeting or to send a copy of the agenda for that meeting or any draft minutes of that meeting to any other person or organisation

4 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

4.1 Except as provided in SO 2.6 and in SO 4.5, and the Regulatory Framework and in such guidance as may be given by Monitor, the Board of Directors may make arrangements for the exercise of any of its functions

4.1.1 by a committee or subcommittee appointed under SO 5.1 or 5.2; or

4.1.2 by a Director or an Officer of the Trust

in each case subject to such restrictions and conditions as the Board of Directors approves.

4.2 Emergency Powers

- 4.2.1 The powers which the Board has resolved to retain to itself may in emergency be exercised by the Chief Executive and the Chairman acting together 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 meeting of the Board of Directors held in public for ratification.
- 4.2.2 Any power exercisable whether solely or jointly with another or others, by the Chairman under these SOs, may if the Chairman is absent or unavailable for any reason, be exercised in an emergency by the Deputy Chairman as provided by Standing Order 2.10.4. or if the Deputy Chairman is also absent or unavailable for any reason, such non-executive Director as has no conflict of interest and is appointed by the Board of Directors for the purpose, and any power exercisable whether solely or jointly with another or others, by the Chief Executive under these SOs, may if the Chief Executive is absent or unavailable for any reason, be exercised in an emergency by the Executive Director who has been duly authorised to represent him, or if that Executive Director is absent or unavailable for any reason, or if no Executive Director has been so authorised, by an Executive Director nominated jointly by the Chairman and a non-executive Director.

4.3 Delegation to committees

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

4.4 Delegation to Officers

- 4.4.1 Save as provided by SO 4.5 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 remain accountable to the Board of Directors.
- 4.4.2 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 provided above.
- 4.4.3 Nothing in the Scheme of Delegation shall restrict or limit the responsibility of the Finance Director to provide information and advice to the Board of Directors in accordance with any statutory requirements, but subject to his discharge of these statutory requirements the Finance Director shall be accountable to the Chief Executive for the performance of his role

4.4.4 The Directors may meet together at any time as a Committee of the Board but may only exercise such functions and take such decisions as may have been delegated to it by the Board at a meeting held in public

4.5 Mental Health Act managers

Where the Trust is exercising the functions of the managers referred to in section 45 of the Mental Health Act 2007 (as amended), those functions may be exercised by any three or more persons authorized by the Board of Directors, each of whom is neither an executive director of the Board nor an employee of the Trust.

4.6 Overriding Standing Orders

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 Chief Executive as soon as possible.

5 COMMITTEES

5.1 Appointment of Committees

5.1.1 Subject to SO 2.6 and the Regulatory Framework and such guidance as may be issued by Monitor, the Board of Directors may appoint committees of the Trust consisting wholly of Directors or except in the case of any of the committees referred to in Standing Orders 4.4.4 or 5.1.7, partly of Directors and partly of Officers

5.1.2 A committee appointed under SO 5.1.1 may, if expressly permitted by its terms of reference and subject to the Regulatory Framework and such guidance as may be given by Monitor or the Board of Directors or other health service bodies in question, appoint sub-committees consisting wholly or partly of Directors or such other persons as may be permitted under its terms of reference, whether or not they are Directors of the Trust in question, or wholly of persons who are not Directors of the Trust or a committee of the Trust.

5.1.3 These SOs, as far as they are applicable, and excluding always SOs 3.4.3 and 3.10.3, shall apply with appropriate alteration to meetings of any committees established by the Board of Directors, and in that 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. Meetings of committees, established by the Trust shall not be held in public.

5.1.4 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.

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

5.1.6 The Board of Directors shall approve the persons appointed to each of the committees, which it has formally constituted, and may resolve at any meeting to remove any person so appointed by it, and to appoint another person in his place. 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.

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

5.1.7.1	Audit Committee
5.1.7.2	Remuneration Committee
5.1.7.3	Nominations Committee
5.1.7.4	Quality and Risk Committee.

5.1.8 The committees so established shall have such responsibilities and duties as are set out in these SOs and in SFIs and in their terms of reference which shall have been approved by the Board of Directors.

5.2 Confidentiality

5.2.1 A member of a committee shall not disclose a matter dealt with by, or brought before, the committee except to the extent that it has been fully disclosed at a meeting of the Board of Directors held in public

5.2.2 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.

6 INTERFACE BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS

6.1 The Board of Directors and the Council of Governors shall consult together when required as to the manner in which the Council is to be assisted by the Trust in the carrying out its general duties

7 INTERESTS OF DIRECTORS

7.1 The duties that a Director of the Trust has by virtue of being a director in particular include

7.1.1 A duty to avoid a situation in which he has (or can have) a direct or indirect interest which conflicts (or possibly may conflict) with the interests of the Trust; and

- 7.1.2 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.
- 7.2 The duty referred to in SO 7.1.1. is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest or the matter has been authorised in accordance with the Constitution.
- 7.3 A Director who is in a situation described in SO 7.1.1 shall take as soon as practical such steps as are needed to place himself in a situation which is not as so described.
- 7.4 The duty referred to in SO 7.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest and for the purposes of that paragraph "third party" means a person other than the Trust or a person acting on its behalf.
- 7.5 If a Director has in any way a direct or indirect interest in any current or proposed transaction or arrangement or matter in which the Trust is to or may become involved he must declare the nature and extent of that interest to the other directors as soon as he becomes aware of that interest or before the transaction or arrangement or matter is entered into or made or discussed as the case may be.
- 7.6 A Director shall be treated as having an indirect interest in a transaction or arrangement or matter if the spouse or a partner or parent or child or brother or sister or nominee of the Director or a company or other organisation of which he is a director or a shareholder has an interest in the transaction arrangement or matter to which if it were the interest of the Director the provisions of this SO 7 would apply.
- 7.7 A Director shall not be required to declare an interest
- 7.7.1 if the Director was not aware of the interest or not aware of the transaction or arrangement or matter, or
- 7.7.2 if the interest cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 7.7.3 if and to the extent that the nature and extent of the interest has previously been disclosed to the Board of Directors
- 7.8 If a declaration made under this SO 7 proves to be or becomes inaccurate or incomplete, a further declaration must be made as soon as the Director becomes aware of the inaccuracy or insufficiency
- 7.9 If a Director is in doubt as to whether he is in a situation described in SO 7.1.1 or has an interest for the purposes of SO 7.5 he shall refer the question to the Chairman and the decision of the Chairman shall be final and binding on the Director
- 7.10 The Secretary shall maintain keep updated and publicise the register of interests of the Directors which shall contain the names of each Director, whether he has declared any interest, and if so the interest declared
- 7.11 The register of interests of the Directors will be made available to the public in accordance with paragraph 35 of the Constitution

8. STANDARDS OF BUSINESS CONDUCT

8.1 Policy

Directors and Officers shall comply with the Department of Health Guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff" and the "Code of Conduct for NHS Managers 2002" as varied from time to time. This section of SOs should be read in conjunction with this document.

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

- 8.2.1 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.
- 8.2.2 A Director shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this 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.
- 8.2.3 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

8.3 Relatives of Directors or Officers

- 8.3.1 Applications for a staff appointment shall require candidates for that appointment when making application to disclose in writing whether they are related to any Director or Officer. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
- 8.3.2 A Director and an Officer shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that Director or Officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.
- 8.3.3 The Chief Executive shall ensure that persons seeking appointment as a Director shall disclose in writing to the Trust before appointment whether they are related to any Director or Officer, and in that event, SO 7 shall apply.

8.4 External Consultants and Contractors and their Employees

- 8.4.1 The attention of all external consultants or other agents acting on behalf of the Trust and of all contractors with the Trust and their employees shall be drawn to the requirements of this SO 8 and their terms of engagement shall be require them to comply with it.

9 TENDERING AND CONTRACT PROCEDURE

9.1 Duty to comply with Standing Orders

- 9.1.1 The procedure for making all contracts by or on behalf of the Trust shall comply with these SOs.

9.2 EU Directives Governing Public Procurement and other Procedures

- 9.2.1 European Union Directives on public sector purchasing promulgated by the Department of Health (under HSG(95)38) prescribing procedures for awarding all forms of contracts shall have effect as if incorporated in these SOs.
- 9.2.2 The Trust shall have policies and procedures in place for the control of all tendering activity carried out through Reverse eAuctions.
- 9.2.3 The Trust shall comply as far as is practicable with the requirements of the Department of Health "Capital Investment Manual" and "Estatecode" and any other relevant Department of Health requirements (including any updates or successors to the Capital Investment Manual and Estatecode) and associated relevant guidance issued by Monitor in respect of capital investment and estate and property transactions. In the case of management consultancy contracts the Trust shall comply as far as is practicable with Department of Health guidance "The Procurement and Management of Consultants within the NHS". The Trust will also comply with the Guidance from Monitor entitled "Best Practice in Making Investments" and the Regulatory Framework.
- 9.2.4 The Tendering and Contract Procedure is governed by the ranges of expenditure referred to in the Scheme of Delegation:
 - 9.2.4.1 Formal Competitive Tendering Procedures are contained in SO 9.3.
 - 9.2.4.2 Competitive Quotations Procedures are contained in SOs 9.4.1 to 9.4.3; and
 - 9.2.4.3 Disposals where Tendering or Competitive Quotations are not required are referred to in SO 10.

9.3 Formal Competitive Tendering

- 9.3.1 The Trust shall ensure that competitive tenders are invited for the supply of goods, materials and manufactured articles and for the rendering of services including all forms of management consultancy services (other than specialised services sought from or provided by the Department of Health); for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals.
- 9.3.2 Formal tendering procedures may be waived by Officers to whom powers have been delegated by the Chief Executive without reference to the Chief Executive if:
 - 9.3.2.1 the estimated expenditure or income does not, or is not reasonably expected to, exceed £30,000 (to be calculated as the aggregate of the amounts to be paid or received over the anticipated lifetime of contract); or
 - 9.3.2.2 where the supply is proposed under special arrangements negotiated by the Department of Health in which event the said special arrangements must be complied with;

- 9.3.2.3 where provided for in the Capital Investment Manual; or
 - 9.3.2.4 there is in existence a framework arrangement, either within the Trust or through a regional, national or other organisation, for this specific requirement and the Trust has an explicit right of access to that framework. For avoidance of doubt the Head of Procurement should provide confirmation prior to using any framework for such a purpose.
- 9.3.3 Formal tendering procedures may be waived by Officers to whom powers have been delegated by the Chief Executive, with the prior approval of the Chief Executive if:
- 9.3.3.1 the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender;
 - 9.3.3.2 specialist expertise is required and is available from only one source;
 - 9.3.3.3 the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate; or
 - 9.3.3.4 there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering; or
 - 9.3.3.5 where provided for in the Capital Investment Manual.
- 9.3.4 The limited application of the single tender rules should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.
- 9.3.5 Where it is decided that competitive tendering is not applicable and should be waived by virtue of SOs 9.3.3.1 to 9.3.3.4 above the fact of the waiver and the reasons should be documented and reported by the Chief Executive to the Board of Directors in a formal meeting.
- 9.3.6 Except where SO 9.3.2 or 9.3.3, or a requirement under SO 9.2, applies, the Officer submitting the invitations to tender shall ensure that invitations to tender are sent to a sufficient number of firms/individuals to provide fair and adequate competition as appropriate, and in no case less than three firms/individuals, having regard to their capacity to supply the goods or materials or to undertake the services or works required.
- 9.3.7 The Finance Director shall ensure that normally the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists referred to in Appendix 1. Where in the opinion of the Finance Director it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive.
- 9.3.8 The Tendering Procedure is set out in the Appendix 1.

9.4 Quotations

- 9.4.1 Quotations are required where formal tendering procedures are waived under SO 9.3.2.1 or SO 9.3.2.2 and where the intended expenditure or income exceeds, or is reasonably expected to exceed the limits defined in the Scheme of Delegation.
- 9.4.2 Where quotations are required under SO 9.4.1, they should be obtained from at least three firms or individuals based on specifications or terms of reference prepared by, or on behalf of, the Board of Directors.
- 9.4.3 Quotations shall be in writing unless the Chief Executive or his Nominated Officer determine that it is impractical to do so in which case verbal quotations may be obtained but must be confirmed in writing as soon as possible and the reasons why the verbal quotation was obtained should be set out in a permanent record.
- 9.4.4 All quotations shall be treated as confidential and should be retained for inspection.
- 9.4.5 The Chief Executive or his Nominated Officer should evaluate the quotations and select the one which gives value for money. If this is not the lowest then this fact and the reasons why the lowest quotation was not chosen should be in a permanent record.
- 9.4.6 Non-competitive quotations in writing may be obtained for the following purposes:
 - 9.4.6.1 the supply of goods or services of a special character for which it is not, in the opinion of the Chief Executive or his Nominated Officer, possible or desirable to obtain competitive quotations; or
 - 9.4.6.2 If the goods or services are required urgently, and the prior approval of the Finance Director or his Nominated Officer has been given
- 9.4.7 Where tenders or quotations are not required, because expenditure is below the limits set in the Scheme of Delegation, the Trust shall procure goods and services in accordance with procurement procedures approved by the Finance Director.

9.5 Private Finance

- 9.5.1 When the Trust proposes, or is required, to use finance provided by the private sector the following should apply:
 - 9.5.1.1 The Chief Executive and Finance Director shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector.
 - 9.5.1.2 The proposal must be specifically agreed by the Board of Directors in the light of such professional advice as should reasonably be sought in particular with regard to vires.

9.5.1.3 The selection of a contractor or finance company must be on the basis of competitive tendering or quotations.

9.6 Contracts

9.6.1 The Trust may only enter into contracts within its statutory powers and shall comply with:

9.6.1.1 these SOs;

9.6.1.2 the Trust's SFIs;

9.6.1.3 EU Directives and other statutory provisions;

9.6.1.4 any relevant directions including the Capital Investment Manual and guidance on the Procurement and Management of Consultants;

9.6.1.5 such of the NHS Standard Contract Conditions as are applicable.

9.6.1.6 the guidance from Monitor entitled "Best Practice in Making Investments"; and

9.6.1.7 any other relevant Monitor guidance.

Where appropriate contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited.

9.6.2 In all contracts made by the Trust, the Chief Executive shall endeavour to obtain value for money and shall nominate an Officer who shall oversee and manage each contract on behalf of the Trust.

9.6.3 All contracts which are subject to the Tendering Procedure referred to in Appendix 1, and are made by or on behalf of the Trust, must be notified to the Head of Procurement by the Officer nominated under 9.6.2 above

9.7 Personnel and Agency or Temporary Staff Contracts

9.7.1 The Chief Executive shall nominate Officers with delegated authority to enter into contracts for the employment of other Officers, to authorize regrading of staff, and enter into contracts for the employment of agency staff or temporary staff service contracts.

9.8 Healthcare Services Agreements

9.8.1 Healthcare Services contracts made between two NHS organisations for the supply of healthcare services, will be legally binding contracts based on the models issued by the Department of Health.

9.8.2 The Chief Executive shall nominate Officers with power to negotiate for the provision of healthcare services with purchasers of healthcare.

9.9 Cancellation of Contracts

9.9.1 Except where specific provision is made in model forms of contracts or standard schedules of conditions approved for use within the NHS, there shall be inserted in every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if:

9.9.1.1 the contractor shall have offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Trust; or

9.9.1.2 for showing or forbearing to show favour or disfavour to any person in relation to the contracts or any other contract with the Trust, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor); or

9.9.1.3 if in relation to any contract with the Trust the contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889 and 1916 and other appropriate legislation; or

9.9.1.4 it is discovered that the contractor withheld any information in relation to any ongoing investigations or previous prosecutions against them or any of their employees in relation to the Bribery Act 2010.

9.10 Determination of Contracts for Failure to Deliver Goods or Material

9.10.1 There shall be inserted in every written contract for the supply of goods or materials a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Trust may without prejudice determine the contract either wholly or to the extent of such default and purchase other goods, or material of similar description to make good (a) such default, or (b) in the event of the contract being wholly determined the goods or materials remaining to be delivered.

9.10.2 This clause shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor in respect of the goods or materials shall be recoverable from the contractor.

9.11 Contracts Involving Funds held on Trust

9.11.1 Contracts involving Funds held on Trust shall do so individually to a specific named fund. Such contracts involving charitable funds shall comply with the requirements of the Charities Acts.

10 DISPOSALS

10.1 Competitive Tendering or Quotation procedures shall not apply to the disposal of:

10.1.2 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;

10.1.3 obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust;

10.1.4 items to be disposed of with an estimated sale value of less than the amount specified in the Scheme of Delegation

10.1.5 items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;

11 IN-HOUSE SERVICES

11.1 In all cases where the Trust determines that in-house services should be subject to competitive tendering the following groups shall be set up:

11.1.2 Specification group, comprising the Chief Executive or an Officer or Officers nominated by him and specialist(s).

11.1.3 In-house tender group, comprising representatives of the in-house team, a nominee of the Chief Executive and technical support.

11.1.4 Evaluation group, comprising normally a specialist Officer, a supplies Officer and a Finance Director representative. For services having a likely annual expenditure exceeding £500,000, a non-executive Director should be a member of the evaluation team.

11.2 All groups should work independently of each other but individual Officers may be a member of more than one group. No member of the in-house tender group may, however, participate in the evaluation of tenders.

11.3 The evaluation group shall make recommendations to the Board of Directors.

11.4 The Chief Executive shall nominate an Officer to oversee and manage the contract.

12 CUSTODY OF SEAL AND SEALING OF DOCUMENTS

12.1 Custody of Seal

12.1.1 The Common Seal of the Trust shall be kept by the Chief Executive or Nominated Officer in a secure place.

12.2 Execution of Deeds

12.2.1 No Deed shall be executed by the Trust unless its execution has been authorised by a resolution of the Board of Directors.

- 12.2.2 A resolution of the Board of Directors under SO 12.2.1 may relate to a specific Deed or may grant general authority for the execution of Deeds of various types or relating to various different transactions and may impose such conditions as to the persons from whom prior approval must be obtained and or as to the persons who must attest the Seal or must execute the Deed on behalf of the Trust and or as to such other matters as the Board of Directors in its absolute discretion may decide.
- 12.2.3 Details of any resolution referred to in SO 12.2 which relates to more than one document or transaction, shall be recorded in the Scheme of Delegation.

12.3 Register of Sealing

- 12.3.1 An entry of every Deed 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 Deed and those who attested the seal or executed the Deed. A report of all Deeds shall be made to the Board of Directors at least quarterly, and shall contain details of the Deed , the date of its execution and the names of the persons who attested the fixing of the Seal or who executed the Deed on behalf of the Trust.

13 SIGNATURE OF DOCUMENTS

- 13.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chairman or 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.
- 13.2 Where a function of the Trust has been delegated to an Officer under the Scheme of Delegation approved under SO 4, the Officer to whom the function has been delegated, shall have authority to complete and sign on behalf of the Trust any document which is not a Deed nor a document which is a necessary step in legal proceedings as referred to in SO 13.1, and which he considers to be necessary or desirable for the proper performance of that function.

14 MISCELLANEOUS

14.1 Standing Orders to be made available to all Officers

It is the duty of the Chief Executive to ensure that all Directors and Officers are made aware of the existence of these Standing Orders and the Standing Financial Instructions and the Scheme of Delegation, and that up to date copies of those documents are readily available to all Directors and Officers and to all new appointees, and that any queries raised by any of them as to their responsibilities answered promptly

14.2 Review of Standing Orders

14.2.1 Standing Orders shall be reviewed annually by the Trust.

14.3 Corporate Documents

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

Appendix 1

TENDERING PROCEDURE

1 Invitation to Tender

- 1.1 All invitations to tender on a formal competitive basis shall state that no tender will be considered for acceptance unless submitted in either:
 - 1.1.1 a plain, sealed package bearing a pre-printed label supplied by the Trust (or bearing the word 'Tender' followed by the subject to which it relates and the latest date and time for the receipt of such tender); or
 - 1.1.2 in a special envelope supplied by the Trust to prospective tenderers and the tender envelopes/packages shall not bear any names or marks indicating the sender.
- 1.2 Every tender for goods, materials, manufactured articles supplied as part of a works contract and services shall embody such of the main contract conditions as may be appropriate in accordance with the contract forms described in Section 1.3 and 1.4 below.
- 1.3 Every tender for building and engineering works, except for maintenance work only where Estmancode guidance should be followed, shall embody or be in the terms of the current edition of the appropriate Joint Contracts Tribunal (JCT) or Department of the Environment (GC/Wks) standard forms of contract amended to comply with Concode. When the content of the works is primarily engineering, tenders shall embody or be in the terms of the General Conditions of Contract recommended by the Institutions of Mechanical Engineers and the Association of Consulting Engineers (Form A) or, in the case of civil engineering work, the General Conditions of Contract recommended by the Institution of Civil Engineers. The standard documents should be amended to comply with Concode and, in minor respects, to cover special features of individual projects. Tendering based on other forms of contract may be used only after prior consultation with the DoH.
- 1.4 Every tender for goods, materials, services (including consultancy services) or disposals shall embody such of the NHS Standard Contract Conditions as are applicable. Every tenderer must have given or give a written undertaking not to engage in collusive tendering or other restrictive practice.
- 1.5 A minimum of three weeks must be allowed from the date upon which the invitation to tender issued to the date for return of tenders.

2 Receipt, Safe Custody and Record of Formal Tenders

- 2.1 Formal competitive tenders shall be addressed to the Chief Executive, and sent to the Trust Headquarters.
- 2.2 The date and time of receipt of each tender shall be endorsed on the unopened tender envelope/package. Opened envelopes/packages will be retained for 12 months for audit purposes.

- 2.3 The Chief Executive shall designate an officer or officers, not from the originating department, to receive tenders on his behalf and to be responsible for their endorsement and safe custody until the time appointed for their opening, and for the records maintained in accordance with Section 3.

3 Opening Formal Tenders

- 3.1 As soon as practicable after the date and time stated as being the latest time for the receipt of tenders they shall be opened in the presence of two senior Officers designated by the Chief Executive and not from the originating department.

- 3.2 Every tender received shall be stamped with the date of opening and initialled by two of those present at the opening. A permanent record shall be maintained to show for each set of competitive tender invitations dispatched:

3.2.1 the names of firms/individuals invited to tender;

3.2.2 the names of and the number of firms/individuals from which tenders have been received;

3.2.3 the total price(s) tendered;

3.2.4 closing date and time;

3.2.5 date and time of opening;

and the record shall be signed by the persons present at the opening of the tender.

- 3.3 Except as in Section 3.4 below, a record shall be maintained of all price alterations on tenders, i.e. where a price has apparently been altered, and the final price shown shall be recorded. Every price alteration appearing on a tender and the record should be initialed by two of those present at the opening.

- 3.4 A report shall be made in the record if, on any one tender, price alterations are so numerous as to render the procedure in Section 3.3 unreasonable.

4 Admissibility and Acceptance of Formal Tenders

- 4.1 In considering which tender to accept, if any, the designated officers shall have regard to whether value for money will be obtained by the Trust and whether the number of tenders received provides adequate competition. In cases of doubt they shall consult the Chief Executive. In order to ensure that value for money has been obtained each tender received must be evaluated using pre-defined criteria (which will be different for each requirement) which must follow the most economically advantageous tender principles.

- 4.2 Tenders received after the due time and date may be considered only if the Chief Executive or Nominated Officer decides that there are exceptional circumstances, e.g. where significant financial, technical or delivery advantages would accrue, and is satisfied that there is no reason to doubt the bona fides of the tenders concerned. The Chief Executive or Nominated Officer shall decide whether such tenders are

admissible and whether re-tendering is desirable. Re-tendering may be limited to those tenders reasonably in the field of consideration in the original competition. If the tender is accepted the late arrival of the tender should be reported to the Board at its next meeting.

- 4.3 Technically late tenders (i.e. those dispatched in good time but delayed through no fault of the tenderer) may at the discretion of the Chief Executive be regarded as having arrived in due time.
- 4.4 Incomplete tenders (i.e. those from which information necessary for the adjudication of the tender is missing) and amended tenders (i.e. those amended by the tenderer upon his own initiative either orally or in writing after the due time for receipt) should be dealt with in the same way as late tenders under Section 4.2.
- 4.5 Where examination of tenders reveals errors which would affect the tender figure, the tenderer is to be given details of such errors and afforded the opportunity of confirming or withdrawing his offer.
- 4.6 Necessary discussions with a tenderer of the contents of his tender, in order to elucidate technical points etc, before the award of a contract, need not disqualify the tender.
- 4.7 While decisions as to the admissibility of late, incomplete, or amended tenders are under consideration and while re-tenders are being obtained, the tender documents shall remain strictly confidential and kept in safekeeping by an officer designated by the Chief Executive.
- 4.8 Where only one tender/quotation is received the Chief Executive shall, as far as practicable, ensure that the price to be paid is fair and reasonable.
- 4.9 A tender other than that obtaining the highest score against the evaluation criteria shall not be accepted unless for good and sufficient reason the designated Officers with the prior approval of the Chief Executive decide otherwise and record that decision and the reason for it in their minutes and in the record referred to in 3.3 above. In no circumstances shall the Contract be awarded to any Contractor other than the highest qualifying Contractor where the total lifetime Contract value (including any potential extension periods) exceeds the thresholds defined within the EU Public Procurement legislation. For the avoidance of doubt a qualifying Contractor is one who has not been disqualified through the process and who meets all the mandatory and minimum requirements.
- 4.10 Where the form of contract includes a fluctuation clause all applications for price variations must be submitted in writing by the tenderer and shall be approved by the Chief Executive or Nominated Officer.
- 4.11 All Tenders should be treated as confidential and should be retained for inspection.

5 Lists of Approved Firms

- 5.1 The Trust shall compile and maintain, and the Finance Director shall keep, lists of approved firms and individuals from whom tenders may be invited, as provided for in SO 9, and shall keep these under review. The lists shall be selected from all firms which have applied for permission to tender provided that:

- 5.1.1 in the case of building, engineering and maintenance works, the Chief Executive is satisfied on their capacity, conditions of labour, etc, and that the Finance Director is satisfied that their financial standing is adequate.
- 5.1.2 in the case of the supply of goods, materials and related services, and consultancy services the Chief Executive or the Nominated Officer is satisfied as to their technical competence etc, and that the Finance Director is satisfied that their financial standing is adequate.
- 5.1.3 in the case of the provision of healthcare services to the Trust by a private sector provider, the Finance Director is satisfied as to their financial standing and the Medical Director is satisfied as to their technical/medical competence.
- 5.2 The Trust shall arrange for advertisements to be issued as may be necessary, and not less frequently than every third year, in trade journals and national newspapers inviting applications from firms for inclusion in the prescribed lists.
- 5.3 If in the opinion of the Chief Executive or the Finance Director it is impractical to use a list of approved firms/individuals (for example where specialist services or skills are required and there are insufficient suitable potential contractors on the list), the Chief Executive should ensure that appropriate checks are carried out as to the technical and financial capability of firms invited to tender or quote.
- 5.4 A permanent record should be made of the reasons for inviting a tender or quote other than from an approved list.

ANNEX 7 – DECLARATIONS REQUIRED BY SECTION 60 OF THE 2006 ACT

Declaration pursuant to S60(1) of entitlement to vote in an election for the Public Constituency

“I hereby declare that I am at the date of this declaration a member of the Public Constituency, by reason of living at [] in the constituency for which this election is being held “

Declaration pursuant to S60(2) of entitlement to stand as a governor

I hereby declare that I am at the date of this declaration a member of the Public Constituency by reason of living at [] in the constituency for which this election is being held and I am not prevented from being a member of the Council of Governors by reason of any of the matters set out in paragraph 14 or Annex 5 of the Constitution of the Trust

Declaration to be made by Governors prior to governors meetings pursuant to S60(3)

Declaration to the Secretary of North Essex Partnership University NHS Foundation Trust

I hereby declare that at the date of this declaration I am not prevented from being a member of the Council of Governors under the provisions in the Constitution.

ANNEX 8 – PROCEEDINGS AT ANNUAL MEETINGS OF MEMBERS

- 1** The Trust shall hold an annual meeting of the Council of Governors and an annual meeting of its members in the first nine months of every financial year in each case and subject to paragraph 3 the business of that meeting or those meetings shall be the presentation of:
 - 1.1 The Annual Report of the Trust for the year most recently ended;
 - 1.2 Its Annual Accounts for the year most recently ended; and
 - 1.3 The opinion of the Auditors of the Trust on those Accounts
- 2** Subject to paragraph 3 the annual meeting of the Council of Governors and the annual meeting of the members of the Trust may be held as separate meetings or as a combined meeting of the Council and of the members as the Trust may from time to time decide
- 3** Where the agenda for the Annual Meeting of the members includes a proposal for the consideration and approval of an amendment to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council has as part of the Trust), the provisions of paragraph 6.2 shall apply to the proceedings of the meeting while that proposal is under consideration
- 4** Annual meetings of the Council of Governors and of the members whether combined or separate shall be open to the public but the Chairman may at any time decide
 - 4.1 That discussion on any subject shall be prohibited or shall terminate if in his reasonable opinion publicity would be prejudicial to the public interest by reason of the confidential nature of the subject or for other special reasons; and/or
 - 4.2 That in the interests of public order the meeting adjourn for a period to be specified and continue thereafter without the presence of the public to enable the meeting to complete its business.
- 5** Before each annual meeting, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Trust Secretary or by an officer authorised by the Chairman, shall be served upon every governor and every member at least 10 Clear Days before the meeting save in the case of emergencies. Any notice or other document to be served upon a governor or a member shall be manually delivered or sent by post to the governor or the member at his usual place of residence which he shall have last notified to the Trust, or where served electronically, to the address which he shall have last notified to the Trust as the address to which a notice or other document may be sent by electronic means. A notice or other document where manually delivered or sent by electronic means, shall be presumed to have been served on the next Clear Day following the day of delivery and where sent by post on the second Clear Day after the day of posting.. Want of service of the

notice on any one or more of the governors or members shall not affect the validity of a meeting

- 6.1 Subject to paragraph 6.2 the Chairman of the Trust shall preside at every annual meeting, but if the Chairman is absent from the meeting or is otherwise unable for any reason to chair the meeting, the Deputy Chairman, or another non-executive director nominated by the Chairman or by the Deputy Chairman, in that order of priority in each case according to the presence and interests and availability of each of them, shall take the place of the Chairman and preside at the meeting but only for so long as the person in immediate priority to him, is absent or otherwise unable to chair the meeting
- 6.2 Where the agenda of the meeting includes any proposal for the consideration and approval of an amendment to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council has as part of the Trust), the meeting shall be chaired by the Lead Governor, or if he is absent or unavailable for any reason the Deputy Lead Governor, or if he is also absent or unavailable to chair the meeting, a governor elected for that purpose by the governors present at the meeting, and the chairman so appointed shall present the proposed amendment to the meeting and preside over the proceedings and the vote of the members present at the meeting whilst the business of the consideration and approval of that amendment is being conducted
- 7 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. On a proposal or resolution requiring voting only by governors, a governor may vote in person or by proxy. On a proposal or resolution requiring voting by members, a member may only vote if personally present at the time of the vote.
- 8 A member may not vote at an annual meeting unless prior to the commencement of the meeting he shall have produced such evidence of his being a member as the Trust may in its absolute discretion decide from time to time and has notified to members
- 9 Every question or proposition at a meeting shall be determined by a majority of the votes of the governors or of the members voting on the question.
- 10 The quorum for an Annual Meeting of the Council of Governors shall be as specified by the standing orders for the Council of Governors and for an Annual Meeting of the members shall be any five members and in the case of a combined meeting shall be both as specified by the standing orders for the Council together with five additional members who are not governors
- 11 Statements made at an annual meeting by a governor or by a member 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.

12 It shall not be necessary to send to any member a copy of the Annual Accounts or the opinion of the Auditors thereon or the Annual Report of the Trust or any other document which is referred to in, but does not accompany, the notice convening the meeting but all of those documents shall be sent to any governor or any member upon written request made by him to the Trust Secretary and shall be available for inspection by any governor or member free of charge at the place of the meeting for at least thirty minutes before the time at which the meeting is scheduled to commence and at the following places for ten Clear Days before the meeting is to be held

12.1 The headquarters of the Trust, and

12.2 The website of the Trust

ANNEX 9 – SIGNIFICANT TRANSACTION

A Transaction where any of the following ratios equals or exceeds 25 %	
Assets	The gross assets subject to the transaction divided by the gross assets of the Trust
Income	The income attributable to the assets or the contract associated with the transaction divided by the income of the Trust
Consideration to total Trust capital	The gross capital of the organisation or business being acquired or disposed of divided by the total capital of the Trust after completion of the transaction, or the effects on the total capital of the Trust following the transaction

In the application of this definition:

- Gross assets is the total of fixed assets and current assets
- Gross capital equals the market value of the target's shares and debt securities plus the excess of current liabilities over current assets
- Total capital of the Trust equals taxpayers equity
- For acquisitions and divestments of assets or businesses, data from the last year's audited accounts of the Trust should be used
- For capital investments, the investment may be made over a number of years, with revenue attributable to the investment potentially being achieved in future years
- For the asset ratio, estimated capital spend is to be compared with audited asset values
- For the income ratio, the full year impact of projected revenue from the investment is to be compared with the projected revenue of the Trust in that year