

Tees Esk and Wear Valleys NHS Foundation Trust Constitution

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1 Interpretation and definitions

1.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) and the Health and Social Care Act 2022.

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

1.3 The 2006 Act is the National Health Service Act 2006 (as amended).

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

1.5 The 2022 Act is the Health and Social Care Act 2022.

1.6 The Annual Members' Meeting is defined in paragraph 10 of the Constitution.

1.7 Constitution means this Constitution and all annexes to it.

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

1.9 In this Constitution:

“Board of Directors” means the Board of Directors of Tees, Esk and Wear Valleys NHS Foundation Trust established in accordance with paragraph 15 of schedule 7 of the 2006 Act.

“Director” means a person whose name is included in the register of directors of Tees, Esk and Wear Valleys NHS Foundation Trust.

“Governor” means a person whose name is included in the register of governors of Tees, Esk and Wear Valleys NHS Foundation Trust.

“Chair” means one of the non-executive Directors appointed by the Council of Governors as the “Chairman” of Tees, Esk and Wear Valleys NHS Foundation Trust as required by paragraph 16(1)(b) of schedule 7 of the 2006 Act.

“Company Secretary” means an officer appointed by the Board of Directors as the principal advisor to the Board of Directors and Council of Governors on compliance with the law, regulation and constitutional matters.

“Deputy Chair” means one of the non-executive Directors appointed by the Council of Governors to discharge the duties of the Chair on occasions when the Chair is absent or incapacitated.

“Finance Director” means a Director who is a CCAB-qualified accountant and whose appointment is required under paragraph 16(1)(a) of schedule 7 of the 2006 Act.

Integrated Care Board means a body established by NHS England under section 19 of the 2022 Act.

“Member” means a person whose name is included in the register of members of Tees, Esk and Wear Valleys NHS Foundation Trust.

“NHS England” means an executive non-departmental public body of the Department of Health and Social Care, formerly known as the NHS Commissioning Board, established under the 2012 Act.

“Secretary of State” means the Secretary of State for Health and Social Care.

“Annual Report” means a document prepared in accordance with paragraph 26 of schedule 7 of the 2006 Act.

“Forward Plan” means a document prepared in accordance with paragraph 27 of schedule 7 of the 2006 Act.

“Annual Accounts” means the financial accounts prepared accordance with paragraph 25 of schedule 7 of the 2006 Act.

“Subsidiary” means a separate, distinct legal entity for the purposes of taxation, regulation and liability owned or partly owned by the Trust. ‘Subsidiary’ includes companies limited by shares or companies limited by guarantee, limited liability partnerships and community interest companies. Joint ventures also fall within the definition.

2 Name

The name of the Foundation Trust is Tees, Esk and Wear Valleys NHS Foundation Trust (hereinafter known as the Trust).

3 Principal purpose

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

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

- 3.3 The Trust may provide goods and services for any purposes related to:
- 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
 - 3.3.2 the promotion and protection of public health.

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

4 Powers

4.1 The powers of the Trust are set out in the 2006 Act (as amended).

4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

4.3 Subject to paragraph 4.4 below, any of these powers may be delegated to a committee of Directors or an executive Director.

4.4 Where the Trust is exercising functions of the managers referred to in section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorised by the Board of Directors, none of whom must be an executive Director of the Trust or an employee of the Trust.

4.5 The Trust may arrange for any of the functions exercisable by the Trust to be exercised by or jointly with any one or more of the following:

- 4.5.1 a relevant body;
- 4.5.2 a local authority within the meaning of section 2B of the 2006 Act;
- 4.5.3 a combined authority.

4.6 The Trust may also enter into arrangements to carry out the functions of another relevant body, whether jointly or otherwise.

4.7 Where a function is exercisable by the Trust jointly with one or more of the other organisations mentioned at paragraph 4.6, those organisations and the Trust may:

- 4.7.1 arrange for the function to be exercised by a joint committee of theirs;
- 4.7.2 arrange for the Trust, one or more of those other organisations, or a joint committee of them, to establish and maintain a pooled fund.

4.8 The Trust must exercise its functions effectively, efficiency and economically.

- 4.9 In making a decision about the exercise of its functions, the Trust must have regard to all likely effects of the decision in relation to:
- 4.9.1 the health and well-being of (including inequalities between) the people of England;
 - 4.9.2 the quality of services provided to (including inequalities between benefits obtained by) individuals by or in pursuance of arrangements made by relevant bodies for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;
 - 4.9.3 efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- 4.10 In the exercise of its functions, the Trust must have regard to its duties under section 63B of the 2006 Act (complying with targets under section 1 of the Climate Change Act 2008 and section 5 of the Environment Act 2021, and to adapt any current or predicted impacts of climate change in the most recent report under section 56 of the Climate Change Act 2008).
- 4.11 For the purposes of this section, “relevant body” means NHS England, an integrated care board, an NHS trust, an NHS foundation trust (including the Trust) or such other body as may be prescribed under section 65Z5(2) of the 2006 Act. “Relevant bodies” means two or more of these organisations as the context requires.
- 4.12 The arrangements under this paragraph 4 shall be in accordance with:
- 4.12.1 any applicable requirements imposed by the 2006 Act or regulations made under that Act;
 - 4.12.2 any applicable statutory guidance that has been issued; and
 - 4.12.3 otherwise on such terms as the Trust sees fit.

5 Membership and constituencies

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

- 5.1 a public constituency
- 5.2 a staff constituency.

6 Application for membership

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

7 Public constituency

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.

- 7.2 Those members who live in an area specified as a public constituency are referred to collectively as a Public Constituency.
- 7.3 The minimum number of members in each Public Constituency is specified in Annex 1.

8 Staff Constituency

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
- 8.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least twelve (12) months; or
- 8.1.2 he has been continuously employed by the Trust under a contract of employment for at least twelve (12) months.
- 8.2 Those individuals who are eligible for membership of the Trust by reason of the previous provisions in paragraph 8.1 are referred to collectively as the Staff Constituency.
- 8.3 The Staff Constituency shall be divided into three descriptions of individuals who are eligible for membership of the Staff Constituency, with each description of individuals being specified within Annex 2 and referred to as a class within the Staff Constituency.
- 8.4 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

Automatic membership by default – staff

- 8.5 An individual who is:
- 8.5.1 eligible to become a member of the Staff Constituency; and
- 8.5.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency
- shall become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.

9 Restriction on membership

- 9.1 An individual who is a member of a constituency, or of a class within a constituency, may not, while membership of that constituency or class continues, be a member of any other constituency or class.
- 9.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any other constituency other than the Staff Constituency.

9.3 An individual must be at least fourteen (14) years old to become a member of the Trust.

9.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 9.

10 Annual Members' Meeting

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

10.2 Further provisions about the Annual Members' Meeting are set out in Annex 10.

11 Council of Governors – composition

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

11.2 The composition of the Council of Governors is specified in Annex 4.

11.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.

12 Council of Governors – election of Governors

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 published by NHS Providers, are attached as Annex 5.

12.3 A subsequent variation of the Model Election Rules shall not constitute a variation of the terms of this constitution for the purposes of paragraph 44 of the Constitution.

12.4 An election, if contested, shall be by secret ballot.

12.5 The Constitution makes further provisions on holding of elections. These are set out in Annex 6.

13 Council of Governors - tenure

- 13.1 An elected Governor may hold office for a period of up to three (3) years.
- 13.2 An elected Governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.
- 13.3 An elected Governor shall be eligible for re-election at the end of their term, for up to two (2) further periods of up to three (3) years, making a maximum total continuous period in office of nine (9) years. For the avoidance of doubt where a break in tenure occurs, either during or following the end of a term of office, the nine (9) year limit will recommence.
- 13.4 An appointed Governor may hold office for such period as agreed with the appointing organisation.
- 13.5 An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 13.6 An appointed Governor shall be eligible for re-appointment at the end of their term.

14 Council of Governors – disqualification and removal

- 14.1 The following may not become or continue as a member of the Council of Governors:
 - 14.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 14.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
 - 14.1.3 a person who within the preceding five (5) 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 (3) months (without the option of a fine) was imposed on them.
- 14.2 Governors must be at least sixteen (16) years of age at the date they are nominated for election or appointment.
- 14.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 6.
- 14.4 The Constitution makes provisions for the termination of office and removal of members of the Council of Governors. These are set out in Annex 6.

15 Council of Governors- duties of Governors

- 15.1 The general duties of the Council of Governors are -
- 15.1.1 to hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors; and
 - 15.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.
- 15.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

16 Council of Governors – meetings of Governors

- 16.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 25.1 or paragraph 26.1 below) or, in their absence, the Deputy Chair (appointed in accordance with the provisions of paragraph 27 below), shall preside at meetings of the Council of Governors. If both the Chair and Deputy Chair are absent or incapacitated for any reason, a Governor or a non-executive Director shall be elected to preside from amongst those present.
- 16.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from all or part of any meeting for special reasons, following appropriate resolution by the Council of Governors made in accordance with its Standing Orders.
- 16.3 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.
- 16.4 Further provisions with respect to the requirement for Directors to attend meetings of the Council of Governors are set out in Annex 7.

17 Council of Governors – Standing Orders

The Standing Orders for the practice and procedure of the Council of Governors are attached at Annex 7.

18 Council of Governors – referral to the Panel

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

- 18.1.1 to act in accordance with its constitution; or
- 18.1.2 to act in accordance with provisions made by or under Chapter 5 of the 2006 Act.

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

19 Council of Governors - conflicts of interest

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

20 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.

21 Council of Governors – further provisions

Further provisions with respect to the Council of Governors are set out in Annex 6.

22 Board of Directors – composition

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

22.2 The Board of Directors is to comprise:

- 22.2.1 a non-executive Chair;
- 22.2.2 a non-executive Deputy Chair;
- 22.2.3 5-9 other non-executive Directors; and
- 22.2.4 5-9 executive Directors.

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

22.4 The Chief Executive shall be the Accounting Officer.

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

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

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

22.8 The number of non-executive Directors shall always exceed the number of executive Directors.

23 Board of Directors – general duty

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

24 Board of Directors – qualification for appointment as a non-executive Director

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

24.1.1 they are a member of a Public Constituency; and

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

25 Board of Directors – appointment and removal of Chair and other non-executive Directors

25.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other non-executive Directors.

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

25.3 The initial Chair and the initial non-executive Directors are to be appointed in accordance with paragraph 26 below.

26 Board of Directors – appointment of initial Chair and initial other non-executive Directors

26.1 The Chair of the Trust shall be appointed as the initial Chair of the trust if he wishes to be appointed.

26.2 The power of the Council of Governors to appoint the other non-executive Directors of the Trust is to be exercised, so far as possible, by appointing as the initial non-executive Directors of the Trust any of the non-executive Directors of the Trust (other than the Chair) who wish to be appointed.

26.3 The criteria for qualification for appointment as a non-executive Director set out in paragraph 24 above (other than disqualification by virtue of paragraph 29 below) do not apply to the appointment of the initial Chair and the initial other non-executive Directors in accordance with the procedures set out in this paragraph.

26.4 An individual appointed as the initial Chair or as an initial non-executive Director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of their term of office as Chair or (as the case may be) non-executive Director of the Trust; but if, on appointment, that period is less than twelve (12) months, they shall be appointed for twelve (12) months.

27 Board of Directors – appointment of deputy Chair and senior independent director

27.1 The Council of Governors at a general meeting of the Council of Governors may in its absolute discretion appoint one of the non-executive Directors as a deputy Chair.

27.2 The Board of Directors at a general meeting of the Board of Directors shall in its absolute discretion appoint one of the non-executive directors as a Senior Independent Director.

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

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

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

28.3 A committee consisting of the Chair, the Chief Executive and the other non-executive Directors shall appoint or remove the other executive Directors and the Company Secretary.

29 Board of Directors – disqualification

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

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

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

29.1.3 a person who within the preceding five (5) 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 (3) months (without the option of a fine) was imposed on him; and

29.1.4 a person who fails to meet the requirements of regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

29.2 This Constitution makes further provisions for the termination of office and disqualification of Directors in Annex 9.

30 Board of Directors – meetings

30.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

30.2 Before holding a meeting, the Board of Directors must send a copy of the agenda for the meeting (but not the reports relating thereto) to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must make available a copy of the minutes of the meeting to the Council of Governors.

31 Board of Directors – Standing Orders

The standing orders for the practice and procedure of the Board of Directors, are attached at Annex 8

32 Board of Directors - conflicts of interest of Directors

32.1 The duties that a Director of the Trust has by virtue of being a Director include in particular -

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

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

32.2 The duty referred to sub-paragraph 32.1.1 is not infringed if –

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

32.2.2 the matter has been authorised in accordance with the Constitution.

32.3 The duty referred to in sub-paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

- 32.4 In sub-paragraph 32.1.2, “third party” means a person other than –
- 32.4.1 the Trust; or
 - 32.4.2 a person acting on its behalf.
- 32.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 32.6 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 32.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 32.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 32.9 A Director need not declare an interest -
- 32.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 32.9.2 if, or to the extent that, the Directors are already aware of it; or
 - 32.9.3 if, or to the extent that, it concerns the terms of the Director’s appointment that have been or are to be considered –
 - 32.9.3.1 by a meeting of the Board of Directors; or
 - 32.9.3.2 by a committee of Directors appointed for the purpose under the Constitution.
- 32.10 Further provisions on the declaration of interests by Directors are set out in Annex 8.

33 Board of Directors – remuneration and terms of office

- 33.1 The Council of Governors at a general meeting shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive Directors.
- 33.2 The Trust shall establish a committee of non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive, the other executive Directors and the Company Secretary.

34 Registers

- 34.1 The Trust shall have:
- 34.1.1 a register of members showing, in respect of each member, the constituency to which they belong and, where there are classes within it, the class to which they belong;
 - 34.1.2 a register of members of the Council of Governors;
 - 34.1.3 a register of interests of Governors;
 - 34.1.4 a register of Directors; and
 - 34.1.5 a register of interests of the Directors.
- 34.2. The Company Secretary shall be responsible for keeping the registers up to date from information received by him, and the registers may be kept in either paper or electronic form.

35 Admission to and removal from the register of Members

- 35.1 Subject to paragraph 8.5 above, Members must complete an application in the form prescribed by the Company Secretary.
- 35.2 The Trust Secretary shall maintain the register in two parts:
- 35.2.1 Part one, will be the register referred to in the 2006 Act, which shall include the name of each Member and the constituency or class to which they belong, and shall be open to inspection by the public in accordance with paragraph 36 below.
 - 35.2.2 Part two will contain all the information from the application form and shall not be made available to the public unless required as a matter of law.
- 35.3 For the avoidance of doubt the Trust may extract such information as it needs in aggregate to satisfy itself that the actual membership of the Trust is representative of those eligible for membership and for the administration of the provisions of this Constitution.
- 35.4 Removal of members from the Members Register shall be in accordance with paragraph 9.4 of this Constitution.

36 Registers – inspection and copies

- 36.1 The Trust shall make the registers specified in paragraph 34.1 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 36.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows personal details of any member of the

Trust, if the member so requests subject always to any legal requirements to do so.

36.3 Subject to 36.4 below and so far as the registers are required to be made available:

36.3.1 they are to be available for inspection free of charge at all reasonable times; and

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

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

37 Documents available for public inspection

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

37.1.1 a copy of the current Constitution;

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

37.1.3 a copy of the latest annual report.

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

37.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;

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

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

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

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

37.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;

- 37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- 37.2.8 a copy of any final report published under section 65I (administrator's final report);
- 37.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
- 37.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

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

38 Auditor

38.1 The Trust shall have an auditor.

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

39 Audit Committee

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

40 Accounts

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

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

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

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

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

41 Annual report, forward plans and non-NHS work

- 41.1 The Trust shall prepare an Annual Report and send it to NHS England.
- 41.2 In accordance with the 2006 Act the Annual Report must in particular review:
- 41.2.1 the extent to which the Trust has exercised its functions in accordance with the plans published under—
- (a) section 14Z52 (joint forward plans for integrated care board and its partners), and
 - (b) section 14Z56 (joint capital resource use plan for integrated care board and its partners).
- 41.2.2 the extent to which the Trust has exercised its functions consistently with NHS England's views set out in the latest statement published under section 13SA(1) (views about how functions relating to inequalities information should be exercised).
- 41.3 In accordance with the 2006 Act the Annual Report must include -
- 41.3.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) of the patients' constituency is representative of those eligible for such membership;
 - 41.3.2 information on any occasions in the period to which the report relates on which the Council of Governors exercised its power under paragraph 10C (Power to require a Director to attend a meeting of the Council);
 - 41.3.3 information on the Trust's policy on pay and on the work of the committee established under paragraph 18(2) and such other procedures as the corporation has on pay;
 - 41.3.4 information on the remuneration of the directors and on the expenses of the governors and the directors,
 - 41.3.5 any other information required by NHS England.
- 41.4 The Trust shall give information as to its forward planning in respect of each financial year to NHS England.
- 41.5 A Trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

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

- 42.1 The following documents are to be presented to a general meeting of the Council of Governors:
- 42.1.1 the annual accounts;

- 42.1.2 any report of the auditor on them; and
- 42.1.3 the annual report.

- 42.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 42.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 42.1 with the Annual Members' Meeting.

43 Instruments

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

44 Amendment of the Constitution

- 44.1 The Trust may make amendments to the Constitution only if –
 - 44.1.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments; and
 - 44.1.2 more than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 44.2 Amendments made under paragraph 44.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- 44.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –
 - 44.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
 - 44.3.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.
- 44.5 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 44.6 Amendments by the Trust of its Constitution are to be notified to NHS England. For the avoidance of doubt, NHS England's functions do not include a power or

duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

45 Statutory and significant transactions

- 45.1 The Trust may only apply for a statutory transaction (a merger, acquisition, separation, dissolution or transfer scheme) with the approval of more than half of the members of the Council of Governors.
- 45.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 45.3 “Significant transaction” means:
 - 45.3.1 a significant service contract which exceeds the reporting threshold set by NHS England; or
 - 45.3.2 a commercial transfer which exceeds the reporting thresholds set by NHS England; or
 - 45.3.3 financing arrangements that are considered to be novel, contentious or repercussive (regardless of value); or
 - 45.3.4 the establishment of or a material change to a Subsidiary.

ANNEX 1 – THE PUBLIC CONSTITUENCIES
(Paragraph 7)

1 The Public Constituencies

There shall be eight (8) Public Constituencies which are coterminous with the local authority election boundaries. The number of Governor places available for election within each Public Constituency (except for the Rest of England Public Constituency) is based on 1 Governor for every 60,000 people residing in that locality. The Public Constituencies are:

Public Constituency	Electoral area of:	Minimum number of members	Number of Elected Governors from 30th June 2024
Stockton-on-Tees	Stockton on Tees Borough Council	100	3
Hartlepool	Hartlepool Borough Council	100	2
Darlington	Darlington Borough Council	100	2
Durham	Durham County Council	100	9
Middlesbrough	Middlesbrough Borough Council	100	2
Redcar and Cleveland	Redcar and Cleveland Borough Council	100	2
North Yorkshire	North Yorkshire Council, the Wolds Weighton and Pocklington Provincial Wards of the East Riding of Yorkshire Council and the Wetherby Ward of Leeds City Council	100	6
City of York and Rest of England	City of York Council and all electoral areas in England which are not included in another Public Constituency	100	3

2. Should a Public Constituency fail to achieve the above minimum numbers, no election shall take place, until such time as the minimum number is reached. An election within that area will then take place within a time period determined by the Chair.

ANNEX 2 – THE STAFF CONSTITUENCY
(Paragraphs 8.3 and 8.4)

1. **The Staff Constituency**

The Staff Constituency is divided into 3 (three) classes. These are:

Class	Minimum number of members	Number of Elected Governors
Corporate Directorates	150	1
Durham, Tees Valley and Forensics Care Group	400	3
North Yorkshire York and Selby Care Group	200	1

2. Should an individual class within the Staff Constituency fail to achieve the above minimum numbers, no election shall take place in that class, until such time as the minimum number is reached. An election within that class will then take place within a time period determined by the Chair of the Trust.
3. Staff will only be able to become a member and vote in one class within the Staff Constituency.

ANNEX 3 – THE PATIENTS’ CONSTITUENCY

NOT APPLICABLE

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS
(Paragraphs 11.2 and 11.3)

COMPOSITION OF THE COUNCIL OF GOVERNORS		
Constituency		Number of Governors from 30/6/2024
Public	Stockton-on-Tees	3
	Hartlepool	2
	Darlington	2
	Durham	9
	Middlesbrough	2
	Redcar & Cleveland	2
	North Yorkshire	6
	City of York and Rest of England	3
Staff	Corporate Directorates	1
	Durham, Tees Valley and Forensics Care Group	3
	North Yorkshire, York and Selby Care Group	1
Appointed Governors	Durham County Council	1
	Darlington Borough Council	1
	Hartlepool Borough Council	1
	Stockton-on-Tees Borough Council	1
	Middlesbrough Borough Council	1
	Redcar & Cleveland Borough Council	1
	North Yorkshire Council	1
	City of York Council	1
	University of Teesside	1*
	University of Sunderland	1*
	University of York	1*
	University of Newcastle	1*
	Voluntary sector organisation based in County Durham and the Tees Valley*	1*
Voluntary sector organisation based in North Yorkshire and York*	1*	
TOTAL		48

Notes:

- 1 The terms of Governors holding office on 30th June 2024 are unaffected by the amendments to the Constitution which come into force on that day.
- 2 The appointing organisations marked (*) in the above schedule are specified for the purposes of sub-paragraph 9(7) of Schedule 7 for the 2006 Act (as amended).
- 3 The voluntary sector organisations to be invited to appoint Governors of the Trust shall be agreed by the Board and the Council of Governors.

ANNEX 5 –THE MODEL RULES FOR ELECTIONS

(Paragraph 12.2)

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
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PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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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
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17. Withdrawal of candidates
18. Method of election

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot
20. The ballot paper
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
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PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

- 52. Declaration of result for contested elections
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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

PART 1: INTERPRETATION

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

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

3. Computation of time

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

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

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

- 4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.
- 4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

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

6. Expenditure

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

7. Duty of co-operation

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

- 8.1 The returning officer is to publish a notice of the election stating:
- (a) the constituency, or class within a constituency, for which the election is being held,
 - (b) the number of members of the council of governors to be elected from that constituency, or class within that constituency,

- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination forms may be obtained;
- (e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

11. Declaration of interests

11.1 The nomination form must state:

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

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

12. Declaration of eligibility

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

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

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

election unless and until the returning officer:

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

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

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

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

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

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

15. Publication of statement of candidates

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

- 15.2 The statement must show:
- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
 - (b) the declared interests of each candidate standing,
- as given in their nomination form.
- 15.3 The statement must list the candidates standing for election in alphabetical order by surname.
- 15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.
- 16. Inspection of statement of nominated candidates and nomination forms**
- 16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.
- 16.2 If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.
- 17. Withdrawal of candidates**
- 17.1 A candidate may withdraw from election on or before the date and time for withdrawal by candidates, by providing to the returning officer a written notice of withdrawal which is signed by the candidate and attested by a witness.
- 18. Method of election**
- 18.1 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the council of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- 18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

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

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

- 19.1 The votes at the poll must be given by secret ballot.
- 19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.
- 19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.
- 19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.
- 19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:
- (a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;
 - (b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and

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

20. The ballot paper

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

20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

- (a) that the voter is the person:
 - (i) to whom the ballot paper was addressed, and/or
 - (ii) to whom the voter ID number contained within the e-voting information was allocated,
- (b) that 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 spoilt text message vote, the returning officer shall enter in a list ("the list of spoilt text message votes"):
- (a) the name of the voter, and
 - (b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
 - (c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

- 30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (a) is satisfied as to the voter's identity,
 - (b) has no reason to doubt that the voter did not receive the original voting information,
 - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):
- (a) the name of the voter
 - (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
 - (c) the voter ID number of the voter.

31. Issue of replacement voting information

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

(c) the voter ID number of the voter.

32. ID declaration form for replacement ballot papers (public 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)¹

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

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

39. De-duplication of votes

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

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

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

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

40. Sealing of packets

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

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

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

PART 6: COUNTING THE VOTES

41. Interpretation of Part 6

41.1 In Part 6 of these rules:

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

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

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

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

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

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

- (a) on which no second or subsequent preference is recorded for a continuing candidate,
- or
- (b) which is excluded by the returning officer under rule 49,

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

- (a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,
- (b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and
- (c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

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

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

“*stage of the count*” means:

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

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

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

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

42. Arrangements for counting of the votes

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

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

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

43. The count

43.1 The returning officer is to:

- (a) count and record the number of:
 - (iii) ballot papers that have been returned; and
 - (iv) the number of internet voting records, telephone voting records and/or text voting records that have been created, and

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

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

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

44. Rejected ballot papers and rejected text voting records

44.1 Any ballot paper:

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

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

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

44.3 Any text voting record:

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

shall be rejected and not counted, but the text voting record shall not be

rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

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

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

45. First stage

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

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

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

46. The quota

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

46.2 The result, increased by one, of the division under rule 46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).

46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules 47.1 to 47.3 has been complied with.

47. Transfer of votes

47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on

which first preference votes are given for that candidate into sub-parcels so that they are grouped:

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

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

47.3 The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.1(a) to the candidate for whom the next available preference is given on those ballot documents.

47.4 The vote on each ballot document transferred under rule 47.3 shall be at a value (“the transfer value”) which:

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

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

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

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

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

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

whichever is the less.

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

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

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

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

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

48. Supplementary provisions on transfer

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

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

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

- (a) record the total value of the votes transferred to each candidate,

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

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

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

49. Exclusion of candidates

49.1 If:

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

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

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

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

- (c) give public notice of the name of each candidate who he or she has declared elected.

52.2 The returning officer is to make:

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

available on request.

53. Declaration of result for uncontested elections

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

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

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

- (a) the counted ballot papers, internet voting records, telephone voting records and text voting records,

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

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

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

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

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

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

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

- (a) any voting documents are received by the returning officer after

the close of the poll, or

- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement voting information are made too late to enable new voting information to be issued,

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

57. Retention and public inspection of documents

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

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

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

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

58.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing –
 - (i) any rejected ballot papers, including ballot papers rejected in part,
 - (ii) any rejected text voting records, including text voting records rejected in part,
 - (iii) any disqualified documents, or the list of disqualified documents,
 - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
 - (v) the list of eligible voters, or
- (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the

purpose of storage,

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

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

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

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

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

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

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

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

- (i) that his or her vote was given, and
- (ii) that 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.

PART 12: MISCELLANEOUS

67. Secrecy

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

must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose

authorised by law, communicate to any person any information as to:

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

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

67.3 The returning officer is to make such arrangements as 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 6 - ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

ELIGIBILITY TO BE A MEMBER OF THE COUNCIL OF GOVERNORS

A person may not be a candidate in an election to the Council of Governors or become a member of the Council of Governors, and if already holding such office will immediately cease to do so, if:

1. They are a Director of the Trust; a director of a Subsidiary; or a director of another NHS foundation trust or any other NHS body or a body providing health or social care (as defined in section 9 of Health and Social Care Act 2008) unless they are an appointed member of the Council of Governors.
2. They are the spouse, partner, parent or child of any person described in paragraph (1) above.
3. They are under the age of 16.
4. They are a member of a Local Authority's Scrutiny Committee covering health matters.
5. They are a director of, or hold an equivalent position of leadership or authority in, a Local Healthwatch.
6. Being a member of one of the Public Constituencies they refuse or fail to sign a declaration, in the form specified by the Council of Governors, giving particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors.
7. They are a vexatious complainant of the Trust.
8. They have been involved within the last ten (10) years as a perpetrator in a serious incident of assault or violence, or in one or more incidents of harassment, against any of the Trust's employees or other persons who exercise functions for the purposes of the Trust, or against registered volunteers.
9. They have been excluded from any of the Trust premises within the last ten (10) years.
10. Their name is included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland.

11. On the basis of disclosures obtained through an application to the Disclosure and Barring Service they have not been considered suitable in accordance with the Trust's Disclosure and Barring Service (DBS) Policy.
12. They have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body.
13. They are a person whose tenure of office as the Chair or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
14. They have been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals and have not been subsequently reinstated to such a register.
15. They are a person who is subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986.
16. They are not a fit and proper person to be a Governor of a Foundation Trust in accordance with the Licence.
17. They have, within the preceding 5 (five) years, had their membership of the Council of Governors terminated and have been removed from office as a Governor of the Trust by reason of:
 - (a) their failure to attend meetings; or
 - (b) their failure to undertake training; or
 - (c) them having committed a serious breach of the Trust's and/or Council of Governors' Code of Conduct; or acted in a manner detrimental to the interests of the Trust; or having failed to discharge their responsibilities as a member of the Council of Governors.

TERMINATION OF OFFICE AND REMOVAL OF MEMBERS OF THE COUNCIL OF GOVERNORS (also see paragraph 14.4 of the Constitution)

A person holding office as a member of the Council of Governors shall immediately cease to do so if:

1. They resign by notice in writing to the Company Secretary;
2. It otherwise comes to the notice of the Company Secretary at the time the member of the Council of Governors takes office or later that the member of the Council of Governors is disqualified in accordance with paragraph 14 of the Constitution;

3. They fail to attend two meetings of the Council of Governors in any financial year, unless the Chair is satisfied that:
 - a. The absences were due to reasonable causes; and
 - b. They will be able to start attending meetings of the Trust again within such a period as the Chair considers reasonable;
4. In the case of an elected member of the Council of Governors, they cease to be a member of the Trust or a member of the Public Constituency or Staff Class for which they were elected;
5. In the case of an appointed member of the Council of Governors, the appointing organisation terminates the appointment;
6. They have failed to undertake any training which the Council of Governors require all members of the Council of Governors to undertake, unless the Chair is satisfied that:
 - a. The failure to undertake training was due to reasonable cause; and
 - b. They will be able to undertake the required training within such a period as they consider reasonable;
7. They have failed to sign and deliver to the Company Secretary within one month of their election or appointment a statement in the form required by the Council of Governors confirming acceptance of the Trust's and/or the Council of Governors' Code of Conduct;
8. They are removed from the Council of Governors by a resolution approved by a majority of the remaining members of the Council of Governors present and voting at a General Meeting on the grounds that:
 - a. They have committed a serious breach of the Trust's and/or Council of Governors' Code of Conduct, or
 - b. They have acted in a manner detrimental to the interests of the Trust, or
 - c. They have failed to discharge their responsibilities as a member of the Council of Governors.

FURTHER PROVISIONS RELATING TO THE TERMINATION OF OFFICE AND REMOVAL OF MEMBERS OF THE COUNCIL OF GOVERNORS

These provisions apply where the Chair and Lead Governor have reasonable cause to believe that a Governor might have committed a serious breach of the Trust's and/or Council of Governors' Code of Conduct, or have acted in a manner detrimental to the interests of the Trust, or have failed to discharge their responsibilities as a member of the Council of Governors.

In those circumstances:

- 1 The Chair and Lead Governor shall jointly report to the Council of Governors on the alleged behaviour of the Governor.
- 2 If the Council of Governors considers the Governor's alleged behaviour might be sufficiently serious as to potentially warrant the termination of their office and their removal from the Council of Governors, it shall:
 - (a) commission the Lead Governor to undertake an investigation to establish the facts of the alleged behaviour; and
 - (b) decide whether the Governor should be suspended from office pending the outcome of the investigation.
- 3 The Company Secretary shall arrange for independent resources to be provided to Lead Governor to support the conduct of the investigation.
- 4 In conducting the investigation, the Lead Governor shall take advice to ensure that reasonable adjustments are made to enable the Governor to be able to participate in the investigation.
- 5 Failure by the Governor to participate in the investigation shall not prevent the investigation being concluded.
- 6 The Lead Governor shall report to the Council of Governors should there be delays, due to any cause, in the progress of the investigation.
- 7 A report on the outcome of the Investigation shall be provided by the Lead Governor to the Chair.
- 8 Where the Chair is assured that the investigation has been undertaken appropriately and the Governor has a case to answer, they and the Lead Governor shall submit a motion to the Council of Governors which will:
 - (a) seek ratification of the investigation's conclusions (on the basis of the balance of probabilities); and
 - (b) recommend an appropriate sanction to be applied to the Governor, taking into account the impact of the Governor's behaviour, including, if appropriate, termination of their office and removal from the Council of Governors.
- 9 The Council of Governors shall determine the motion in accordance with Standing Orders.

Provisions relating to the Referral of Potential Breaches of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 to the Senior Independent Director

Any alleged breaches of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 by the Chair or a Non-Executive Director, raised by a Governor, shall only be referred to the Senior independent Director for investigation if more than half of the members of the Council of Governors voting approve the referral.

The disclosure of any allegations of a breach of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 or matters which could be considered a breach of the Regulation by a Governor prior to them being

considered by the Council of Governors or during any investigation conducted by the Senior Independent Director shall be regarded as a serious breach of the Trust's or Council of Governors' Code of Conduct.

REQUIREMENT OF MEMBER OF THE COUNCIL OF GOVERNORS TO NOTIFY TRUST

Where a person has been elected or appointed to be a member of the Council of Governors and they become disqualified from office under paragraph 14 of this constitution, they shall notify the Company Secretary in writing of such disqualifications.

FURTHER PROVISIONS RELATING TO ELECTIONS

- (1) In any year when a Governor is due to retire the ordinary day of election ("the Annual Election") to fill the vacancy shall be a day in June agreed by the Chair.
- (2) A Governor elected at an Annual Election shall take up office on 1st July of that year.

RETIREMENT OF GOVERNORS

- (1) Those Governors representing the Public or Staff Constituencies, who are due to retire in any given year, shall retire on 30th June of that year.

FILLING OF CASUAL VACANCIES

- (1) Subject to the provisions of this section, if there is a casual vacancy for a Governor for any of the public constituencies or the staff classes an election in accordance with the Model Election Rules to fill the vacancy shall be held unless:
 - (a) an elected Governor's seat falls vacant for any reason within six months of their election to office, in which case the Company Secretary shall invite the next highest polling candidate for the public constituency or staff class at the most recent election, who is willing to take office, to fill the seat (the "Reserve Governor");
 - (b) an elected Governor's seat falls vacant for any reason within six months of their ordinary day of retirement, subject to paragraph 3 below, the seat shall stand vacant until the next annual election; or
 - (c) an annual election is due to be held within a period of six months of the casual vacancy arising.
- (2) The day of election to fill a casual vacancy in any office mentioned in (1) above shall be fixed by the Chair, in consultation with the Company Secretary.

- (3) Paragraphs (1) (b) and 1 (c) above shall not apply and an election shall be held to fill the vacancy if the Chair considers that there is a reasonable possibility that during the six month period the total number of unfilled vacancies of public Governors would mean that the public Governors are not in the majority on the Council of Governors.
- (4) A person elected under paragraph (1) or (3) or a “Reserve Governor” invited under paragraph (1)(a) shall hold office to fill the casual vacancy until the date upon which the person whose seat they are elected/invited to fill would have regularly retired.
- (5) Where a vacancy arises amongst the appointed members of the Council of Governors, the Company Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
- (6) Subject to the provisions of the Standing Orders for the Practice and Procedure of the Council of Governors set out at Annex 7, the validity of any act of the Council of Governors shall not be affected by any vacancy among the Governors or by any defect in the election or appointment of any Governor.

ROLES AND RESPONSIBILITIES

In undertaking its duties as set out under paragraph 15 of the Constitution, the general roles and responsibilities of the Council of Governors shall be:

Advisory – To communicate to the Board of Directors the wishes of members and the wider community.

Guardianship – To ensure that the Trust operates in accordance with its Licence. In this regard it acts as a Trustee for the welfare of the organisation.

Strategic – To advise on the longer-term direction to help the Board effectively determine its policies.

In particular the Council of Governors is to:

1. Develop the membership of the Trust and represent the interests of the members in accordance with its Membership Strategy.
2. Determine any proposals by the Board of Directors to increase by 5% or more the proportion of the Trust’s total income, in any financial year, attributable to activities other than for the provision of goods and services for the purposes of the health service in England.

3. Respond to any matter as appropriate when consulted by the Board of Directors.
4. Appoint or remove the Chair and the other non-executive Directors in accordance with paragraph 25 of this Constitution.
5. Decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and other non-executive Directors in accordance with paragraph 33 of this Constitution.
6. Approve the appointment of the Chief Executive in accordance with paragraph 28 of this Constitution.
7. Consider the Annual Accounts, any reports of the auditor on them, and the Annual Report.
8. Appoint or remove the Trust's external auditor.
9. Determine (in conjunction with the Board of Directors) any questions on statutory transactions.
10. Determine (in conjunction with the Board of Directors) whether the Trust should be dissolved.
11. Determine any significant transactions proposed by the Board of Directors.
12. Consider any matters raised by NHS England, an integrated care board or the Care Quality Commission which could have or lead to a substantial change to the Trust's financial well-being, healthcare delivery performance, or reputation and standing or which might otherwise affect the Trust's compliance with the terms of its Licence or its registration of services.
13. Determine (in conjunction with the Board of Directors) any proposed changes to the Trust's Constitution.
14. Decide whether to refer a matter to NHS England's Panel in accordance with paragraph 18 of the Constitution.

APPOINTMENT OF NON-EXECUTIVE DIRECTORS (including Chair and Deputy Chair)

1. The Council of Governors shall establish a Committee of the Council of Governors and the Board of Directors ("the Nomination and Remuneration Committee") to assist in the process of appointment of non-executive Directors (including Chair and Deputy Chair). The Committee shall comprise up to four suitably qualified members of the Council of Governors and two

Directors (at least one of whom will be the Chair of the Trust or the Senior Independent Director). The Committee may have an independent advisor in attendance if appropriate.

2. The process to be followed in the appointment of the Chair and non-executive Directors shall be agreed by the Council of Governors based on the Code of Governance for NHS Foundation Trusts, the Licence, guidance published by the Care Quality Commission and advice received from the Nomination and Remuneration Committee.

REMUNERATION OF THE CHAIR AND OTHER NON-EXECUTIVE DIRECTORS

In order to determine the proper level of remuneration and allowances that should be paid to the Chair and other non-executive Directors the Council of Governors may, from time to time, and at least every three years, consult, at the Trust's expense, with external professional advisers.

PROVISION OF TRAINING AND DEVELOPMENT FOR GOVERNORS

The Trust shall make available any reasonable resources required by the Council of Governors to ensure Governors are equipped with the skills and knowledge they require in their capacity as such.

STAFF CONSTITUENCY - TIME TAKEN OUT OF NORMAL WORKING HOURS TO PERFORM COUNCIL OF GOVERNORS DUTIES

Leave from Trust duties to carry out Council of Governors duties will be dealt with in accordance with the Trust's Special Leave Policy. Special leave to undertake obligations for the Council of Governors will be considered alongside any other special leave previously or subsequently granted to staff.

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

(Paragraph 17)

FOREWORD

The Tees, Esk & Wear Valleys NHS Foundation Trust (the “Trust”) is a public benefit corporation that was established in accordance with the provisions of National Health Service Act 2006 (as amended).

The principal places of business are across County Durham, Darlington, The Tees Valley, Scarborough, Whitby, Ryedale, Hambleton and Richmondshire and Harrogate and the Vale of York and the head office is located at Trust Headquarters, Flatts Lane Centre, Flatts Lane, Normanby, Middlesbrough, TS6 0SZ.

These Standing Orders (SOs) are for the regulation of the Trust’s Council of Governors proceedings and business.

The Council of Governors will conduct its business in as open a way as possible and shall:

1. Observe the Nolan principles of Public Life of selflessness, integrity, objectivity, accountability, openness, honesty and leadership;
2. At all times seek to comply with the NHS Foundation Trust Code of Governance;

Everything done by the Council of Governors should be able to stand the test of scrutiny, public judgment on propriety, and professional codes of conduct.

The Council of Governors will in its business be as transparent as it can be about its activities to promote confidence between the Council of Governors, the membership, the Board of Directors, staff, services users and the public.

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Declaration of Interest
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1. INTERPRETATION

1.1 Any expression to which a meaning is given in the National Health Service Act 2006 (as amended) has the same meaning in this interpretation and in addition:

“ATTEND” or **“ATTENDANCE”** means being present either in person or remotely.

“BOARD” means the Board of Directors, formally constituted in accordance with this Constitution and consisting of a Chair and non-executive Directors, appointed by the Council of Governors and the executive Directors, appointed by the non-executive Directors and (except for their own appointment) by the Chief Executive.

“CHAIR” is the non-executive Director appointed by the Council of Governors with the responsibility for the leadership of the Council of Governors and for presiding at its meetings. The Chair shall be deemed to include the non-executive Director appointed by the Council of Governors to take on the Chair’s duties if the Chair is absent from the meeting or is otherwise unavailable, known as the Deputy Chair. The term Chair shall also, for the purposes of these standing orders refer to the person appointed by the Council of Governors to preside in exceptional circumstances should either the Chair or Deputy Chair be temporarily unavailable.

“CLEAR DAY” - means a day of the week excluding the day the document becomes available, the day the meeting is held/notice submitted, Saturdays, Sundays and public holidays.

“COMMITTEE” means a committee formed by the Council of Governors with specific Terms of Reference and membership approved by the Council.

“COUNCIL” means the Council of Governors, formally constituted in accordance with this Constitution meeting in public and presided over by a Chair.

“GOVERNOR” means a person elected or appointed to the Council of Governors.

“IN PERSON” means the physical presence of an individual.

“LEAD GOVERNOR” means a Governor, appointed by the Council of Governors, to act as a point of contact for the Council of Governors with NHS England (in cases where it is considered inappropriate for

communication to be undertaken through the Chair or Company Secretary) and the Care Quality Commission.

“MEETING” means a meeting of the Council of Governors, which may be in person and/or remotely, for which notice has been given in accordance with these Standing Orders.

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

“OFFICER” means an employee of the Trust.

“PLACE” in relation to a meeting, any reference to a “place” means the place where a meeting is held, or to be held, which may be:

- a specified location; or
- a virtual, digital or electronic platform/location including but not limited to platforms/locations accessed remotely via “Apps”, internet locations, web addresses or conference call telephone numbers; or
- both.

“PRESENT” means attendance at a meeting either in person or remotely in accordance with the terms of these Standing Orders.

“REMOTE” or **“REMOTELY”** means attendance via electronic, digital or other virtual means including, but not limited to, telephone conference, video conference, live webcasts, and live interactive streaming provided such electronic means satisfies the requirements set out at S.O. 4.17.3 of this Annex 7.

“SENIOR INDEPENDENT DIRECTOR” means one of the non-executive Directors appointed by the Board of Directors to whom Governors may raise concerns about the performance of the Chair or the Trust if they consider it is inappropriate or impractical to express these concerns to the Chair or officers of the Trust. The Senior Independent Director also leads the Board on matters pertaining to the appointment and appraisal of the Chair and provides advice to the Chair under the disputes resolution procedure.

“SO” means standing order

- 1.2 Save as permitted by law, the Chair shall be the final authority on the interpretation of Standing Orders (on which they shall be advised by the Company Secretary, Chief Executive and Director of Finance).

2. GENERAL INFORMATION

- 2.1 The purpose of these Standing Orders is to ensure that the highest standards of Corporate Governance and conduct are applied to all Council meetings and associated deliberations. The Council shall at all times seek to comply with the NHS Foundation Trust Code of Governance published by NHS England.
- 2.2 All business shall be conducted in the name of the Trust.
- 2.3 A Governor who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal or civil liability which is incurred in the execution or purported execution of his or her function as a Governor save where the Governor has acted recklessly. On behalf of the Council, and as part of the Trust's overall insurance arrangements, the Board shall put in place appropriate insurance provision to cover such indemnity.

3. COMPOSITION OF THE COUNCIL OF GOVERNORS

- 3.1 The composition of the Council shall be in accordance with the Trust's Constitution and shall include the Chair.
- 3.2 **Duties of the Deputy Chair** – Where the Chair has died or has otherwise ceased to hold office or where they have been unable to perform their duties as a Chair owing to illness, absence from England and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to perform their duties, be taken to include references to the Deputy Chair.
- 3.3 **Lead Governor**
- 3.3.1 The Lead Governor shall be appointed by the Council.
- 3.3.2 It shall be for the Council to determine the period of office of the Lead Governor, normally a period of up to three (3) years after which the Council shall review the appointment.
- 3.3.3 No Governor should be appointed as the Lead Governor for more than two consecutive periods except in accordance with SO 3.3.5.
- 3.3.4 A nominated Governor shall require more than half of the members of the Council of Governors present voting in favour of their appointment as the Lead Governor.
- 3.3.5 Where a Governor would be ineligible for appointment under SO 3.3.3 above, they may be nominated and be appointed as the Lead Governor for a

further period where no other Governor is willing to be nominated or where the position remains vacant following a vote under SO 3.3.4.

- 3.4 The Lead Governor shall produce a written report to the Council of Governors on their activities when the appointment to the role is due for review.

4. MEETINGS OF THE COUNCIL OF GOVERNORS

4.1 General

- 4.1.1 General meetings of the Council inclusive of an Annual General Meeting shall be held at times and places as the Council may determine.
- 4.1.2 The Council of Governors shall review, annually, the arrangements for conducting its meetings.
- 4.1.3 The Council will publicise and hold an Annual General Meeting to receive the annual report and annual accounts within a reasonable period after the end of each financial year, but not before the annual report and accounts have been laid before Parliament.
- 4.1.4 The Annual General Meeting shall be combined with an Annual Members' Meeting in accordance with paragraph 10 of this Constitution. Further provisions about Annual Members' Meetings are set out in Annex 10 of this Constitution.

4.2 Admission of the Public

- 4.2.1 A meeting of the Council shall be open to the public except to the extent that they are excluded by resolution under SO 4.2.5 below.
- 4.2.2 Where a meeting is accessible to the public through remote means it is open to the public whether or not members of the public are able to attend in person.
- 4.2.3 The Chair may determine that attendance by members of the public shall be in person, by remote means or both.
- 4.2.4 Where remote access to a meeting is provided the Chair must be satisfied that the arrangements will enable members of the public in attendance to be able to hear, and where practicable see, the business transacted at the meeting.
- 4.2.5 The Council may by resolution exclude the public from a meeting during consideration of an item of business whenever it is likely, in view of the

nature of the business to be transacted or the nature of the proceedings, that there would be disclosure to them of confidential information as defined in SO 4.2.6 below.

4.2.6 The descriptions of information which are, for the purposes of this Standing Order, to be treated as confidential information are those for the time being specified in Annex 9 to this Constitution.

4.2.7 The reasons for the exclusion of the public from a meeting shall be included in the agenda for the meeting and recorded in the minutes.

4.3 Attendance at meetings by Directors

4.3.1 Directors may attend meetings of the Council (both public and confidential sessions) by standing invitation.

4.3.2 Directors may address meetings of the Council at the discretion of the Chair.

4.3.3 Directors may be excluded from the consideration of confidential business by resolution of the Council or by ruling of the Chair.

4.3.4 The Council may require a Director to attend a meeting of the Council to obtain information about the Trust's performance of its functions or the Director's performance of their duties in accordance with Paragraph 10C of Schedule 7 of the National Health Service Act 2006 by either:

4.3.4.1 resolution of the Council; or

4.3.4.2 notice in writing being given to the Chair by ten (10) Governors.

4.3.5 The resolution or notice under SO 4.3.4 shall identify the Director whose attendance is required at a meeting of the Council; the date and time of the meeting of the Council which the Director is required to attend; and include particulars of the information which the Council wishes to obtain from the Director.

4.3.6 The Chair shall notify the Director of the requirement to attend a meeting of the Council. The notice shall include the matters specified in SO 4.3.5.

4.3.7 If, upon being given notice under SO 4.3.6, a Director refuses to attend or fails to attend the meeting of the Council the matter shall be referred to the Chair. If the Chair is unable to resolve the non-attendance they shall:

4.3.7.1 in the case of a non-executive Director, refer the matter to the Council of Governors' Nomination and Remuneration Committee for investigation and report, including recommendations, to the Council of Governors; or

4.3.7.2 in the case of an executive Director, refer the matter to the Nomination and Remuneration Committee of the Board of Directors

for investigation and report, including recommendations, to the Board of Directors.

- 4.3.8 The Chair shall report to the next general meeting of the Council on action taken in accordance with SO 4.3.7.2. If the Council is dissatisfied with the outcome of any action taken it may invoke the disputes resolution procedure set out in Annex 9 to the Constitution.

4.4 **Calling Meetings**

Notwithstanding SO 4.1.1 above, the Chair may, in exceptional circumstances, call a meeting of the Council at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Governors, or if without so refusing the Chair does not call a meeting within fourteen days after a requisition to do so, then the Governors may forthwith call a meeting provided they have been requisitioned to do so by more than one-third of the Governors.

4.5 **Notice of Meetings**

- 4.5.1 A notice specifying the date, time and place of a meeting of the Council of Governors and signed by the Chair, or by an officer authorised by the Chair to sign on his/her behalf, shall be sent to each Governor at least five (5) clear days before each meeting of the Council. Where the meeting is to be held or be accessible remotely, such notice shall also include details of how to access the meeting or, if this is not known at the time the notice is issued, details shall be circulated or otherwise made available as soon as practicable. Lack of service of the notice on any Governor shall not affect the validity of a meeting subject to SO 4.5.5.
- 4.5.2 The notice of the meeting shall also specify the business proposed to be transacted at the meeting (the agenda).
- 4.5.3 The notice of the meeting provided to each Governor shall be:
- (i) delivered by hand; or
 - (ii) sent by post to their usual place of residence; or
 - (iii) sent via electronic means.
- 4.5.4 Notwithstanding the above requirement for notice, the Chair may waive notice on written receipt of the agreement of at least 50% of Governors in office.
- 4.5.5 In the case of a meeting called by Governors in default of the Chair, the notice shall be signed by those Governors calling the meeting and no business shall be transacted at the meeting other than that specified in the notice. Failure to serve such a notice on more than three quarters of all

Governors will invalidate the meeting. A notice will be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

4.6 Setting the Agenda

4.6.1 The Chair is responsible for leading on setting the agenda for meetings of the Council of Governors and ensuring that adequate time is available for discussion of all agenda items.

4.6.2 The agenda for each general meeting of the Council shall include items to enable Governors:

4.6.2.1 to ask questions on any matters contained in the confirmed minutes of any meeting of the Board of Directors held since the last meeting of the Council.

4.6.2.2 to review any reports received from the Care Quality Commission about the Trust's compliance with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009 and to consider making comments or observations on the matters included in those reports.

4.6.3 The Council may also determine that certain matters shall appear on every agenda for a meeting of the Council and shall be addressed prior to any other business being conducted.

4.6.4 A Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least ten (10) clear working days before the meeting. Requests made less than ten (10) clear days before a meeting may be included on the agenda at the discretion of the Chair. The matter shall be included in the agenda for the next general meeting of the Council unless otherwise stated in the request.

4.7 Chair of the Meeting

At any meeting of the Council, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair shall preside. Otherwise, such Governor or non-executive Director, as the Governors present shall choose, shall preside.

4.8 Notices of Motion

4.8.1 A Governor desiring to move or amend a motion shall send a written notice thereof at least the (10) clear days before the meeting to the Chair, who, unless in their opinion he/she considers it to be out of order, illegal, impermissible or improper, shall insert it in the agenda for the meeting. This

paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to SO 4.5.

- 4.8.2 A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 4.8.3 Notice of motion to amend or rescind any resolution (or general substance of any resolution), which has been passed within the preceding six (6) calendar months, shall bear the signature of the Governor who gives it and also the signature of four other Governors. When any such motion has been disposed of by the Council it shall not be competent for any Governor to propose a motion to the same effect within six (6) months; however the Chair may do so if they consider it appropriate.
- 4.8.4 The mover of the motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.8.5 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- a) An amendment to the motion.
 - b) The adjournment of the discussion or the meeting.
 - c) The appointment of an ad hoc committee to deal with a specific item of business.
 - d) That the meeting proceed to the next business.
 - e) That the motion shall be now put.

Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion. In the case of motions under d) and e), to ensure objectivity motions may only be put by a Governor who has not previously taken part in the debate.

- 4.8.6 A motion to remove the Chair or a non-executive Director must be in writing and be signed by at least ten (10) Governors and set out the reasons why the removal of the Chair or non-executive Director is proposed.

4.9 Reference of a matter to NHS England's Panel

- 4.9.1 A Governor wishing to refer a matter to NHS England's Panel may only do so on the passing of a resolution by the Council following notice under SO 4.8.1.
- 4.9.2 The notice of motion to refer a matter to NHS England's Panel shall identify the provisions of this Constitution or the provisions made by or under

Chapter 5 of the National Health Service Act 2006 with which the Governor considers the Trust has failed or is failing to act.

4.10 **Chair's Ruling**

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

4.11 **Preservation of Order**

The Chair, acting reasonably, may exclude any Governor, Director, observer or member of public from the meeting if they are acting contrary to these Standing Orders, disregarding the rulings of the Chair under SO 4.10 above or if they are interfering with or preventing the reasonable conduct of the meeting.

4.12 **Adjournment**

4.12.1 Any meeting may be adjourned by the Chair (whether or not it has commenced) to such time and place as the Chair shall state, where acting reasonably it appears to the Chair that:

4.12.1.1 Governors wishing to attend the meeting cannot be properly or conveniently accommodated in or access the place appointed for the meeting;

4.12.1.2 the conduct of the persons present prevents, or is likely to prevent, the orderly continuation of the business of the meeting; or

4.12.1.3 an adjournment is otherwise necessary so that the business of the meeting may be properly conducted;

and any business remaining on the agenda shall stand adjourned until that adjourned meeting.

4.12.2 In addition the Chair may at any time adjourn the meeting where a quorum is present to another place and time with the consent of the meeting and shall be obliged to do so if directed by a majority of those present at the meeting.

4.12.3 Notice of the adjourned meeting shall be dispatched to all Governors not present at the meeting as soon as possible, but in any event no later than 2 (two) days prior to the date of the adjourned meeting (if possible).

4.13 Voting

- 4.13.1 Decisions at meetings shall be determined by a majority of the votes of the Governors present and voting. In the case of any equality in votes, the Chair shall have a second or casting vote.
- 4.13.2 All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper or electronic ballot may also be used if a majority of the Governors present so request. A vote cast by paper or electronic means shall be counted only if it is delivered to the Company Secretary within a reasonable period as determined and notified to Governors by the Chair.
- 4.13.3 If at least one-third of Governors present so request, the voting (other than by paper or electronic ballot) on any question may be recorded to show how each Governor voted or abstained.
- 4.13.4 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than a paper or electronic ballot).
- 4.13.5 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

4.14 Suspension of Standing Orders (SOs)

- 4.14.1 Except where this would contravene any statutory provision, any one or more of these, Standing Orders may be suspended at any meeting, provided that at least two-thirds of Governors are present and that the majority of those present vote in favour of the suspension.
- 4.14.2 A decision to suspend SOs shall be recorded in the minutes of the meeting.
- 4.14.3 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Council of Governors.
- 4.14.4 No formal business may be transacted while SOs are suspended.

4.15 Record of Attendance

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

4.16 Minutes

- 4.16.1 The minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next general meeting where they will be signed by the person chairing it.
- 4.16.2 No discussion shall take place upon the minutes except upon their accuracy. Any amendment to the minutes, due to inaccuracy, shall be agreed and recorded at the next meeting.
- 4.16.3 Minutes shall be circulated in accordance with Governors' wishes. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded from a meeting under SO 4.2.5.

4.17 Quorum

- 4.17.1 No business shall be transacted at a meeting of the Council of Governors unless at least one –third of Governors, in office, are present.
- 4.17.2 A Governor shall be classed as being present at a meeting if:
 - (a) They are present in person at the location (if any) specified in the notice in which the meeting is being held; or
 - (b) They are in “remote attendance” at the meeting.
- 4.17.3 A Governor shall satisfy the following conditions to be counted as being in “remote attendance” at a meeting:
 - (a) They have verbally confirmed or otherwise indicated their presence to the Chair;
 - (b) They are able to hear, and where practicable see, and be so heard and, where practicable, be seen by the other Governors in attendance; and
 - (c) They are able to be heard and, where practicable, be seen by members of the public attending the meeting.
- 4.17.4 Any question as to whether a Governor satisfies the conditions for “remote attendance” in S.O. 4.17.3, at any or a particular time, shall be determined by the Chair.
- 4.17.5 If a Governor has been disqualified from participating in the discussion of any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

5. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 5.1 **Emergency Powers** – The powers which the Council has retained to itself within these Standing Orders may in an emergency be exercised by the Chair after having consulted at least five (5) elected Governors. The exercise of such powers by the Chair shall be reported to the next formal meeting of the Council.
- 5.2 **Delegation to Committees** – The Council may agree from time to time to the delegation of its duties to committees or sub-committees, which it has formally constituted. To ensure clarity of purpose the Constitution and Terms of Reference of these committees, or sub-committees, and their specific powers shall be laid out in accordance with Trust policy and approved by the Council.
- 5.3 **Delegation to a Member of the Council of Governors** – The Council may delegate duties to an individual Governor but only under a clear remit approved by the Council.

6. Committees – Further Provisions

- 6.1 Save as stipulated in this Constitution the Council may appoint other committees of the Council consisting wholly of Governors. Non-members of the Council may attend such committees if appropriate under the committee's terms of reference but they shall have no vote.
- 6.2 A committee so appointed may appoint sub-committees consisting wholly of Governors. Non-members of the Council may attend such sub-committees if appropriate under the sub-committee's terms of reference but they shall have no vote.
- 6.3 With the exception of SO 4.2 (Admission of the public) these Standing Orders, as far as they are applicable, shall apply also, with the appropriate alteration, to meetings of any committees or sub-committees established by the Council.
- 6.4 Meetings of committees and sub-committees of the Council shall be held in private unless otherwise agreed by the committee or sub-committee.
- 6.5 Each committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Council) as the Council shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.

- 6.6 Committees may not delegate their powers to a sub-committee unless expressly authorised by the Council.
- 6.7 Governors to serve on the Nomination and Remuneration Committee must be appointed by the Council.
- 6.8 The Council shall determine the process for the appointment of Governors to any of its other committees.
- 6.9 The membership of sub-committees shall be determined by the relevant committee.
- 6.10 With the exception of the Nomination and Remuneration Committee, it shall be for each individual committee to appoint its Chair and vice-Chair and the chairs of its sub-committees.
- 6.11 The Chair of the Nomination and Remuneration Committee shall be the Chair of the Trust. The Senior Independent Director shall be the Chair of the Committee if the Chair of the Trust is absent or for matters pertaining to the appointment, appraisal and remuneration of the Chair of the Trust.

7. CONFIDENTIALITY

- 7.1 A Governor or an attendee on a committee of the Council shall not disclose a matter dealt with by, or brought before, the committee without its permission or until the committee shall have reported to the Council or shall otherwise have concluded on that matter.
- 7.2 A Governor or a non-member of the Council of Governors in attendance at a committee shall not disclose any matter dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee resolves that it is confidential.

8. DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

8.1 Declaration of Interests

- 8.1.1 Governors are required to comply with the Trust's policy on Conflicts of Interest. All Governors should declare their interests on appointment and on any subsequent occasion when a conflict arises.
- 8.1.2 If a Governor has any doubt about the relevance of an interest, they should discuss it with the Chair who shall advise them whether or not to disclose the interest.

- 8.1.3 At the time Governors' interests are declared, they should be recorded in the Council's minutes and (if appropriate) entered in a Register of Interests of Governors to be maintained by the Company Secretary. Any changes in interests should be declared at the next Council meeting following the change occurring.
- 8.1.4 Information on the interests of Governors shall be disclosed in the Annual Report in accordance with guidance published by NHS England.
- 8.1.5 During the course of a Council meeting, if a conflict of interest is established, the Governor concerned shall withdraw from the meeting and play no part in the relevant discussion or decision unless two-thirds of those Governors present agree otherwise.
- 8.1.6 In the case of persons co-habiting the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of the Constitution and these Standing Orders to be also an interest of the other, and a Governor shall be required to register and declare such interests.

8.2 Register of Interests

- 8.2.1 The Company Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Governors.
- 8.2.2 Details of the Register will be kept up to date and reviewed annually.
- 8.2.3 The Register will be available to the public.

9 TRAINING AND DEVELOPMENT

- 9.1 The Council shall agree a scheme of training and development to be undertaken by Governors to ensure that they are equipped with the skills and knowledge required to undertake their role and duties.
- 9.2 The Trust shall provide the necessary resources for its Governors to develop and update their skills, knowledge and capabilities.

10. PERFORMANCE EVALUATION

- 10.1 The Chair, with the assistance of the Company Secretary, shall lead, at least annually, an assessment of the collective performance of the Council. This process will act as the basis for determining the scheme of training and development under SO 9.1.

11. COMPLIANCE – OTHER MATTERS

- 11.1 Governors shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the Trust.
- 11.2 Members of the Council of Governors must behave in accordance with Code of Conduct for Governors of the Trust.

12. RESOLUTION OF DISPUTES WITH BOARD OF DIRECTORS

- 12.1 The process for resolving disputes between the Council and Board of Directors is set out in Annex 9 to the Constitution.

13. CHANGES TO STANDING ORDERS

- 13.1 These Standing Orders shall be amended only if:
 - 13.1.1 A notice of motion under Standing Order 4.8 has been given; and
 - 13.1.2 More than half of the members of the Council of Governors present vote in favour of amendment; and
 - 13.1.3 The amendment proposed does not contravene a statutory provision; and
 - 13.1.4 The amendment is agreed by Board of Directors.
- 13.2 Any change to these standing orders under SO 13.1 which amend the powers and duties of the Council shall cease to have effect, if members do not approve the amendment upon a vote being taken at an Annual Members' Meeting in accordance with paragraph 44 of this Constitution.

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

(Paragraph 31)

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1. INTRODUCTION

The principal place of business of the Trust is Flatts Lane Centre, Flatts Lane Normanby, Middlesbrough, Cleveland, TS6 0SZ.

NHS Foundation Trusts are governed by a Regulatory Framework that confers the functions of the Trust and comprises: Acts of Parliament and in particular the National Health Service Act 2006 ('the 2006 Act') as amended by the Health and Social Care Act 2012; the Health and Social Care Act 2022; their constitutions; and the terms of their Licence granted by NHS England.

The Regulatory Framework requires the Board of Directors to adopt Standing Orders for the practice and procedure of the Board of Directors.

The Board of Directors will conduct its business in as open a way as possible and will:

1. Observe the Nolan principles of Public Life of selflessness, integrity, objectivity, accountability, openness, honesty and leadership;
2. At all times seek to comply with the NHS Foundation Trust Code of Governance;

Everything done by the Trust should be able to stand the test of scrutiny, public judgment on propriety, and professional codes of conduct.

These Standing Orders (SOs) are for the regulation of the Board of Directors' proceedings and business.

2. INTERPRETATION

Save as permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders on which they should be advised by the Company Secretary, Chief Executive and Director of Finance.

Any expression to which a meaning is given in the Health Service Acts or in the Regulations or Orders made under the Acts shall have the same meaning in this interpretation and in addition:

"ATTEND" or **"ATTENDANCE"** means in person or remotely.

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

“ASSOCIATE NON-EXECUTIVE DIRECTOR” is a person appointed by, and accountable to, the Board of Directors to provide additional advice or expertise to the Board. Associate Non-Executive Directors are not Directors of the Trust for the purposes of the 2006 Act and thus are non-voting appointees without executive or delegated executive functions or any powers to bind the Trust.

“BOARD” means the Board of Directors, formally constituted in accordance with this Constitution and consisting of a Chair, and non-executive Directors, appointed by the Council of Governors and executive Directors, appointed by the non-executive Directors and (except for their own appointment) by the Chief Executive.

“BUDGET” shall mean a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.

“CHAIR” is the person appointed by the Council of Governors to lead the Board to ensure it successfully discharges its overall responsibility for the Trust as a whole. The Chair shall be deemed to include the non-executive Director appointed by the Council of Governors to take on the Chair’s duties if the Chair is absent from the meeting or is otherwise unavailable, known as the Deputy Chair. The term Chair shall also, for the purposes of SOs refer to the person appointed by the Board to preside in exceptional circumstances when both the Chair and Deputy Chair are temporarily unavailable.

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

“CLEAR DAY” - means a day of the week excluding the day the document becomes available, the day the meeting is held/notice submitted, Saturdays, Sundays and public holidays.

“COMMITTEE” shall mean a committee formed by the Board of Directors.

“COMMITTEE MEMBERS” shall be persons formally appointed by the Board of Directors to sit on or to chair specific committees.

“EXECUTIVE DIRECTOR” is a person appointed through the Nomination and Remuneration Committee of the Board of Directors to be a member of the Board of Directors.

“FUNDS HELD ON TRUST” shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Sch 3 and 4 para 14.1c National Health Service Act 2006. Such funds may or may not be charitable.

“IN PERSON” means the physical presence of an individual.

“LICENCE” means the licence granted by Monitor under Chapter 3 of the Health and Social Care Act 2012.

“MEETING” means a meeting of the Board of Directors for which notice has been given in accordance with these Standing Orders and which may take place in person and/or remotely.

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

“NOMINATED OFFICER” means an officer charged with the responsibility for discharging specific tasks within SOs and SFIs.

“NON-EXECUTIVE DIRECTOR” is a person appointed through the Nomination and Remuneration Committee of the Council of Governors to be a member of the Board of Directors. Initially non-executive Directors of the applicant NHS Trust will automatically become non-executive Directors of the Foundation Trust. This includes the Chair of the Trust.

“OFFICER” means an employee of the Trust.

“PLACE” in relation to a meeting, any reference to a “place” means the place where a meeting is held, or to be held, which may be:

- a specified location; or
- a virtual, digital or electronic platform/location including but not limited to platforms/locations accessed remotely via “Apps”, internet locations, web addresses or conference call telephone numbers; or
- both.

“PRESENT” means attendance at a meeting either in person or remotely in accordance with the terms of these Standing Orders.

“REMOTE” or **“REMOTELY”** means attendance via electronic, digital or other virtual means including, but not limited to, telephone conference, video conference, live webcasts, and live interactive streaming provided such electronic means satisfies the requirements set out at S.O. 4.42 of this Annex 8.

“SENIOR INDEPENDENT DIRECTOR” means one of the non-executive Directors appointed by the Board of Directors to whom Governors may raise concerns about the performance of the Chair or the Trust if they consider it is inappropriate or impractical to express these concerns to the Chair or officers of the Trust. The Senior Independent Director also leads the Board on

matters pertaining to the appointment and appraisal of the Chair and provides advice to the Chair under the disputes resolution procedure.

“**SFIs**” means Standing Financial Instructions.

“**SOs**” means Standing Orders.

“**TRUST**” means the Tees Esk and Wear Valleys NHS Foundation Trust.

3. THE BOARD OF DIRECTORS – ITS COMPOSITION, APPOINTMENTS AND INDEMNITY ARRANGEMENTS

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

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

3.3 The powers of the Trust established under statute shall be exercised by the Board meeting except as stated in SO 5.

3.4 The Board of Directors has resolved that certain powers and decisions may only be exercised or made by the Board. These powers and decisions are set out in “Reservation of Powers to the Board” and have effect as if incorporated into the Standing Orders. The Board of Directors must adopt a Scheme of Delegation and Standing Financial Instructions (SFIs) as an integral part of these Standing Orders setting out the responsibilities of individuals.

3.5 Composition of the Board of Directors

The composition of the Board of Directors shall be in accordance with paragraph 22 of the Constitution.

3.6 Terms of Office of the Chair and Members of the Board

The period of tenure of office of the Chair and each non-executive Director and the terms and conditions of service of the Chair and non-executive Directors shall be determined by the Council of Governors based on the provisions of the Constitution and guidance contained in the NHS Foundation Trust Code of Governance published by NHS England.

3.7 **Appointment of the Chair and non-executive Directors** – the Chair and non-executive Directors are appointed/removed by the Council of Governors.

- 3.8 **Appointment of Deputy Chair** – The Council of Governors at a general meeting of the Council of Governors may appoint one of the non-executive Directors as the Deputy Chair.
- 3.9 Any non-executive Director so elected may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair. The Council of Governors may thereupon appoint another non-executive Director as Deputy Chair in accordance with SO 3.8.
- 3.10 **Powers of Deputy Chair** – Where the Chair of the Trust has died or has otherwise ceased to hold office or where they have been unable to perform his/her duties as Chair owing to illness, absence or any other cause, references to the Chair in the Standing Orders shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Deputy Chair.
- 3.11 **Senior Independent Director** – The Board shall appoint one of the non-executive Directors as a “Senior Independent Director” in consultation with the Council of Governors.
- 3.12 In accordance with paragraph 28 of this Constitution the non-executive Directors shall appoint the Chief Executive (which appointment shall be approved by the Council of Governors) and a committee consisting of the Chair, Chief Executive and the non-executive Directors shall appoint or remove the other executive Directors.
- 3.13 The Board shall appoint a Company Secretary, who, under the direction of the Chair, shall ensure information flows within the Board and Council of Governors and their Committees, between Directors and members of the Council of Governors, and between senior management and the Board. The Company Secretary shall also advise the Board and Council of Governors on all legal, governance and compliance matters and shall facilitate induction and professional development as required.
- 3.14 A Director and the Company Secretary, who has acted honestly and in good faith will not have to meet out of his own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her function as a Director/Company Secretary save where the Director/Company Secretary has acted recklessly. On behalf of the Directors/Company Secretary and as part of the Trust’s overall insurance arrangements the Board shall put in place appropriate insurance provision to cover such indemnity.
- 3.15 Non-executive Directors may, at the Trust’s expenses, seek external advice or appoint an external adviser on any material matter of concern provided

the decision to do so is a collective one by the majority of non-executive Directors.

- 3.16 Associate Non-Executive Directors** – The Board may appoint Associate Non-Executive Directors on terms and conditions and to undertake such duties as specified by the Board.

4. MEETINGS OF THE BOARD OF DIRECTORS

4.1 Admission of the Public

- 4.1.1 All meetings of the Board shall be open to the public except to the extent that they are excluded by resolution under SO 4.1.3 below.
- 4.1.2 Where a meeting is accessible to the public through remote means it is open to the public whether or not members of the public are able to attend in person.
- 4.1.3 The Board may by resolution exclude the public from a meeting during consideration of an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during consideration of that item of business there would be disclosure to them of confidential information as defined in SO 4.1.4 below
- 4.1.4 The descriptions of information which are, for the purposes of this Standing Order, confidential information are those for the time being specified in Annex 9 to the Constitution.
- 4.1.5 The reasons for the exclusion of the public from a meeting shall be included in the agenda for the meeting and recorded in the minutes.
- 4.1.6 The Chair shall give such directions as they think fit with regard to the arrangements for meetings and accommodation of or access by the public.
- 4.1.7 The Chair may determine that attendance by members of the public shall be restricted to access either in person or by remote means only.
- 4.1.8 Where remote access is provided the Chair must be satisfied that the arrangements will enable the public to be able to hear, and where practicable see, the business transacted at the meeting.
- 4.1.9 Nothing in these Standing Orders shall require the Board to allow members of the public to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Chair.

- 4.2 **Confidentiality** - Directors and Officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers or minutes marked 'Confidential' outside of the Board of Directors meeting, without the express permission of the Chief Executive. This prohibition shall apply equally to the content of any discussion during the Board of Directors' meeting which may take place on such reports or papers.
- 4.3 **Calling Meetings** - Ordinary meetings of the Board of Directors shall be held at such times and places as the Board may determine.
- 4.4 The Chair may call a meeting of the Board at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to him/her, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to him/her at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting.
- 4.5 **Notice of Meetings** –
- 4.5.1 A notice specifying the date, time and place of a meeting of the Board of Directors and signed by the Chair, or by an officer authorised by the Chair to sign on his/her behalf, shall be sent to each Director at least three (3) clear days before each meeting of the Board. Where the meeting is to be held or be accessible remotely, such notice shall also include details of how to access the meeting or, if this is not known at the time the notice is issued, details shall be circulated or otherwise made available as soon as practicable.
- 4.5.2 The notice of the meeting shall also specify the business proposed to be transacted at the meeting (the agenda).
- 4.5.3 The notice of the meeting provided to each Director shall be:
- (i) delivered by hand; or
 - (ii) sent by post to their usual place of residence; or
 - (iii) sent by electronic means.
- 4.5.4 Prior to each meeting a copy of the notice under SO 4.5.1 shall be made available to each Governor.
- 4.5.5 Want of service of the notice on any Director or failure to make available a copy of the notice to any Governor shall not affect the validity of a meeting subject to S.O. 4.5.6
- 4.5.6 In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice or emergency motions allowed

under these Standing Orders. Failure to serve such a notice on more than three (3) Directors will invalidate the meeting. A notice sent by post shall be presumed to have been served one day after posting.

- 4.7 Before each public meeting of the Board a public notice of the time and place of the meeting, and the public part of the agenda, shall be published on the Trust's website together with electronic or other access details where applicable.
- 4.8 **Setting the Agenda** - The Board may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 4.9 A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least ten (10) clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than ten 10 days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.10 **Petitions** - Where a petition has been received by the Trust the Chair of the Board shall include the petition as an item for the agenda of the next Board meeting subject to the powers granted to the Chair by these Standing Orders to regulate arrangements for Board meetings.
- 4.11 **Chair of Meeting** - At any meeting of the Board, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair, if there is one and they are present, shall preside. If the Chair and Deputy Chair are absent such Director (who is not also an officer of the Trust) as the Directors present shall choose shall preside.
- 4.12 If the Chair is absent temporarily on the grounds of a declared conflict of interest the Deputy Chair, if present, shall preside. If the Chair and Deputy Chair are absent, or are disqualified from participating, such non-executive Director as the Directors present shall choose shall preside. If any matter for consideration at a meeting of the Board of Directors relates to the interests of the Chair or to the interests of the non-executive Directors as a class, neither the Chair nor any of the non-executive Directors shall preside over the period of the meeting during which the matter is under discussion. The Directors (excluding the Chair or the non-executive Directors) shall elect one of their number to preside during that period and that person shall exercise all the rights and obligations of the Chair including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.

- 4.13 **Decision Making** - When making decisions in the exercise of its functions which relate to the provision of health care for the purposes of the NHS, the Board shall comply with its duty relating to the triple aim, including any guidance published thereon by NHS England, of achieving:
- 4.13.1. better health and wellbeing of the people of England (including by reducing inequalities with respect to health and wellbeing)
 - 4.13.2. better quality of health care services for the purposes of the NHS (including by reducing inequalities with respect to the benefits obtained by individuals from those services)
 - 4.13.3. more sustainable and efficient use of resources by NHS bodies,
- 4.14 **Notices of Motion** - A Director desiring to move or amend a motion shall send a written notice thereof at least ten (10) clear days before the meeting to the Chair, unless in his/her opinion he/she considers it to be out of order, illegal, impermissible or improper, shall insert it in the agenda for the meeting. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda, subject to SO 4.18.
- 4.15 **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 4.16 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six (6) calendar months shall bear the signature of the Director who gives it and also the signature of four (4) other Directors. When any such motion has been disposed of by the Board, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within six (6) months; however the Chair may do so if they consider it appropriate.
- 4.17 **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.18 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- An amendment to the motion.
 - The adjournment of the discussion or the meeting.
 - That the meeting proceed to the next business. (*)
 - The appointment of an ad hoc committee to deal with a specific item of business.
 - That the motion be now put. (*)
 - A motion resolving to exclude the public (including the press).

* In the case of sub-paragraphs denoted by (*) above to ensure objectivity motions may only be put by a Director who has not previously taken part in the debate and who is eligible to vote.

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

- 4.19 **Chair's Ruling** - Statements of Directors made at meetings of the Board shall be relevant to the matter under discussion at the material time and the ruling of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final. In this interpretation he/she shall be advised by the Company Secretary on standing orders and the case of Standing Financial instructions by the Director of Finance.
- 4.20 **Preservation of Order** - The Chair, acting reasonably, may exclude any Director, or observer or member of the public from the meeting if they are acting contrary to these Standing Orders, disregarding the rulings of the Chair under paragraph 4.19 above or if they are interfering with or preventing the reasonable conduct of the meeting.
- 4.21 **Voting** - Every question put to a vote at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.
- 4.22 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A ballot, taken by paper or electronic means, may also be used if a majority of the Directors present so request. A vote cast by paper or electronic means shall be counted only if it is delivered to the Company Secretary within a reasonable period as determined and notified to the Directors by the Chair.
- 4.23 If at least one-third of the Directors present so request, the voting (other than by paper or electronic ballot) on any question may be recorded to show how each Director present voted or abstained.
- 4.24 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper or electronic ballot).
- 4.25 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.26 An officer who has been appointed formally by the Board 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 a meeting of the Board to

represent an executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the executive Director. An officer's status when attending a meeting shall be recorded in the minutes.

- 4.27 **Minutes** - The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ordinary meeting where they will be signed by the person presiding at it.
- 4.28 No discussion shall take place upon the minutes except upon their accuracy. Any amendment to the minutes due to inaccuracy only shall be agreed and recorded at the next meeting.
- 4.29 **Provision of minutes of meetings of the Board to the Council of Governors**
- 4.30 Copies of the confirmed minutes relating to any part of a meeting held in public shall be published on the Trust's website and Governors shall be notified accordingly.
- 4.31 Copies of the confirmed minutes for any part of a meeting from which the public were excluded under SO 4.1.3 shall be made available for inspection by Governors at least one hour before the next general meeting of the Council of Governors.
- 4.32 **Joint Directors** - Where the office of a Director is shared jointly by more than one person:
- (a) either or both or any of those persons may attend or take part in meetings of the Board of Directors;
 - (b) if both/any are present at a meeting they should cast one vote if they agree;
 - (c) in the case of disagreements no vote should be cast; and
 - (d) the presence of either/any or both/any of those persons should count as the presence of one person for the purposes of SO 4.40 (Quorum).
- 4.33 **Suspension of Standing Orders** - Except where this would contravene any provision of the Constitution or any direction made by NHS England, 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 present vote in favour of suspension.
- 4.34 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.

- 4.35 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 4.36 No formal business may be transacted while Standing Orders are suspended.
- 4.37 The Audit and Risk Committee shall review every decision to suspend Standing Orders.
- 4.38 **Variation and Amendment of Standing Orders** - These Standing Orders shall be amended only if:
- a notice of motion under SO 4.14 has been given;
 - more than half of the Directors present vote in favour of amendment;
 - the variation proposed does not contravene a statutory provision; and
 - the amendment is agreed by the Council of Governors.
- 4.39 **Record of Attendance** - The names of the Directors present at the meeting shall be recorded in the minutes.
- 4.40 **Quorum** - No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors appointed, (including at least one non-executive Director and one executive Director) are present.
- 4.41 A Director shall be classed as being present at a meeting if:
- (a) They are present in person at the location (if any) specified in the notice in which the meeting is being held; or
 - (b) They are in “remote attendance” at the meeting.
- 4.42 A Director shall satisfy the following conditions to be counted as being in “remote attendance” at a meeting:
- (a) they have verbally confirmed or otherwise indicated their presence to the Chair;
 - (b) they are able to hear, and where practicable see, and be so heard and, where practicable, be seen by the other Directors in attendance; and
 - (c) they are able to be heard and, where practicable, be seen by members of the public attending the meeting.
- 4.43 Any question as to whether a Director satisfies the conditions for “remote attendance” in S.O. 4.42, at any or a particular time, shall be determined by the Chair.
- 4.44 An officer in attendance for an executive Director but without formal acting up status may not count towards the quorum.

- 4.45 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 they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one executive Director to form part of the quorum shall not apply where the executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Nomination and Remuneration Committee). The above requirement for at least one non-executive Director to form part of the quorum shall not apply where all the non-executive Directors are excluded from a meeting.
- 4.46 **Adjournment of Meetings** - The Board of Directors may, by resolution, adjourn any meeting to some other specified date, place and time and such adjourned meeting shall be deemed a continuation of the original meeting. No business shall be transacted at any adjourned meeting which was not included in the agenda of the meeting of which it is an adjournment.
- 4.47 Any meeting may be adjourned by the Chair (whether or not it has commenced) to such time and place as the Chair shall state, where acting reasonably it appears to the Chair that:
- 4.47.1 Directors wishing to attend the meeting cannot be properly or conveniently accommodated in or access the place appointed for the meeting;
 - 4.47.2 the conduct of the persons present prevents, or is likely to prevent, the orderly continuation of the business of the meeting; or
 - 4.47.3 an adjournment is otherwise necessary so that the business of the meeting may be properly conducted;
- and any business remaining on the agenda shall stand adjourned until that adjourned meeting.
- 4.48 When any meeting is adjourned to another day, other than the following day, notice of the adjourned meeting shall be sent to each Director specifying the business to be transacted.
- 4.49 **Observers at Board of Directors meetings** - The Board of Directors will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Board meetings and may change, alter or vary these terms and conditions as it deems fit.

5. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 5.1 The Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 6.1 or 6.2 below or by a Director of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.
- 5.2 **Emergency Powers** – The powers which the Board has retained to itself within these Standing Orders may in emergency be exercised jointly by the Chief Executive and the Chair after having consulted at least two other non-executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board.
- 5.3 **Delegation to Committees** – The Board shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board.
- 5.4 **Delegation to Officers** – Those functions of the Trust which have not been retained as reserved to the Board or delegated to an executive committee or sub-committee shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate officers to undertake the remaining functions for which they will still retain accountability to the Board.
- 5.5 The Chief Executive shall prepare a Scheme of Decisions Reserved to the Board and Schedule of Decision/Duties Delegated by the Board, identifying their proposals which shall be considered and approved by the Board, 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 as indicated above.
- 5.6 Nothing in the Schedule of Decision/Duties Delegated by the Board shall impair the discharge of the direct accountability to the Board of the Director of Finance, other Director or the Company Secretary to provide information and advise the Board in accordance with any statutory requirements.
- 5.7 The arrangements made by the Board as set out in the Scheme of Decisions Reserved to the Board and Schedule of Decision/Duties Delegated by the Board shall have effect as if incorporated in these Standing Orders.
- 5.8 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the

circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All members of the Board and officers have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive or Company Secretary as soon as possible.

6. COMMITTEES

- 6.1 **Formation of Committees** – The Board may form committees of the Trust, consisting wholly or partly of members of the Board of Directors or wholly of persons who are not members of the Board of Directors.
- 6.2 A committee so formed under SO 6.1 may form sub-committees consisting wholly or partly of members of the committee (whether or not they include Directors) or wholly of persons who are not members of the Trust committee (whether or not they include Directors).
- 6.3 The Standing Orders of the Trust, as far as they are applicable and with the exception of SO 4.1 (Admission of the public) shall apply with appropriate alteration to meetings of any committees or sub-committee formed by the Board or a committee respectively.
- 6.4 All meetings of committees and sub-committees established by the Board shall be held in private unless agreed by the committee or sub-committee.
- 6.5 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), as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 6.6 Committees may not delegate their powers to a sub-committee unless expressly authorised by the Board.
- 6.7 The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines that persons, who are neither non-executive Directors nor Directors, shall be appointed to a committee, the terms of such appointment shall be defined by the Board. Those appointed would be entitled to the payment of travelling and other allowances.
- 6.8 Where the Trust is required to appoint persons to a committee and/or to undertake statutory functions and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with the regulations and directions laid down by the Board of Directors.

6.9 The Board may appoint sub-committees of the Board. Attendance at these Boards will be determined in the committees' terms of reference.

6.10 The following committees shall be established and maintained by the Board:

- Audit and Risk Committee
- Nomination and Remuneration Committee
- Mental Health Legislation Committee
- Quality Assurance Committee

Other committees and sub-committees of the Board may be formed from time to time.

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

7. CONFLICTS OF INTEREST

7.1 **Duties of Directors** – It is the duty of each Director to comply with the Trust's Policy on Conflicts of Interests. A Director must:

7.1.1 Avoid any situation in which they have (or may have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.

7.1.2 Not accept a benefit from a third party that conflicts (or possibly may conflict) with the interests of the Trust.

7.1.3 Declare any interests (either direct or indirect) they may have, including the nature and extent of any interest, in:

- (a) any proposed transaction or arrangements with the Trust;
or
- (b) any other relevant or material matter relating to the Board of which they are a member.

7.1.4 Register any interests, in the register kept under paragraph 34.1 of the Constitution, including any all former employment/roles in the two years prior to taking up an appointment with the Trust, where there is or may be perceived to be a conflict of interest

7.2 A Director must seek advice from the Chair or the Company Secretary if they have any doubt about the relevancy of a potential or actual interest.

7.3 Relevant and Material Interests

7.3.1 Interests which should be regarded as “relevant or material” under SO 7.1.3 (b) are:

- (a) directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
- (b) ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- (c) majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- (d) a position of trust in a charity or voluntary organisation in the field of health and social care;
- (e) any connection with a voluntary or other organisation contracting for NHS services; and
- (f) any other commercial interest in the decision the committee or Board meeting may be considering.

7.4 Declarations of Interests

7.4.1 A Director shall declare any interests under SO 7.1.3:

- (a) on appointment;
- (b) if relating to an interest under SO 7.1.3(a), before the Trust enters into the proposed transaction or arrangement;
- (c) at any meeting at which the proposed transaction, arrangement or relevant and material matter is being considered either at the start of the meeting or as soon as they become aware of it; and
- (d) if appropriate in the register kept in accordance with paragraph 34.1 of the Constitution.

7.4.2 A further declaration of interest must be made if the original declaration of interest under SO 7.4.1 proves to be, or becomes, inaccurate or incomplete.

7.5 Disability of Directors in proceedings on account of interests

7.5.1 If a Director is present at a meeting at which a matter in which they have an interest is being considered they shall, unless the interest in the subject of a dispensation under SO 7.7:

7.5.1.1 Declare the interest in accordance with SO7.4.1(c).

- 7.5.1.2 For a direct financial interest, withdraw from the meeting room whilst the matter is being considered.
- 7.5.1.3 For an indirect financial interest arising from their being a Director of a Subsidiary, participate in the consideration or discussion but not vote on any matters concerning the Subsidiary.
- 7.5.1.4 For all other indirect interests of a financial nature, take no part in the consideration of or discussion on the matter, without the Chair's agreement, or vote on any question with respect to it except in circumstances set out in SO 7.7.5.
- 7.5.1.5 For all other interests participate in the consideration or discussion on the matter or vote on any question in respect of it as they consider appropriate.

7.5.2 The Board of Directors may exclude the Chair or a Director from a meeting of the Board by resolution if they have reasonable cause to believe that they have a direct pecuniary interest in any matter under consideration.

7.6 Record of Declarations of Interests

- 7.6.1 The interests of a Director shall be recorded in:
- (a) the minutes of the meeting at which the interest was declared in accordance with SO 7.4.1 (c); and
 - (b) In the register of interests in accordance with SO 7.4.1 (d).

7.7 Interpretation, Savings and Dispensations

- 7.7.1 The duty of a Director under SO 7.1.1 is not infringed if:
- (a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - (b) the matter has been authorised in accordance with the Constitution.
- 7.7.2 The duty of a Director under 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.
- 7.7.3 In SO 7.1.2 "third party" means a person other than:
- (a) the Trust; or
 - (b) a person acting on its behalf.
- 7.7.4 A Director shall not be regarded as having an interest if they are not aware of it or of the transaction or arrangement in question.
- 7.7.5 A Director need not declare an interest in a matter:
- 7.7.5.1 if it cannot reasonably be regarded as likely to give rise to an interest;

- 7.7.5.2 if, or to the extent that, the Directors are already aware of it. (A Director may only rely on this provision if the interest has been declared previously at a meeting of the Board or it is recorded in the Register of Interests); or
- 7.7.5.3 if, or to the extent that, it concerns the terms of the Director's appointment that have been or are to be considered -
- (a) By a meeting of the Board of Directors; or
 - (b) By a committee of the Directors appointed for the purpose under the Constitution
- 7.7.6 Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 11 of Schedules 3 and 4 to the National Health Service Act 2006 shall not be treated as a financial interest for the purpose of this Standing Order.
- 7.7.7 For the purposes of SO 7.5:
- 7.7.7.1 The Chair or Director shall be treated, as having an indirect interest of a financial nature in a contract, proposed contract or other matter, if:
- (a) they, or a nominee of theirs, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a financial interest in the other matters under consideration; or
 - (b) they are a partner of, or are in the employment of a person with whom the contract was made or is proposed to be made or who has a direct financial interest in the other matter under consideration.
- 7.7.7.2 The Chair or Director shall not be treated as having a financial interest (either direct or indirect) in any contract, proposed contract or other matter by reason only because:
- (a) of their membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
 - (b) of an interest in any company, body or person with which he is connected as mentioned in SO 7.3.1 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a member in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

- 7.7.7.3 Where the Chair or a Director:
- (a) has an indirect financial interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
 - (b) the total nominal value of those securities does not exceed one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
 - (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one hundredth of the total issued share capital of that class,
- this Standing Order shall not prohibit him/her from taking part in the consideration or discussion of the contract or other matter from voting on any question with respect to it without prejudice however to his/her duty to disclose his/her interest.

7.8 Application to meetings of Committees and Sub-Committees

- 7.8.1 Standing Order 7.7 applies to a committee or sub-committee of the Board as it applies to the Board and applies to any member of any such committee or sub-committee (whether or not they are also a Director) as it applies to a Director.

8. STANDARDS OF BUSINESS CONDUCT

- 8.1 **Policy** - Staff must comply with all Trust policies relating to standards of conduct including the Conflicts of Interest Policy.
- 8.2 **Interests of Officers in Contracts** – If it comes to the knowledge of a Director of the Trust that a contract is which they have any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he shall, at once, give notice in writing to the Chief Executive of the fact that he is interested therein.
- 8.3 An officer must also declare to the Chief Executive any other employment or business or other relationship of him/her, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Trust requires interests, employment or relationships so declared by staff to be entered in a register of interests of staff.
- 8.4 **Canvassing of, and recommendations by, Members in relation to Appointments** –

Canvassing of Directors or members of any committee of the Board directly or indirectly for any appointment by the Trust shall disqualify the candidate

from such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.

- 8.5 A Director shall not solicit for any person any appointment by the Board of Directors or recommend any person for such appointment, but this paragraph of this Standing Order shall not preclude a member from giving written testimonial of a candidate's ability, experience or character for submission to the Board, if required
- 8.6 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 8.7 **Relatives of Members of the Board of Directors** – Candidates for any staff appointment shall when making application disclose in writing whether they are related to any member of the Board or the holder of any office within the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
- 8.8 The Chair, and every Director of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature the Chair, or Director is aware. It shall be the duty of the Chief Executive or nominated Director to report to the Board any such disclosure made.
- 8.9 Prior to or on acceptance of an appointment, the Chair and Directors must disclose to the Board whether they are related to any other member or holder of any office under the Trust.
- 8.10 Where the relationship of a Director or another member of the Board or another member of the Trust is disclosed, SO 7.5 shall apply.

9. RESOLUTION OF DISPUTES WITH THE COUNCIL OF GOVERNORS

- 9.1 The procedure for the resolution of disputes between the Board and the Council of Governors is set out in Annex 9 to the Constitution.

10. NOTIFICATION TO NHS ENGLAND AND THE COUNCIL OF GOVERNORS

- 10.1 The Board shall notify NHS England and the Council of Governors of any major changes in the circumstances of the Trust which have made or could lead to a substantial change to its financial well being, healthcare delivery performance, or reputation and standing or which might otherwise affect the Trust's compliance with the terms of its Licence.

- 10.2 The requirement for the Board to notify the Council of Governors under SO 10.1 above includes, but is not limited to, the provision of the following information:
- 10.2.1 notification of concerns by the Care Quality Commission and any compliance actions or enforcement notices related thereto;
 - 10.2.2 the expiry; loss, cancellation, withdrawal or other termination without renewal; suspension; or any modification of terms of its registration with the Care Quality Commission;
 - 10.2.3 a statement setting out any material changes to services that the Trust is required to provide as Commissioner Requested Services;
 - 10.2.4 any application made to NHS England in relation to the disposal or relinquishment of control over any relevant asset as defined within the Licence;
 - 10.2.5 any notice received from NHS England that it has concerns about the ability of the Trust to continue as a going concern;
 - 10.2.6 A notice received from NHS England about the Trust's ability to continue to provide commissioner requested services or NHS commissioned services due to quality stress; or
 - 10.2.7 any notification provided to NHS England when the Directors are aware of any circumstance that causes them to no longer have expectation that the Trust will have reasonable resources available to it.

11. BOARD PERFORMANCE

- 11.1 The Chair, with the assistance of the Company Secretary, shall lead, at least annually, a performance assessment process for the Board. This process should act as the basis for determining individual and collective professional development programmes for Directors.

12. TENDERING AND CONTRACT PROCEDURE

- 12.1 **Duty to comply with Standing Orders and Standing Financial Instructions** – The procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Orders (except where Suspension of SOs is applied) and the Standing Financial Instructions.

13. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 13.1 **Custody of Seal** – The Common Seal of the Trust shall be kept by the Chief Executive or nominated person in a secure place.
- 13.2 **Sealing of documents**- The Common Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the

Board of Directors or of a committee thereof or by an officer to whom the Board of Directors has delegated its powers.

- 13.3 Where it is necessary that a document shall be sealed the seal shall be affixed in the presence of two Directors or a Director and the Company Secretary and shall be attested by them. The Directors approving and attesting the document shall not be from the originating department.
- 13.4 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or an Officer nominated by him/her).
- 13.5 The form of the attestation of documents shall be “The Common Seal of the Tees Esk and Wear Valleys NHS Foundation Trust was hereto affixed in the presence of”.
- 13.6 **Register of Sealing** – An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and attested the seal. A report of all sealing shall be made to the next Board of Directors meeting. (The report shall contain details of the seal number, the description of the document and date of sealing).

14. SIGNATURE OF DOCUMENTS

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

15. DISSEMINATION OF STANDING ORDERS

The Chief Executive is responsible for ensuring all existing Directors and officers, and all new appointees are notified of, and understand their responsibility within the Standing Orders.

ANNEX 9 - Further Provisions

1 Disqualification from Membership

A person may not become a member if:

1. Within the last 10 years they have been involved in a serious incident of violence at any of the Trust's hospitals, facilities or sites or against any of the Trust's employees, or registered volunteers.
2. They are under 14 years of age.
3. They have acted in a way, which is detrimental to the Trust.

A person may not become or remain a member of the Public Constituency if they are eligible to become a member of the Staff Constituency.

A person may not be a member of more than one constituency.

Where the Trust is on notice that a member may be disqualified from membership, or may no longer be eligible to be a member it shall give the member 14 days written notice for them to show cause why their name should not be removed from the register of members. On receipt of any such information supplied by a member, the Company Secretary may, if he considers it appropriate, remove the member from the Register of Members. In the event of any dispute the Company Secretary shall refer the matter to the Council of Governors. All Members of the Trust shall be under a duty to notify the Company Secretary of any change in their particulars, which may affect their entitlement as a member.

2 Termination of Membership

A member shall cease to be a member if:

1. They resign on notice to the Company Secretary;
2. They cease to be entitled under this Constitution to be a member of any of the constituencies;
3. They are expelled under this Constitution;
4. If it appears to the Company Secretary that they no longer wish to be a member and after enquiries made in accordance with a process approved by the Council of Governors, they fail to confirm that they wish to continue to be a member of the Trust.

3 Expulsion

A member may be expelled by a resolution of the Council of Governors. The following procedure is to be adopted:

1. Any member may complain to the Company Secretary that another member has acted in a way detrimental to the interests of the Trust.
2. If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
 - a. Dismiss the complaint and take no further action; or
 - b. Arrange for a resolution to expel a member to be considered at the next meeting of the Council of Governors.
3. If a resolution to expel a member is to be considered at a meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
4. At the meeting the Council of Governors will consider oral and written evidence produced in support of the complaint and any oral and written evidence submitted for or on behalf of the member about whom complaint has been made.
5. If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence. A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting that the resolution to expel them is carried. No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors.

4 Board of Directors Termination of Tenure and Disqualification

1. A non-executive Director may resign from that office at any time during their term of office by giving notice to the Company Secretary.
2. In the case of a non-executive Director, they are no longer a member of the public constituency.
3. They become a member of the Council of Governors

4. They cease to be a fit and proper person to be a Director of a Foundation Trust in accordance with the requirements set out in the Licence and the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
5. They are subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986.
6. They are otherwise disqualified at law from holding the office of non-executive Director of an NHS Foundation Trust

5 Classes of information to be treated as confidential

The classes of information to be treated as confidential for the purposes of Standing Order 4.2.6 of the Council of Governors and Standing Order 4.1.4 of the Board of Directors shall be as follows:

1. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, the Trust.
2. Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the Trust.
3. Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the Trust.
4. Information relating to the financial or business affairs of any particular person (other than the Trust).
5. The amount of any expenditure proposed to be incurred by the Trust under any particular contract for the acquisition of property or the supply of goods or services.
6. Any terms proposed or to be proposed by or to the Trust in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.
7. The identity of the Trust (as well as of any other person, by virtue of paragraph 4 above) as the person offering any particular tender for a contract for the supply of goods or services.
8. Any documents relating to the Trust's forward plans prepared in accordance with paragraph 27 of schedule 7 of the National Health Service Act 2006.
9. Information which, if published would, or be likely to, inhibit -
(a) the free and frank provision of advice, or

- (b) the free and frank exchange of views for the purposes of deliberation, or
 - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
10. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the Trust and employees of, or office-holders under, the Trust.
 11. Any advice received or information obtained from legal or financial advisers appointed by the Trust or action to be taken in connection with that advice or information.
 12. Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
 13. Information:
 - (a) prohibited from disclosure by or under any enactment, or
 - (b) which if disclosed by the Trust would be incompatible with any EU obligation or would constitute or be punishable as a contempt of court.
 14. Information which is held by the Trust with a view to its publication, by the Trust or any other person, at some future date (whether determined or not), and it is considered reasonable, in all the circumstances, to withhold the information from disclosure until that date.

6. RESOLUTION OF DISPUTES BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS

Should a dispute arise between the Board of Directors and Council of Governors -

1. The Chair or Deputy Chair (if the dispute involves the Chair) of the Trust, as appropriate, shall first endeavour through discussion with the Council of Governors and Board of Directors (or, to achieve the earliest possible conclusion, appropriate representatives of them) to resolve the matter to the reasonable satisfaction of both parties.
2. Failing resolution under (1) above then the Board or the Council of Governors, as appropriate, shall, at its next formal meeting, approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
3. The Chair or Deputy Chair (if the dispute involves the Chair) shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an Agenda Item and Agenda Paper at the next formal meeting of the

Board or Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.

4. The Chair, or Deputy Chair (if the dispute involves the Chair), as appropriate, shall immediately or as soon as is practicable, communicate the outcome to the other party and deliver the Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in (3) above shall be repeated.
5. If, in the opinion of the Chair, or Deputy Chair (if the dispute involves the Chair), as appropriate, and following the further discussion prescribed in (4), there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council of Governors and the Board accordingly.
6. At each stage in the process, and in particular prior to determining whether there is no prospect of resolution, the Chair, or Deputy Chair (if the dispute involves the Chair) shall consult with the Senior Independent Director.
7. On the satisfactory completion of this disputes process the Board shall implement any agreed changes.
8. On the unsatisfactory completion of this disputes process the view of the Board shall prevail unless the matter falls within the statutory powers of the Council of Governors.
9. Nothing in this procedure shall prevent the Council of Governors, if it considers it appropriate following advice from the Senior Independent Director, Lead Governor and the Company Secretary from:
 - a. informing NHS England that it believes the Board has not responded constructively to concerns about the Trust's compliance with its Licence.
 - b. Referring a matter to NHS England's Panel in accordance with paragraph 18 of the Constitution.
 - c. Making a direct referral to the Care Quality Commission if it considers the issue giving rise to the dispute will lead to the Trust failing to comply with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009.

ANNEX 10 – ANNUAL MEMBERS’ MEETING

1. General

- 1.1 A meeting of the Members of the Foundation Trust (“The Annual Members’ Meeting”) shall be held annually in accordance with paragraph 10 of the Constitution.

2. Interpretation

- 2.1 All words and expressions shall have the same meaning as those provided in the Standing Orders of the Council of Governors (Annex 7 to the Constitution).

3. Combination of the Annual Members’ Meeting and the Annual General Meeting of the Council of Governors.

- 3.1 Unless otherwise agreed by the Chair of the Trust, the Annual Members’ Meeting will be combined with the Annual General Meeting of the Council of Governors.

4. Calling the Annual Members’ Meeting

- 4.1 The date and time of the Annual Members’ Meeting shall be agreed by the Chair of the Trust in consultation with the Council of Governors.
- 4.2 The place for the meeting shall be fixed by the Chair of the Trust.

5. Notice of the Annual Members’ Meeting

- 5.1 Notice of an Annual Members Meeting must be given:
- 5.1.1 to all Members (who are included in the register kept under paragraph 34.1.1 of the Constitution on the date the notice is given);
 - 5.1.2 to all Governors;
 - 5.1.3 in a paid-for newspaper circulating in the Trust’s area; and
 - 5.1.4 on the Trust’s website
- at least 14 clear days before the date of the meeting.
- 5.2 The notice shall give the time, date and place of the meeting and indicate the business proposed to be transacted at it. Where a meeting is to be held

remotely, either in whole or in part, this shall be stated in the notice together with details of how to access the meeting.

5.3 A copy of the notice must also be sent to all Directors and to the External Auditor (unless they are notified of the meeting in accordance with paragraph 4.1.1 above).

5.4 Want of service of the notice on any Member of the Trust shall not affect the validity of a meeting.

6. Business to be transacted at the Annual Members' Meeting

6.1 The following business must be transacted at the Annual Members' Meeting:

6.1.1 the presentation of the Annual Accounts;

6.1.2 the presentation of any report prepared by the External Auditors on the Annual Accounts;

6.1.3 the presentation of the Annual Report; and

6.1.4 the consideration of any motions to ratify any amendment to the Constitution which has been agreed since the last Annual Members' meeting in relation to the powers and duties of the Council of Governors.

6.2 A motion under paragraph 6.1.4 above, in relation to each specific amendment to the Constitution, shall be set out in the notice for the meeting and moved by the Chair of the meeting.

6.3 No other business shall be transacted at an Annual Members' Meeting.

7. Chair of the Annual Members' Meeting

7.1 The Chair of the Trust, if present, shall preside.

7.2 If the Chair is absent, the Deputy Chair of the Trust, shall preside.

7.3 If both the Chair and Deputy Chair are absent, a Governor or non-executive Director, chosen by the Governors of the Trust, shall preside.

7.4 The ruling of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

8. Preservation of Order

- 8.1 The Chair acting reasonably, may exclude any Member, Governor, Director, officer of the Trust or member of the public from the meeting if they are interfering with or preventing the reasonable conduct of the meeting.

9. Presentation of the Annual Accounts and Annual Report

- 9.1 The Annual Accounts and Annual Report shall be presented by the Chief Executive (or by a Director appointed by him).

10. Quorum

- 10.1 No business shall be transacted at an Annual Members' Meeting unless there are at least fifty (50) Members present.
- 10.2 A Member shall be classed as being present at a meeting if:
- (a) They are present in person at the location (if any) specified in the notice in which the meeting is being held; or
 - (b) They are in "remote attendance" at the meeting.
- 10.3 A Member shall satisfy the following conditions to be counted as being in "remote attendance" at a meeting:
- (a) They have verbally confirmed or otherwise indicated their presence to the Chair.
 - (b) They are able to hear, and where practicable see, and be so heard and, where practicable, be seen by the other Members in attendance.
- 10.3 Any question as to whether a Member satisfies the conditions for "remote attendance" in para. 10.3, at any or a particular time, shall be determined by the Chair.

11. Voting

- 11.1 The method of voting on any motion under paragraph 6.1.4 shall be determined by the Chair.

12. Minutes

- 12.1 The minutes of the Annual Members' Meeting shall be approved at the next ordinary meeting of the Council of Governors.

13. Adjournment

13.1 An Annual Members' Meeting may be adjourned by the Chair (whether or not it has commenced) to such time and place as the Chair shall state, where acting reasonably it appears to the Chair that:

- (a) Members wishing to attend the meeting cannot be properly or conveniently accommodated in or access the place appointed for the meeting;
- (b) the conduct of the persons present prevents, or is likely to prevent, the orderly continuation of the business of the meeting;
or
- (c) an adjournment is otherwise necessary so that the business of the meeting may be properly conducted;

and any business remaining on the agenda shall stand adjourned until that adjourned meeting.