



**Sussex Community**  
NHS Foundation Trust

# Constitution

**Based on NHS Foundation Trust Model Core Constitution**  
**This version dated December 2018**

**v1.017**

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## **1 Interpretation and definitions**

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

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

the **2006 Act** is the National Health Service Act 2006.

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

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

**Annual Members' Meeting** is defined in paragraph 11 of this Constitution.

**Authorisation** means an authorisation given by NHS Improvement under section 35 of the 2006 Act.

**Board of Directors** is the Board of Directors of the Trust as constituted in accordance with this Constitution.

**Clinical Commissioning Group** or **CCG** means a clinical commissioning group as defined in section 11 of the 2006 Act.

the **Sussex and East Surrey Commissioners** means the alliance of the eight clinical commissioning groups in Sussex and East Surrey.

the **Code of Conduct for Governors** means the Trust's code of conduct for the Governors as adopted by the Trust from time to time.

**Code of Governance** means Monitor's NHS Foundation Trust Code of Governance, as may be amended or updated by NHS Improvement from time to time.

**Constitution** means this constitution and all annexes to it.

**Council of Governors** is the council of governors of the Trust as constituted in accordance with this Constitution.

**Director** means a member of the Board of Directors

**Governor** means a member of the Council of Governors.

**Lead Governor** means one (1) Governor appointed by the Council of Governors to lead the Council of Governors and to communicate directly with NHS Improvement in certain circumstances.

**Model Election Rules** means those election rules as published and/or updated by NHS Providers from time to time, the current version (as at the date of this Constitution) of which is attached to this Constitution at Annex 4.

**NHS Improvement** is the body corporate established on 1 April 2016 and responsible for overseeing Foundation Trusts and NHS Trusts, as well as independent providers that provide NHS-funded care.

**NHS Providers** means the member owned registered charity (charity no. 1140900 registration no. 07525114) established for promotion of the NHS public provider trusts and foundation trusts.

**Public Constituency** means those who live in an area specified in Annex 1 of this Constitution as an area for any public constituency of the Trust as constituted in accordance with paragraph 7 of this Constitution.

**Secretary** means a person whose function shall be to provide advice on corporate governance issues to the Board of Directors, Council of Governors and the chairman.

**Staff Constituency** means those individuals who come within paragraph 8.1 and 8.2 of this Constitution and who are referred to collectively as the staff constituency, in accordance with paragraph 8.3 of this Constitution.

## **2 Name**

The name of the foundation trust is Sussex Community NHS Foundation Trust (the “**Trust**”).

## **3 Principal purpose**

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

#### **4 Powers**

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

#### **5 Membership and constituencies**

- 5.1 The Trust shall have members, each of whom shall be a member of one (1) of the following constituencies:
  - 5.1.1 a Public Constituency; and
  - 5.1.2 a Staff Constituency.

#### **6 Application for membership**

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

#### **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 individuals who live in an area specified for 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 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - 8.1.2 they have been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than



under a contract of employment with the Trust, may become or continue as members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.

- 8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into four (4) descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

## **9 Automatic membership by default – staff**

- 9.1 An individual who is:
  - 9.1.1 eligible to become a member of the Staff Constituency; and
  - 9.1.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

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

## **10 Restriction on membership**

- 10.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 10.3 An individual must be at least 12 years old to become a member of the Trust.
- 10.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 8 – Further Provisions

## **11 Annual Members' Meeting**

- 11.1 The Trust shall hold an annual meeting of its members ("**Annual Members'**

**Meeting**”). The Annual Members’ Meeting shall be open to members of the public.

- 11.2 Further provisions about the Annual Members’ Meeting are set out in Annex 9 – Members’ Meetings.

## **12 Council of Governors - composition**

- 12.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed Governors.
- 12.2 The composition of the Council of Governors is specified in Annex 3. Appointed Governors include: appointed representatives from the organisations with which the Trust has close relationships (currently Local Authorities, Clinical Commissioning Groups and Higher Education) and; where the Trust appoints Governors to represent a specific group of the community it serves (currently Children and Young People, and Volunteers).
- 12.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituencies or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.
- 12.4 The Sussex and East Surrey Commissioners listed in Annex 3 shall be eligible to appoint a Governor.
- 12.5 In respect of the higher education organisations listed in Annex 3, if the University of Surrey and the University of Brighton are unable to agree on the joint appointment of a higher education sector Governor, the organisations shall appoint on a rotational basis one (1) higher education sector Governor by a process to be agreed between the organisations. In the event that the organisations are unable to agree which organisation shall appoint a Governor for each term, the Trust shall determine which organisation shall appoint the Governor. A Governor appointed in accordance with this shall be appointed for a two (2) year term.
- 12.6 Any potential conflicts of interests of appointed Governors will be managed through the Trust’s normal processes of maintaining a Register of Interests of Governors and asking for declarations of interest from Governors at the start of each meeting. Any declared conflicts will exclude the relevant Governor(s) from that part of the discussions and any subsequent vote.

## **13 Council of Governors – election of Governors**

- 13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 13.2 The Model Election Rules as published from time to time by NHS Providers form

part of this Constitution. The Model Election Rules current at the date of the Trust's Authorisation are attached at Annex 4.

13.3 A subsequent variation of the Model Election Rules by NHS Providers shall take effect for the Trust as soon as it is published, but shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 46 of the Constitution (amendment of the Constitution).

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

#### **14 Council of Governors - tenure**

14.1 An elected Governor may hold office for a period of up to three (3) years.

14.2 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.

14.3 An elected Governor shall be eligible for re-election at the end of their term.

14.4 An appointed Governor may hold office for a period of up to two (2) years.

14.5 An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.

14.6 An appointed Governor shall be eligible for re-appointment at the end of their term provided that an appointed Governor shall not hold office for more than three (3) consecutive terms, and shall not be re-appointed thereafter until having been out of office for at least six (6) months.

#### **15 Council of Governors – disqualification and removal**

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

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

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

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

15.1.4 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.

- 15.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 15.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.
- 15.4 Provision for the removal of Governors is set out at Annex 5.

## **16 Council of Governors – duties of Governors**

- 16.1 The general duties of the Council of Governors are:
  - 16.1.1 to hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors; and
  - 16.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.
- 16.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require to discharge their duties.

## **17 Council of Governors – meetings of Governors**

- 17.1 The chairman of the Trust (i.e. the chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 26.1 or, in their absence, the deputy chairman (appointed in accordance with the provisions of paragraph 27.1 below), shall preside at meetings of the Council of Governors.
- 17.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 17.3 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one (1) or more of the Directors to attend a meeting.

## **18 Council of Governors – referral to the panel**

- 18.1 In this paragraph, the panel means a panel of persons appointed by NHS Improvement 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 provision made by or under Chapter 5

of Part 2 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 – standing orders**

- 19.1 The standing orders for the practice and procedure of the Council of Governors are attached at Annex 6.

## **20 Council of Governors - conflicts of interest of Governors**

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

## **21 Council of Governors – travel expenses**

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

## **22 Council of Governors – further provisions**

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

## **23 Board of Directors – composition**

- 23.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive Directors. The non-executive Directors (including the chairman) will always form the majority of the Board of Directors.

- 23.2 The Board of Directors is to comprise:

23.2.1 a non-executive chairman;

23.2.2 up to six (6) other non-executive Directors; and

23.2.3 up to six (6) executive Directors.

- 23.3 One (1) of the executive Directors shall be the chief executive.

- 23.4 The chief executive shall be the Accounting Officer.
- 23.5 One (1) of the executive Directors shall be the finance Director.
- 23.6 One (1) of the executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 23.7 One (1) of the executive Directors is to be a registered nurse or a registered midwife.

#### **24 Board of Directors – general duty**

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

#### **25 Board of Directors – qualification for appointment as a non-executive Director**

- 25.1 A person may be appointed as a non-executive Director only if:
- 25.1.1 they are a member of a Public Constituency;
  - 25.1.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university; and
  - 25.1.3 they are not disqualified by virtue of paragraph 29 below.

#### **26 Board of Directors – appointment and removal of chairman and other non-executive Directors**

- 26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chairman and the other non-executive Directors.
- 26.2 Removal of the chairman or another non-executive Director shall require the approval of three-quarters of the members of the Council of Governors.

#### **27 Board of Directors – appointment of deputy chairman**

- 27.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one (1) of the non-executive Directors as a deputy chairman.

#### **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 chairman, the chief executive and the other non-executive Directors shall appoint or remove the other executive Directors.

## **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 in relation to whom a moratorium period under a debt relief order applies (under part 7A of the Insolvency Act 1986);
  - 29.1.3 a person who has made a composition or arrangement with, or granted a trust deed for, thier creditors and has not been discharged in respect of it;
  - 29.1.4 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/her; and/or
  - 29.1.5 a person who does not satisfy all of the requirements of Regulation 5(3) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014/2936 (as amended or updated from time to time).
  - 29.1.6 A person who does not fulfill the requirements of the Fit and Proper Persons Test as defined in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

## **30 Board of Directors – meetings**

- 30.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 30.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

## **31 Board of Directors – standing orders**

- 31.1 A summary version of the standing orders for the practice and procedure of the Board of Directors is attached at Annex 7.

## **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 in sub-paragraph 32.1.1 is not infringed if:
- 32.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - 32.2.2 the matter has been authorised in accordance with the Constitution.
- 32.3 The duty referred to in sub-paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4 In sub-paragraph 32.1.2, “third party” means a person other than:
- 32.4.1 the Trust; or
  - 32.4.2 a person acting on its behalf.
- 32.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 32.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 32.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 32.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 32.9 A Director need not declare an interest:



- 32.9.1 if after taking advice from the Secretary it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 32.9.2 if, or to the extent that, the Directors are already aware of it;
- 32.9.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
  - 32.9.3.1 by a meeting of the Board of Directors; or
  - 32.9.3.2 by a committee of the Directors appointed for the purpose under the Constitution.

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

- 32.10.1 the Board of Directors by majority vote at a general meeting of the Board of Directors disapplies the provision of the Constitution which would otherwise prevent a Director from being counted as participating in the decision-making process; or
- 32.10.2 the Director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- 32.10.3 the Director's conflict of interest arises from a permitted cause (as determined by the Board of Directors in their absolute discretion from time to time).

### **33 Board of Directors – remuneration and terms of office**

- 33.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the chairman and the other non-executive Directors.
- 33.2 The Board of Directors shall establish a committee of non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the chief executive and other executive Directors.

### **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.

### **35 Admission to and removal from the registers**

35.1 Any person entitled to be a member who as appropriate, applies or is invited to become a member in accordance with this Constitution, shall have their name added to the register of members by the Secretary. Such person's membership of the Trust shall commence from the date of their name being added to the register of members.

35.2 The Secretary shall remove from the register of members the name of any member who:

35.2.1 is no longer eligible to continue as a member under the provisions of this Constitution;

35.2.2 is disqualified from membership in accordance with the provisions of this Constitution;

35.2.3 who is removed from membership of the Trust in accordance with the provisions of this Constitution; and/or

35.2.4 is deceased.

35.3 The register of Governors shall list the names of Governors, the class or constituency area which they belong to, and an address through which they may be contacted (which may be the Secretary at the principal address of the Trust).

35.4 The register of interests of Governors shall contain the names of each Governor, whether they have declared any interests and, if so, the interests declared in accordance with this Constitution or the standing orders for Governors.

35.5 The register of Directors shall list the names of Directors, their role on the Board of Directors, and an address through which they may be contacted (which may be the Secretary at the principal address of the Trust).

35.6 The register of interests of Directors shall contain the names of each Director, whether they have declared any interests and, if so, the interests declared in accordance with this Constitution on the standing orders for Directors.

### **36 Registers – inspection and copies**

36.1 The Trust shall make the registers specified in paragraph 34 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 details of any member of the Trust, if the member so requests in writing to the Secretary.
- 36.3 So far as the registers are required to be made available:
- 36.3.1 they are to be available for inspection free of charge at all reasonable times; and
  - 36.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

### **37 Documents available for public inspection**

- 37.1 The 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/or
  - 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 Committees of the Board of Directors**

- 39.1 The Board of Directors shall establish a committee of non-executive Directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate. The Board of Directors may also establish other Committees as it deems appropriate from time to time.

### **40 Accounts**

- 40.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 40.2 NHS Improvement may with the approval of the Secretary of State give

directions to the Trust as to the content and form of its accounts.

- 40.3 The accounts are to be audited by the Trust's auditor.
- 40.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS Improvement may with the approval of the Secretary of State direct.
- 40.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

#### **41 Annual report, forward plans and non-NHS work**

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

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

- 42.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 42.1.1 the annual accounts;
  - 42.1.2 any report of the auditor on them; 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 (1) 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 or its nominees.

## **44 Amendment of the Constitution**

- 44.1 The Trust may make amendments of its Constitution only if:
- 44.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments; and
  - 44.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 44.2 Amendments made under paragraph 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 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 (1) 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.

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.

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

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

- 45.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 45.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the trust voting approve entering into the transaction.
- 45.3 In this paragraph 45, significant transaction means a transaction which meets all or any one of the tests below:
- 45.3.1 the fixed asset test; and/or
  - 45.3.2 the turnover test; and/or
  - 45.3.3 the gross capital test.

The fixed asset test:

- 45.3.4 is met if the assets which are the subject of the transaction exceed 25% of the fixed assets of the Trust.

The turnover test:

- 45.3.5 is met if, following the completion of the relevant transaction, the income of the Trust will increase or decrease by more than 25%;

The gross capital test:

- 45.3.6 is met if the gross capital of the corporation or business which is the subject of the transaction represents more than 25% of the gross capital of the Trust, where gross capital is:

- 45.3.6.1 the aggregate of the market value of the relevant corporation's or business's equity; and its debt due in

more than one (1) year; and any excess of current liabilities over its current assets or, if there is no market value; then

45.3.6.2 the aggregate of the of the relevant corporation's or business's capital and reserves; and its debt due in more than one (1) year; and any excess of current liabilities over its current assets; and

45.3.6.3 the Trust's gross capital is the aggregate of its capital and reserves; and its debt due in more than one (1) year; and any excess of current liabilities over its current assets.

45.3.7 for the purposes of calculating the tests in this paragraph 45, figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts.

A transaction:

45.3.8 includes all agreements (including amendments to agreements) entered into by the Trust;

45.3.9 excludes a transaction in the ordinary course of business (including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Trust);

45.3.10 excludes any agreement or changes to healthcare services carried out by the Trust following a reconfiguration of services led by the commissioners of such services; and

45.3.11 excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the Trust.

45.3.12 excludes changes to services taking place as a result of a merger or acquisition on separation or dissolution.

## **46 Procedures and protocols**

46.1 The Board of Directors shall adopt such procedures, protocols, as it shall deem to be appropriate for the good governance of the Trust from time to time.

## **47 Indemnity**

47.1 Members of the Board of Directors and Council of Governors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by



the Trust.

- 47.2 The Trust may purchase and maintain for members of the Board of Directors and Council of Governors insurance in respect of Directors' and Officers' liability, including, without limitation, liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

## ANNEX 1 – THE PUBLIC CONSTITUENCIES

There shall be ten (10) Public Constituencies. Members of the public shall be eligible for membership of the Public Constituencies as shown in the table below:

| <b>Public Constituency Area</b>        | <b>Minimum number of public members</b> |
|--|---|
| Brighton and Hove City Council         | 200                                     |
| Mid Sussex District Council            | 100                                     |
| Arun District Council                  | 100                                     |
| Adur District Council                  | 50                                      |
| Chichester District Council            | 50                                      |
| Crawley District Council               | 50                                      |
| Horsham District Council               | 100                                     |
| Worthing Borough Council               | 50                                      |
| High Weald Lewes Havens                | 20                                      |
|  |   |
| Rest of England                        | 0                                       |
| <b>Total number of minimum members</b> | <b>720</b>                              |

## ANNEX 2 – THE STAFF CONSTITUENCY

The Staff Constituency is divided into four (4) classes. Staff shall be eligible for membership of the class within the Staff Constituency as shown in the table below:

| Class                                      | Description  | Minimum number of members in each class |
|--|--|---|
| Doctors and Dentists                       | Individuals who are registered with the relevant regulatory body such as the General Medical Council and individuals who have attained a professional qualification as Doctor of Dental Surgery or Doctor of Dental Medicine and are registered with the relevant regulatory body such as the General Dental Council | <b>10</b>                               |
| Nurses and Health Care Assistants          | Individuals who are professionally registered with the relevant regulatory body such as the Nursing and Midwifery Council and individuals employed as Health Care Assistants who are trained to the competencies required to perform their role  | <b>10</b>                               |
| Therapists and Allied Health Professionals | Individuals employed as Therapists and Allied Health Professionals who are professionally registered with the Health and Care Professionals Council  | <b>10</b>                               |
| Support Staff                              | Individuals employed in a capacity other than mentioned in the above three categories  | <b>10</b>                               |
| <b>Total</b>                               |  | <b>40</b>                               |

The minimum number of members for the Staff Constituency shall be 40.

### ANNEX 3 – COMPOSITION OF THE COUNCIL OF GOVERNORS

The Council of Governors shall comprise twenty-eight (28) Governors as set out in the table below:

|     |  | <b>Number of<br/>Governors</b> |
|-----|--|--------------------------------|
| 1.  | <b>ELECTED PUBLIC GOVERNORS</b>  |                                |
| 2.  | Brighton and Hove City Council   | 3                              |
| 3.  | Mid Sussex District Council  | 1                              |
| 4.  | Arun District Council  | 2                              |
| 5.  | Adur District Council  | 1                              |
| 6.  | Chichester District Council  | 2                              |
| 7.  | Crawley Borough Council  | 1                              |
| 8.  | Horsham District Council   | 2                              |
| 9.  | Worthing Borough Council   | 1                              |
| 10. | High Weald Lewes Havens  | 2                              |
| 11. |  |                                |
| 12. | <b>ELECTED STAFF GOVERNORS</b>   |                                |
| 13. | Doctors and Dentists   | 1                              |
| 14. | Nurses and Health Care Assistants  | 2                              |
| 15. | Therapists and Allied Health Professionals   | 1                              |
| 16. | Support Staff  | 1                              |
| 17. |  |                                |
| 18. | <b>APPOINTED GOVERNORS</b>   |                                |
| 19. | Local Authorities:<br>Brighton & Hove City Council<br>West Sussex County Council   | 1<br>1                         |
| 20. | Sussex and East Surrey Commissioners   | 1                              |
| 21. | Higher education sector representative:<br><ul style="list-style-type: none"> <li>• University of Surrey; and</li> <li>• University of Brighton,</li> </ul> who shall appoint a Governor jointly in accordance with paragraph 12.5 of this Constitution. | 1                              |
| 22. | Young people's representatives   | 2                              |
| 23. | Volunteer Governors  | 2                              |
|     | <b>Total number of Governors</b>   | <b>28</b>                      |
|     |  |                                |

## **ANNEX 4 –THE MODEL ELECTION RULES**

The Trust is to hold elections in accordance with the first past the post version of the Model Election Rules, as set out below.

### **PART 1: INTERPRETATION**

1. Interpretation

### **PART 2: TIMETABLE FOR ELECTION**

2. Timetable
3. Computation of time

### **PART 3: RETURNING OFFICER**

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

### **PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

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

### **PART 5: CONTESTED ELECTIONS**

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (Public Constituency)

*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 Constituency)
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 Constituency)
39. De-duplication of votes
40. Sealing of packets

**PART 6: COUNTING THE VOTES**

41. Not used
42. Arrangements for counting of the votes
43. The count
44. Rejected ballot papers and rejected text voting records
45. Not used
46. Not used
47. Not used
48. Not used
49. Not used
50. Not used
51. Equality of votes

**PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS**

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

**PART 8: DISPOSAL OF DOCUMENTS**

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

## **PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

59. Countermand or abandonment of poll on death of candidate

## **PART 10: ELECTION EXPENSES AND PUBLICITY**

### *Expenses*

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

### *Publicity*

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

## **PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES**

66. Application to question an election

## **PART 12: MISCELLANEOUS**

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

## **PART 1: INTERPRETATION**

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### **1. Interpretation**

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

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

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

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

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

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

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

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

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

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

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

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

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

“*Monitor*” means the corporate body known as NHS Improvement 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**

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### **2. Timetable**

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

| <b>Proceeding</b>  | <b>Time</b>  |
|--|--|
| 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.                                    |

2.2 Nominees for Public Governor seats (and all members intending to vote) should submit a declaration in line with that set out in Annex 5 of this Constitution, such declarations to be submitted as part of the nominations documentation not sooner than (i.e. not before) the fortieth day before close of the poll but not later than (i.e. not after) the twenty eighth day before close of poll.

### **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**

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### **4. Returning Officer**

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

### **5. Staff**

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

### **6. Expenditure**

- 6.1 The corporation is to pay the returning officer:
- (a) any expenses incurred by that officer in the exercise of their 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**

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### **8. Notice of election**

- 8.1 The returning officer is to publish a notice of the election stating:
- (a) the constituency, or class within a constituency, for which the election is being held,
  - (b) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
  - (c) the details of any nomination committee that has been established by the corporation,
  - (d) the address and times at which nomination forms may be obtained;

- (e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer
- (h) the date and time of the close of the poll in the event of a contest.

## **9. Nomination of candidates**

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

9.2 The returning officer:

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

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

## **10. Candidate's particulars**

10.1 The nomination form must state the candidate's:

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

## **11. Declaration of interests**

11.1 The nomination form must state:

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

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

## **12. Declaration of eligibility**

- 12.1 The nomination form must include a declaration made by the candidate:
- (a) that they are not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the Constitution; and,
  - (b) for a member of the Public Constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

### **13. Signature of candidate**

- 13.1 The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:
- (a) they wish to stand as a candidate,
  - (b) their declaration of interests as required under rule 11, is true and correct, and
  - (c) their declaration of eligibility, as required under rule 12, is true and correct.

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

### **14. Decisions as to the validity of nomination**

- 14.1 Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:
- (a) decides that the candidate is not eligible to stand,
  - (b) decides that the nomination form is invalid,
  - (c) receives satisfactory proof that the candidate has died, or
  - (d) receives a written request by the candidate of their withdrawal from candidacy.

- 14.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:
- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
  - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
  - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,

- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

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

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

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

## **15. Publication of statement of candidates**

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

15.2 The statement must show:

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

- (b) the declared interests of each candidate standing,

as given in their nomination form.

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

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

## **16. Inspection of statement of nominated candidates and nomination forms**

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

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

with the copy or extract free of charge.

**17. Withdrawal of candidates**

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

**18. Method of election**

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

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

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

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

**PART 5: CONTESTED ELECTIONS**

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**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 Constituency)**

21.1 The corporation shall require each voter who participates in an election for a Public Constituency to make a declaration confirming:

- (a) that the voter is the person:
  - (i) to whom the ballot paper was addressed, and/or
  - (ii) to whom the voter ID number contained within the e-voting information was allocated,
- (b) that they have not marked or returned any other voting information in the election, and
- (c) the particulars of thier 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 thier declaration of identity with thier 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 their 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 64 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; and
- (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 Constituency, make a declaration of identity;in order to be able to cast thier vote;
  - (b) specify:
    - (i) the name of the corporation,
    - (ii) the constituency, or class within a constituency, for which the election is being held,
    - (iii) the number of members of the Council of Governors to be elected

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

26.5

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

- (a) require a voter to
  - (i) enter their voter ID number in order to be able to cast their vote; and
  - (ii) where the election is for a Public Constituency, make a declaration of identity;
- (b) specify:
  - (i) the name of the corporation,
  - (ii) the constituency, or class within a constituency, for which the election is being held,
  - (iii) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
  - (iv) instructions on how to vote and how to make a declaration of identity,
  - (v) the date and time of the close of the poll, and
  - (vi) the contact details of the returning officer;

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

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

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

*The poll*

**27. Eligibility to vote**

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

**28. Voting by persons who require assistance**

28.1 The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

28.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as they consider necessary to enable that voter to vote.

**29. Spoilt ballot papers and spoilt text message votes**

29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if they can obtain it.

29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless 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 they 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 they are 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 spoiled text message vote (if that officer was able to obtain it), and
- (c) the details of the replacement voter ID number issued to the voter.

### **30. Lost voting information**

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

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

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

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

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

### **31. Issue of replacement voting information**

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

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

- (a) the name of the voter,



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

### **32. ID declaration form for replacement ballot papers (Public Constituency)**

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

*Polling by internet, telephone or text*

### **33. Procedure for remote voting by internet**

- 33.1 To cast their 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 their vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom they wish to cast their vote.
- 33.5 The voter will not be able to access the internet voting system for an election once their vote at that election has been cast.

### **34. Voting procedure for remote voting by telephone**

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

once his or her vote at that election has been cast.

**35. Voting procedure for remote voting by text message**

35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.

35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom they wish to vote.

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

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

**36. Receipt of voting documents**

36.1 Where the returning officer receives:

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

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

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

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

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

**37. Validity of votes**

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

37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, they are to:

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

37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, they are to:

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

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

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

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

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

### **38. Declaration of identity but no ballot paper (Public Constituency)**

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

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

### **39. De-duplication of votes**

- 39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.
- 39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election they shall:
- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
  - (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number.
- 39.3 Where a ballot paper is disqualified under this rule the returning officer shall:
- (a) mark the ballot paper “disqualified”,
  - (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
  - (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
  - (d) place the document or documents in a separate packet; and
  - (e) disregard the ballot paper when counting the votes in accordance with these rules.
- 39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
  - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
  - (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
  - (d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

#### **40. Sealing of packets**

- 40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:
- (a) the disqualified documents, together with the list of disqualified documents inside it,
  - (b) the ID declaration forms, if required,

- (c) the list of spoiled ballot papers and the list of spoiled text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

## **PART 6: COUNTING THE VOTES**

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### **41. Not used**

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

shall, subject to rules 44.2 and 44.3, be rejected and not counted.

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

44.3 A ballot paper on which a vote is marked:

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

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

44.4 The returning officer is to:

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules 44.2 and 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

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

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

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

44.6 Any text voting record:

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

shall, subject to rules 44.7 and 44.8, be rejected and not counted.

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

44.8 A text voting record on which a vote is marked:

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

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

44.9 The returning officer is to:

- (a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and
- (b) in the case of a text voting record on which any vote is counted under rules 44.7 and 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

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

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

(c) unmarked or rejected because of uncertainty,

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

**45. Not used**

**46. Not used**

**47. Not used**

**48. Not used**

**49. Not used**

**50. Not used**

**51. Equality of votes**

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

## **PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS**

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

52.2 The returning officer is to make:



- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule 44.5,
- (c) the number of rejected text voting records under each of the headings in rule 44.10,

available on request.

### **53. Declaration of result for uncontested elections**

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

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

## **PART 8: DISPOSAL OF DOCUMENTS**

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### **54. Sealing up of documents relating to the poll**

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

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

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

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

- (a) the disqualified documents, with the list of disqualified documents inside it,

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

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

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

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

## **55. Delivery of documents**

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

## **56. Forwarding of documents received after close of the poll**

56.1 Where:

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

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

## **57. Retention and public inspection of documents**

57.1 The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one (1) 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 NHS Improvement has declared that the vote was invalid.

## **PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

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### **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) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
- (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

59.2 Where a new election is ordered under rule 59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

59.3 Where a poll is abandoned under rule 59.1(a), rules 59.4 to 59.7 are to apply.

59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.

59.5 The returning officer is to:

- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
- (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and

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

59.6 The returning officer is to endorse on each packet a description of:

- (a) its contents,

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

59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules 59.4 to 59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

## **PART 10: ELECTION EXPENSES AND PUBLICITY**

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### *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 NHS Improvement 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**

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**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 NHS Improvement 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 NHS Improvement 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. NHS Improvement will refer the application to the independent election arbitration panel appointed by NHS Improvement.
- 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 NHS Improvement 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**

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### **67. Secrecy**

67.1 The following persons:

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

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

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

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

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

### **68. Prohibition of disclosure of vote**

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

### **69. Disqualification**

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



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

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

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

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

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

## ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

### 1. Eligibility, disqualification and grounds for removal

- 1.1. A person may not become or continue as a member of the Council of Governors if:
- 1.1.1. they are a person whose tenure of office as the chairman or as a member or director of an organisation engaged in the provision of health services for the purpose of health services in England, including an NHS foundation trust, has been terminated on the grounds that his/her appointment is not in the interests of the health service, for non attendance at meetings, or for breach of the relevant organisation's constitution (including for non-disclosure of an interest which was required to be disclosed);
  - 1.1.2. they are an elected or appointed as a Governor of the Trust and is also an executive or non-executive of the Trust, or a governor, non-executive director (including the chairman) or executive director (including the chief executive officer) of another NHS foundation trust or such other organisation as the Council of Governors may (after consultation with the Board of Directors ) decide;
  - 1.1.3. they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirements to register under current legislation coming into force;
  - 1.1.4. they have within the preceding two (2) years been dismissed, otherwise than by reason of redundancy, from any paid employment with an organisation engaged in the provision of health care services for the purposes of the health service in England. In other cases of dismissal such as capability, an individual may be permitted to become a Governor at the discretion of the Board of Directors and subject to full disclosure of the relevant circumstances and facts concerning the dismissal;
  - 1.1.5. they have a medical practitioner that has been disqualified by a direction under any applicable legislation and or has been removed from any list prepared thereunder;
  - 1.1.6. they or any other health or social care practitioner whose professional and/or other registrations appropriate to his/her practice and specialty have been suspended, disqualified, revoked or removed in any manner or they have otherwise failed to maintain or lost his/her registration for any disciplinary breaches or pursuant to any other proceedings and such registration has not been subsequently reinstated;
  - 1.1.7. they are incapable by reason of mental disorder, illness or injury of managing and administering his/her property and affairs, such incapacity to be determined by an appropriately qualified medical professional;

- 1.1.8. they are a spouse, partner, parent or child of a member of the Board of Directors of the Trust;
- 1.1.9. they have a warning from the Trust for verbal and/or physical abuse towards Trust staff, staff contracted to provide a service for the Trust or its patients or visitors;
- 1.1.10. they fail to comply with or complete any formalities that are required by the Trust to be completed before the individual becomes a Governor or during the course of being a Governor. This will include any failure to sign a declaration in the form specified by the Council of Governors (set out at paragraph 3 below) of the particulars of his/her qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Trust;
- 1.1.11. they fail to attend two (2) meetings in any financial year, unless the other Governors are satisfied that the absences were due to reasonable causes and he will be able to start attending meetings of the Trust again within such a period, as they consider reasonable; or
- 1.1.12. they are, or spouse or partner of, a member of a Clinical Commissioning Group unless appointed in accordance with paragraph 12.4/Annex 3.

## **2. Appointed Governors**

- 2.1. Appointment of an appointed Governor shall be made in writing by an appointing body in response to a written invitation issued by order of the Board of Directors . The letter of appointment, which shall be valid only if accompanied by a declaration as set out in this Annex 5, shall be addressed to the chairman of the Trust and shall take effect from the time it is received as confirmed in writing by the Secretary.

## **3. Governor's declaration**

- 3.1. A person may not stand for election to the Council of Governors as a public Governor, nor act as an appointed Governor nor vote at an election for public Governor(s), unless they have made a declaration in the form set out below confirming that they have not prevented from being a member of the Council of Governors by paragraph 15 of this Constitution (disqualification and removal), such declaration to be made within the specified period. It is an offence to knowingly or recklessly make a declaration under section 60 of the 2006 Act which is false in a material particular.
- 3.2 This section does not apply to an election held for the staff constituency.
- 3.3 “Specified period” means as specified in the trust's constitution Election Rules, Part 2, Timetable for Elections, s.2.1.

## THE DECLARATION

### SUSSEX COMMUNITY NHS FOUNDATION TRUST (*the Trust*)

I, [insert name] of [insert address] hereby declare that (a) I am entitled to stand for election to the Council of Governors as a Governor elected by the Public Constituency because I am a member of the Public Constituency in which the election is being held, OR I, [insert name] of [insert address] hereby declare that (in the case of an elected Governor only) I am entitled to vote at a meeting of the Council as a member of the Trust, and (b) I am not prevented from being a member of the Council of Governors of the Trust by paragraph 8 of Schedule 7 to the National Health Service Act 2006, which states;

The following may not become or continue as members of the Council of Governors:

1. a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
2. a person in relation to whom a moratorium period under a debt relief order applies (under part 7A of the Insolvency Act 1986);
3. a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it; and/or
4. 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 months (without the option of a fine) was imposed on him/her.

OR

I, [insert name] of [insert address] hereby declare that I am entitled to vote at an election for the Council of Governors because I am eligible to be a member of the constituency in which the election is being held.

This declaration has been made within the specified period as defined in the Constitution in the Election Rules, Part 2, s.2.1.

Signed.....

Print name.....

Date of declaration.....

#### **4. Vacancies for Governors**

- 4.1. Where an elected public or staff Governor ceases to hold office within six (6) months of his/her appointment election, the Trust shall offer the candidate who is not currently a Governor and who secured the second highest number of votes in the last election for the constituency (or class of constituency, as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office for the unexpired balance of the retiring member's term of office. If that candidate does not wish to fill the vacancy it will then be offered to the candidate who secured the next highest number of votes until the vacancy is filled.
- 4.2. If no reserve candidate is available or willing to fill the vacancy, or if the vacancy occurs beyond the first six (6) months after the vacating Governor was elected then, subject as provided below, an election will then be held for a new Governor to hold office for three (3) years and otherwise in accordance with the Constitution.
- 4.3. Provided that if an election is due to be held within six (6) months of the vacancy having arisen the office will stand vacant until the next scheduled election unless by so doing this causes the number of Public Governors to be less than half the total membership of the Council of Governors. In that event an election will be held in accordance with the Model Election Rules as soon as reasonably practicable.
- 4.4. The returning officer under the Model Election Rules shall maintain a record of votes cast at each election for the above purposes and the returning officer shall conduct or shall oversee the conducting of the process set out above.
- 4.5. Eligibility to stand as Governor may be checked against the electoral register or equivalent, to confirm that the candidate is a current member of that constituency at the time that nominations close.
- 4.6. Where a vacancy arises amongst the appointed Governors, the Trust shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term.

#### **5. Lead Governor**

- 5.1. The Council of Governors shall select a public Governor to undertake the role of Lead Governor. A summary of the responsibilities of the Lead Governor is provided at paragraph 5.6 below.
- 5.2. The Lead Governor shall be elected at the first meeting of the Council of Governors, and at the next meeting after the position of Lead Governor becoming vacant.
- 5.3. The Lead Governor shall have a term of two (2) years.
- 5.4. The Lead Governor may relinquish his position by giving notice to the chairman in writing. They will cease to be Lead Governor if they are removed as Lead Governor (by a majority of two (2) thirds of the remaining Governors present and voting) or is removed as a Governor.

- 5.5. The Secretary shall notify NHS Improvement of a change of Lead Governor.
- 5.6. The responsibility of the Lead Governor is to liaise with NHS Improvement in those limited circumstances where it is not appropriate for NHS Improvement to communicate through the normal channel ie via the chairman. Examples include:
- 5.6.1. if NHS Improvement has concerns about the appointment or removal of the chairman;
- 5.6.2. if NHS Improvement has concerns about the leadership provided to the Trust, which could lead NHS Improvement to apply its formal powers to remove the chairman; and/or
- 5.6.3. if material decisions have not complied with the Trust's Constitution.
- 5.7. The Lead Governor should inform NHS Improvement, via the Trust's NHS Improvement relationship executive, if a vote of no confidence in the chairman is proposed at a general meeting of the Council of Governors.
- 5.8. The Lead Governor has no greater power or responsibility than other Governors. The Lead Governor should not deputise for the deputy chairman. The appointment of a Lead Governor does not prevent any other Governor approaching NHS Improvement, should they think fit.

## **6. Expenses and remuneration of Governors**

- 6.1. The Trust may reimburse Governors for travelling and other costs and expenses incurred in carrying out their duties as the Board of Directors shall determine in their absolute discretion from time to time.
- 6.2. The Trust may at its discretion decide to reimburse the cost and expense of a Governor's carer arrangements necessarily and reasonably incurred in the Governor carrying out their duties.
- 6.3. In respect of a staff Governor who is an employee of the Trust, the Secretary shall seek to facilitate such employee's reasonable participation as a staff Governor during normal working hours to the extent reasonably necessary for the performance of their duties as a staff Governor (including reasonable time off from his contractual duties) and shall not make any corresponding deduction from salary.
- 6.4. Governors shall not receive remuneration from the Trust for the performance of their duties as Governors otherwise than as set out in paragraphs 6.1, 6.2 or 6.3.

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

### **1. Meetings of the Council of Governors**

#### **Admission of the public and the press**

- 1.1. All meetings of the Council of Governors are to be open to members of the public unless a simple majority of the Governors present and voting at the meeting of the Council of Governors decide otherwise, in relation to all or part of the meeting, for reasons of commercial confidentiality or other special reasons. The chairman may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

### **2. Calling, notice and minutes of meetings**

- 2.1. The Council of Governors is to meet at least four (4) times (including the Annual Members' Meeting) in each financial year. Before each meeting of the Council of Governors, five (5) clear days' notice of the meeting specifying the business proposed to be transacted shall be delivered to every Governor. Notice must also be published on the Trust's website.
- 2.2. Meetings of the Council of Governors may be convened by the Secretary, the chairman, or by five (5) Governors (including at least two (2) elected governors and two (2) appointed Governors) who give written notice (including by fax and email) to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request and will call a meeting of the Council of Governors within the next following twenty eight clear days. If the Secretary fails to convene such a meeting then the chairman or five (5) Governors, whichever is the case, shall convene such a meeting.
- 2.3. Minutes of any meeting of the Council of Governors shall be published on the Trust's website following formal approval of the minutes at the subsequent meeting.

### **3. Quorum**

- 3.1. No business shall be transacted at a meeting of the Council of Governors unless at least one (1) third of the Council of Governors are present, a majority of whom must be Governors elected by the Public Constituencies.

### **4. Chair of the Meeting**

- 4.1. At any meeting of the Council of Governors, chairman shall preside; or in his/her absence, the deputy chairman shall preside. If the deputy chairman is unwilling or unable to preside, at the meeting or at part of the meeting, the Governors present shall choose, by a majority vote, which public Governor shall preside.

### **5. Voting**

- 5.1. Except on the issues which the Constitution requires to be settled by a greater majority, questions arising at a general meeting of the Council of Governors shall be decided by a simple majority of Governors present and voting. The chairman, and the deputy chairman, are not Governors and will not normally vote, however, in the case of an equality of votes the person presiding at the meeting shall, be enfranchised and shall have a casting vote.
- 5.2. Without prejudice to the right of the chairman of the meeting to call for a vote at a meeting on such matters as they may in their absolute discretion deem appropriate, any Governor may require the chairman to take a vote on a resolution at the meeting on the following matters (notwithstanding the absence of such a matter from the agenda for such meeting):
  - 5.2.1. to appoint or remove the chairman and the other non-executive Directors;
  - 5.2.2. to decide the remuneration and allowances and the other terms and conditions of office of the non-executive Directors;
  - 5.2.3. to appoint or remove the auditor;
  - 5.2.4. to receive the annual accounts, any report of the auditor on them and the annual report;
  - 5.2.5. to consider the annual accounts, any report of the Auditor on them and the Annual Report;
  - 5.2.6. to approve an appointment (by the non-executive Directors) of the chief executive other than the initial chief executive of the Trust appointed in pursuance of the 2006 Act Schedule 7 paragraph 19;
  - 5.2.7. to give the views of the Council of Governors to the Directors for the purposes of the preparation (by the Directors) of the document containing information as to the Trust's forward planning in respect of each financial year to be given to NHS Improvement; and
  - 5.2.8. to respond as appropriate when consulted by the Directors in accordance with this Constitution.
- 5.3. All questions put to the vote shall, at the discretion of the chairman of the meeting, be determined by a show of hands or by paper ballot.
- 5.4. If any Governor so requests, his/her vote shall be recorded by name.
- 5.5. In no circumstances may an absent Governor vote by proxy. Absence shall mean being absent at the time of the relevant vote.

## **6. Committees**



- 6.1. The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its functions. The Council of Governors may appoint Governors to such committees and may invite Directors and other persons to attend in an advisory, non-voting capacity. The Council of Governors may, through the Secretary request that external advisors assist them, or any committee which they appoint, in carrying out its duties. Committees established by the Council of Governors may meet in private for reasons of commercial confidentiality or other special reasons if the members of the committee so decide.

## **7. Confidentiality**

- 7.1. In respect of any meeting of the Council of Governors (or any committee thereof) held in private for all or part of such meeting, the Governors shall not disclose, other than to other Governors, the contents of the papers, discussions or minutes of the items taken in private.

## **8. Disclosure of interests**

- 8.1. The Constitution requires Governors to declare any pecuniary, personal or family interest, 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. A family interest will include those of a Governor's spouse or partner. All Governors shall declare such interests. Any Governor appointed or elected subsequently should declare such interests on appointment or election.

- 8.2. Such interests include:

- 8.2.1. directorships, including non-executive directorships held in any company (with the exception of those of dormant companies) or in any public benefit corporation;
- 8.2.2. ownership or part-ownership of any company business or consultancy reasonably regarded as being likely or possibly seeking to do business with the NHS;
- 8.2.3. majority or controlling share holdings in organisations reasonably regarded as being likely or possibly seeking to do business with the NHS;
- 8.2.4. any position of authority in a charity or voluntary organisation in the field of health or social care;
- 8.2.5. any connection with a voluntary or other organisation contracting for NHS services; and/or
- 8.2.6. any other financial interest in the decision before the meeting.

- 8.3. The following exceptions shall not be treated as interests:

- 8.3.1. an employment contract with the Trust held by a staff Governor;
- 8.3.2. an employment contract with their employing Clinical Commissioning Group held by a CCG Governor;
- 8.3.3. an employment contract with a local authority held by a local authority Governor; and/or
- 8.3.4. an employment contract with a stakeholder organisation held by an appointed Governor.

## **9. Declaring interests**

- 9.1. At the time when any Governor's interests are declared, they should be recorded in the minutes of the Council of Governors meeting and entered on a register of interests of Governors to be maintained by the Secretary. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring.
- 9.2. During the course of a meeting of the Council of Governors or a committee, if a conflict of interest is established, the Governor concerned shall disclose the fact and withdraw from the meeting and play no part in the relevant discussion or decision.
- 9.3. If a Governor has any doubt about the relevance of an interest, they should discuss it with the chairman or the Secretary who shall advise him/her whether or not to disclose the interest.

## **10. Code of conduct**

- 10.1. All members of the Council of Governors are required to comply with any Code of Conduct for Governors adopted by the Council of Governors or Board of Directors from time to time.

## **11. Removal from the Council of Governors**

- 11.1. A Governor may be removed from the Council of Governors by a resolution approved at a duly convened meeting of the Council of Governors of which the Governor has had notice, by not less than two (2) thirds of the remaining Governors present and voting, on the grounds that they have committed a serious breach of the Code of Conduct for Governors, is in breach of any element of the list of grounds for removal at paragraph 1 Annex 5 above, or they have acted in a manner detrimental to the interests of the Trust and or the Council of Governors considers that it is not in the best interests of the Trust for him/her to continue as a Governor.
- 11.2. A Governor, whom it is proposed to remove:
  - 11.2.1. shall have notice of the meeting at which his removal is to be discussed;
  - 11.2.2. is entitled to be heard on the resolution at the meeting; and

- 11.2.3. may make representations in writing to the Council of Governors (not exceeding a reasonable length) which shall be sent to all other Governors in advance of the meeting. If received too late for that to be practicable, or because of the Trust's error or omission, the Governor may require (without prejudice to his right to be heard orally) that the representations are to be read out at the meeting.
- 11.3. Any such Governor shall be removed from office on the passing of such a resolution which shall be notified to the Governor removed, in writing by the Secretary, who shall also (in the case of an appointed Governor) notify his/her appointing body.

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

### **1. The Board of Directors general authority**

- 1.1. The Directors are responsible for management of the Trust's business for which purpose they may exercise all the powers of the Trust.
- 1.2. Subject to the Constitution, and in particular paragraph 4.3, the Directors may delegate any of the powers which are conferred on them under the Constitution:
  - 1.2.1. to such person or committee;
  - 1.2.2. by such means (including by power of attorney);
  - 1.2.3. to such an extent;
  - 1.2.4. in relation to such matters; and
  - 1.2.5. on such terms and conditions;as the Board of Directors think fit.
- 1.3. Subject to paragraph 4.3, if the Directors so specify, any such delegation may authorise further delegation of the Directors' powers by any person to whom they are delegated.
- 1.4. The Directors may revoke any delegation in whole or part, or alter its terms and conditions.

### **2. Committees and delegation**

- 2.1. The Board of Directors shall appoint an audit committee and may appoint any other committee to advise or assure the Board of Directors, subject to delegated authority granted by the Board of Directors within terms of reference.
- 2.2. The Board of Directors or, where authorised by the Board of Directors, its committees, may appoint sub-committees, such sub-committees to be subject to any terms of reference (including powers, objects and membership) adopted by the Board of Directors or by the relevant Board of Directors committee, as it shall deem to be appropriate for the good governance of the Trust from time to time.
- 2.3. Committees and sub-committees are subject to the provisions of this Constitution and in these standing orders as far as they are applicable, provided that where those procedures are inconsistent with the respective terms of reference, this Constitution shall prevail.

### **3. Meetings of the Board of Directors notices**

- 3.1. Any notice of a meeting of the Board of Directors must include: (a) its proposed date and time; (b) where it is to take place; and (c) if it is expected that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 3.2. Before each meeting of the Board of Directors, to be held in public, a public notice of the time and place of the agenda for that part of the meeting, shall be displayed at the Trust's principal office or on the Trust's website at least three (3) days before the meeting.
- 3.3. Accidental failure to give notice to every Director or, in the case of a meeting to be held in public, accidental failure to give notice to the public, does not invalidate the proceedings of the meeting.

### **4. Admission of the public and the press**

#### **4.1. Admission and exclusion on grounds of confidentiality of business to be transacted**

- 4.1.1. The public and representatives of the press may attend all public meetings of the Board of Directors, but shall be required to withdraw upon the Board of Directors resolving as follows:

*“That representatives of the press, and other members of the public, be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted publicity on which would be prejudicial to the public interest, Section 1 (2) Public Bodies (Admission to Meetings) Act 1960.”*

#### **4.2. General disturbances**

- 4.2.1. The chairman or the person presiding over the meeting shall give such directions as they think fit with regard to the arrangements for the meeting, and the seating of the public and representatives of the press, such as to ensure that the Trust's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw from the Board of Directors meeting resolving as follows:

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

#### **4.3. Business proposed to be transacted when the press and public have been excluded from a meeting**

4.3.1. Matters to be dealt with by the Board of Directors following the exclusion of representatives of the press and other members of the public, as provided in paragraph 4.1 and 4.2 above, shall be confidential to the members of the Board of Director. Members, officers, and any employee of the Trust in attendance of the meeting shall not reveal or disclose the contents of confidential papers or minutes outside of the Trust, without the express permission of the Trust. This prohibition shall apply also to the content of any discussion during the Board of Directors meeting which may take place including such reports or papers.

4.4. **Use of mechanical or electrical equipment for recording or transmission of meeting**

4.4.1. Nothing in these standing orders shall be construed as permitting the introduction by the public or press representatives, or recording, transmitting, video or similar apparatus into meetings of the Board of Directors without express permission of the chairman.

4.5. **Chair of the meeting**

4.5.1. At any meeting of the Board of Directors, the chairman of the Board of Directors shall preside. If the chairman is unwilling or unable to preside, at the meeting or part of the meeting, through absence, or disqualification, or otherwise, the deputy chairman of the Board of Directors shall preside. If the deputy chairman is unwilling or unable to preside, at the meeting or at that part, the non-executive Director(s) present shall choose, by a majority vote, which non-executive Director shall preside.

4.6. **Quorum**

4.6.1. No business shall be transacted at a meeting unless at least one (1) third of the Board of Directors are present personally or by means permitted in paragraph 4.8 below, including not less than one (1) non-executive Director and one (1) executive Director.

4.7. **Voting**

4.7.1. Every question put to a vote at a meeting shall be determined by a majority of Directors present and voting (including those participating at a telephone conference). In the case of an equality of votes, the person presiding at the meeting shall have a second, or casting, vote.

4.8. **Telephone meetings**

4.8.1. Any Director or member of a committee of the Board of Directors may participate in a Board of Directors meeting or any committee or sub-committees by means of any audio or audio-visual conference telephone or

other communications equipment whereby all persons participate in the meeting can hear each other and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting.

## **5. Directors' written resolutions**

- 5.1. Any Director may propose a Directors' written resolution and the Secretary must propose Directors' written resolution if a Director so requests.
- 5.2. A Directors' written resolution is proposed by giving written notice of the proposed resolution to every Director and notice must include: (a) the wording of the proposed resolution, and (b) the time by which it is proposed that the Directors should adopt it.
- 5.3. A proposed Directors' written resolution is adopted when all the Directors who would have been entitled to vote on the resolution at a Directors' meeting have signed one (1) or more copies of it, provided that those Directors would have formed a quorum at such a meeting. It is immaterial whether any Director signs the resolution before or after the time by which the notice proposed that it should be adopted.
- 5.4. Once a Directors' written resolution has been adopted, it must be treated as if it had been a decision taken at a Directors' meeting in accordance with the Constitution.
- 5.5. The Secretary will keep a record, in writing, of all Directors' written resolutions for at least ten (10) years from the date of their adoption.
- 5.6. The circumstances in which a Directors' written resolution may be proposed and enacted are restricted to situations arising unexpectedly and requiring urgent Board of Directors decision and not as a result of a lack of forward planning or to circumvent normal governance processes.

## **6. Directors' interests**

### **6.1. Disclosure of Interest**

6.1.1. The Constitution requires Directors to declare any pecuniary, personal or family interest, 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 Board of Directors . A family interest includes that of the Director's spouse or partner. All Directors should declare such interests. Any Directors appointed subsequently should do so on appointment.

6.1.2. Such interests should include:

6.1.2.1. Directorships, including non-executive directorships held in any company (with the exception of those of dormant companies); or in any private benefit corporation;

6.1.2.2. ownership or part-ownership of any company, business or consultancy reasonably regarded as being likely or possibly seeking to do business with the NHS;

6.1.2.3. majority or controlling share holdings in organisations reasonably regarded as being likely or possibly seeking to do business with the NHS;

6.1.2.4. a position of authority in a charity or voluntary organisation in the field of health or social care;

6.1.2.5. any connection with a voluntary or other organisation contracting for NHS services; and/or

6.1.2.6. research funding/grants that may be received by an individual or his/her department.

## **6.2. Declaring interests**

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

6.2.2. During the course of a Board of Directors meeting, if a conflict of interest is established, the Director concerned shall disclose the fact, withdraw from the meeting, and play no part in the relevant discussion or decision.

6.2.3. If a Director has any doubt about the relevance of an interest, they should discuss it with the chairman or the Secretary who shall advise him/her on whether or not to disclose the interest.

## **7. Communications**

7.1. Any notice, or other communication, required to be sent by post or otherwise, is sufficiently sent if sent by fax or by email and is deemed to be received 24 hours after sending if sent by first class post or upon sending if sent by email or fax.

## **8. Other Provisions**

8.1. In addition to these standing orders, the Board of Directors may establish any procedures and rules for the operation of the Board of Directors and for economic, effective and for efficient operation and good governance of the Trust generally, as it shall deem appropriate from time to time.



## ANNEX 8 – FURTHER PROVISIONS

### 1. Disqualification from membership

- 1.1. A person may not become or remain a member of the Trust if the following apply:
  - 1.1.1. they do not meet the requirements of eligibility under this Constitution. It is the responsibility of each member to ensure his eligibility at all times;
  - 1.1.2. they have been removed from membership by the Council of Governors within the preceding five (5) years;
  - 1.1.3. the Board of Directors considers that they have caused substantial detriment to the Trust;
  - 1.1.4. during the five (5) years prior to their application, they have demonstrated aggressive or violent behaviour towards any person working for the Trust or a health service body and following such behaviour they have been removed or excluded from any hospital or Trust site or other health service body under either the Trust's or other health service body's policy for withholding treatment for violent/aggressive patients, or equivalent;
  - 1.1.5. they have been confirmed as a 'vexatious complainant' in accordance with the Trust's complaints handling policy;
  - 1.1.6. the Council of Governors has reasonable cause to believe that by becoming or remaining a member of the Trust, a person is likely to:
    - 1.1.6.1. prejudice the ability of the Trust to fulfil its principal purpose or other of its purposes under the Constitution or otherwise discharge its duties and functions;
    - 1.1.6.2. harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services;
    - 1.1.6.3. adversely affect public confidence in the goods or services provided by the Trust; and/or
    - 1.1.6.4. otherwise bring the Trust into disrepute.
- 1.2. Where the Trust is on notice that a member may be disqualified from membership, or may no longer be eligible to be a member, the Secretary shall give the member fourteen clear days written notice to show cause why their name should not be removed from the register of members. On receipt of any

such information supplied by the member, the Secretary may, if he considers it appropriate, remove the member from the register of members.

- 1.3. Any dispute about membership entitlement shall be resolved by the Secretary.
- 1.4. All members of the Trust shall be under a duty to notify the Secretary of any change in their circumstances which may affect entitlement to membership.

## **2. Expulsion from membership**

- 2.1. A member may be expelled by a resolution approved by not less than two (2) thirds of the whole number of the Council of Governors present and voting if they are deemed to have acted in a manner contrary to the interests of the Trust.

- 2.2. The following procedure is to be adopted:

- 2.2.1. any member may complain to the Secretary that another member has acted in a way which would justify expulsion in accordance with 2.1 above;

- 2.2.2. 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:

- 2.2.2.1. dismiss the complaint and take no further action; or

- 2.2.2.2. arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.

## **3. Dispute resolution procedures**

- 3.1. Membership - in the event of any dispute about membership entitlement, the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the member or applicant is aggrieved at the decision of the Secretary, he may appeal in writing within fourteen clear days of the Secretary's decision to the Council of Governors whose decision shall be final.
- 3.2. Governor's eligibility - in the event of any dispute about eligibility of a Governor, the dispute shall be referred to the Council of Governors, whose decision shall be final.
- 3.3. Board of Directors /Council of Governors - in the event of any dispute between the Board of Directors and Council of Governors:

- 3.3.1. in the first instance, the chairman, on the advice of the Secretary, and any other advice the chairman may obtain, shall seek to resolve the issue through mediation;
  - 3.3.2. if the chairman is unable to resolve the dispute, they shall appoint at their discretion a special committee chaired by the chairman and may invite appropriate representatives of another NHS foundation trust(s). The decision of the special committee shall be binding. The special committee will be obliged to keep records of its discussions and maintain the confidentiality of the business discussed and the records at all times during and after its business has concluded. No appointment to the special committee will be made without first ensuring the member in question has no conflicts of interests in the business to be transacted.
- 3.4. Governor/Council of Governors - in the event of any dispute between a Governor and the Council of Governors:
- 3.4.1. in the first instance, the chairman, on the advice of the Secretary, and other advice the chairman may obtain, shall seek to resolve the issue through mediation; and
  - 3.4.2. if the chairman is unable to resolve the dispute, they shall refer the dispute to the Board of Directors who shall make the final decision.

## **ANNEX 9 – MEMBERS’ MEETINGS**

### **MEMBERS’ MEETINGS**

1. The Trust shall hold a meeting for all of its members (called the Annual Members’ Meeting) within six (6) months of the end of each financial year of the Trust.
2. Any members’ meeting other than the Annual Members’ Meeting shall be called a Special Members’ Meeting.
3. Annual Members’ Meetings and Special Members’ Meetings shall be open to all members of the Trust, members of the Council of Governors and members of the Board of Directors, together with representatives of the auditors, and to the public. The Board of Directors may invite representatives of the media and any experts or advisors, whose attendance it considers to be in the best interests of the Trust, to attend any such meeting.
4. The Board of Directors may convene an Annual Members’ Meeting or a Special Members’ Meeting when it thinks fit, subject to paragraph 1. The Council of Governors may request the Board of Directors to convene a Special Members’ Meeting.
5. The Board of Directors (or at least one (1) member thereof) shall present to the members at the Annual Members’ Meeting:
  - 5.1. the annual accounts;
  - 5.2. any report of the auditor on them; and
  - 5.3. the annual report.
6. The Secretary shall give notice of all Annual Members’ Meetings and Special Members’ Meetings:
  - 6.1. in writing to all members;
  - 6.2. by notice prominently displayed at the Trust’s headquarters;
  - 6.3. on the Trust’s website; and
  - 6.4. to the Council of Governors, the Board of Directors, and to the Trust’s auditors,

stating whether the meeting is an Annual Members’ Meeting or a Special Members’ Meeting and including the time, date, place of the meeting, and the business to be dealt with at the meeting, at least 14 clear days before the date of the relevant

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

7. An accidental omission to give notice of an Annual Members' Meeting or Special Members' Meeting or to send, supply or make available any document or information relating to the Annual Members' Meeting or Special Members' Meeting, or the non-receipt of any such notice, document or information by a person entitled to receive any such notice, document or information shall not invalidate the proceedings at that meeting.
8. The chairman or in his/her absence the deputy chairman of the Board of Directors shall preside at all Annual Members' Meetings or Special Members' Meetings of the Trust. If neither the chairman nor the deputy chairman is present, the Governors present shall elect one (1) of their number to act as chairman.
9. The quorum for an Annual Members' Meeting or a Special Members' Meeting shall be eight (8) members present and entitled to vote. If a quorum is not present within thirty minutes from the time appointed for the meeting, the meeting shall stand adjourned for a minimum of seven (7) clear days until such time as the chairman determines.
10. The chairman may, with the consent of an Annual Members' Meeting or a Special Members' Meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn an Annual Members' Meeting or a Special Members' Meeting from time to time and from place to place or for an indefinite period.
11. A resolution put to the vote of an Annual Members' Meeting or a Special Members' Meeting shall be decided on a show of hands.
12. No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.
13. In the case that an Annual Members' Meeting or a Special Members' Meeting is adjourned or postponed for fourteen clear days or more, at least seven (7) clear days' notice shall be given specifying the time and place of the adjourned members' meeting and the general nature of the business to be transacted.
14. The Board of Directors may make any arrangement and impose any restriction it reasonably considers appropriate to ensure the security of an Annual Members' Meeting or a Special Members' Meeting.
15. The Board of Directors shall cause minutes to be made and kept, in writing, of all proceedings at Annual Members' Meetings or Special Members' Meetings.