



North East Ambulance Service NHS Foundation Trust

Constitution

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**CONSTITUTION OF THE NORTH EAST AMBULANCE
NHS FOUNDATION TRUST
(updated as per the Health and Social Care Act 2012)**

1. Definitions

In this Constitution:

“the 2006 Act”	means the National Health Service Act 2006
“the 2012 Act”	Means the Health and Social Care Act 2012
“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
“Area of the Trust”	means the area consisting of all the areas specified in Annex 1 as an area for a Public Constituency
“Board of Directors”	means the Board of Directors as constituted in accordance with this Constitution
“Chair”	means the person who is the Chair of the Board of Directors and the Council of Governors
“Chief Executive”	means the Chief Executive of the Trust appointed in accordance with the terms of this Constitution
“Class”	means a category (class) of membership within the Staff Constituency as provided for in Schedule 7 to the 2006 Act and more particularly set out in this Constitution
“Constitution”	means this Constitution and all Annexes to it
“Council of Governors”	this is the name the Trust gives to its Board of Governors (the expression used in the 2006 Act) and as constituted in accordance with this Constitution
“Deputy Chair”	means in relation to the:
	Board of Directors – a Non-Executive Director appointed as Deputy Chair in accordance with the provisions of this Constitution who will preside over a meeting of the Board of Directors when the Chair is absent or when the Chair declares a conflict of interest which precludes him/her from presiding as Chair at that meeting
“Director”	means a member of the Board of Directors
“Executive Director”	means an Executive Director of the Board of Directors including the Chief Executive where the context so permits
“Financial Year”	Means:
	(a) the period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 st March; and (b) each successive period of twelve months beginning with 1 st April
“Governor”	Means a member elected or a person appointed as a member of the Council of Governors
“Local Authority Governor”	means a Governor appointed by one of more local authorities whose area includes the whole or part of one of the areas of the Trust

“Member”	means a member of the Trust
“Monitor”	Is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act.
“Non-Executive Director”	means a Non-Executive Director of the Board of Directors including the Chair where the context so permits
“Partnership Governor”	means a Governor appointed by one of the partnership organisations specified in this Constitution
“Public Constituency”	means those constituencies referred to in Annex 1 and “Public Constituency” shall mean each of those constitutions singly and all of them collectively
“Public Governor”	means a Governor elected by the members of the Public Constituency
“Register of Sex Offenders”	means the register to be maintained for the purposes of Part II of the Sexual Offenders Act 2003
“Secretary”	means the Secretary of the Trust or any other person appointed by the Trust to perform the duties conferred on the Secretary by this Constitution, including a joint, assistant or deputy Secretary
“Staff Constituency”	means that part of the Trust’s membership consisting of the staff of the Trust and which is divided into the classes as provided by this Constitution as referred to in Annex 2
“Staff Governor”	means a member of the Council of Governors elected by the members of the relevant class within the Staff Constituency in accordance with the provisions of this Constitution
“Terms of the Licence”	Means the terms of the Licence which Monitor has issued to the Trust
“The Trust”	means the North East Ambulance Service NHS Foundation Trust

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

Reference in this Constitution to legislation include all amendments, replacements or re-enactments made, and all regulations, statutory guidance or directions.

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

Words importing the singular shall include the plural and vice-versa.

References in the Constitution to paragraphs are to paragraphs in this Constitution.

2. **Name**

The name of the Foundation Trust is North East Ambulance Service 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.

4. **Functions**

- 4.1. 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
- 4.2. The profits or surpluses of the Trust are not to be distributed (either directly or indirectly) amongst members.
- 4.3. The Trust shall exercise its functions effectively, efficiently and economically.

5. **Powers**

- 5.1. The powers of the Trust are set out in the 2006 Act subject to any restrictions in the conditions of the Licence issued by Monitor. In fulfilling its objectives, the Trust may exercise all the statutory and other powers available to it.
- 5.2. Without prejudice to the generality of those powers, the Trust may in particular:
 - 5.2.1. acquire and dispose of property;
 - 5.2.2. enter into contracts;
 - 5.2.3. accept gifts of property (including property to be held on trust for the purposes of the trust or for any purpose relating to health services);
 - 5.2.4. employ staff;
 - 5.2.5. borrow money for the purposes of or in connection with its functions, subject to the limit set by Monitor;
 - 5.2.6. invest money (other than money held by it as a trustee) for the purpose of or in connection with its functions;
 - 5.2.7. give financial assistance (whether by way of a loan, guarantee or otherwise) to any person for the purpose of or in connection with its functions; and
 - 5.2.8. pay remuneration and allowances to any person, including the power to make arrangements for providing or securing the provision of pensions or gratuities (including payable by way of compensation for loss of employment or loss or reduction in pay).
- 5.3. All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 5.4. Any of these powers may be delegated to a committee of Directors or to an Executive Director.

6. Framework

The following paragraphs describe the governance arrangements within the Trust. The affairs of the Foundation Trust are to be conducted by the Board of Directors, the Council of Governors and the members in accordance with this Constitution.

6.1. Members

The Trust shall have members, each of whom shall be members of either a Public or a Staff Constituency.

- 6.1.1. The members may vote at the elections to the Council of Governors. They may take part in consultation and opinion-testing exercises conducted by the Trust and attend open meetings of the Trust.
- 6.1.2. A member can stand for election to the Council of Governors.
- 6.1.3. A member will receive care and treatment in the Trust on exactly the same basis as any other NHS patient (that is, whether they are a member or not).
- 6.1.4. Members will not be required to pay a subscription.
- 6.1.5. The Council of Governors may ask members for their views.
- 6.1.6. Members of the Public Constituencies are eligible for appointment as Non-Executive Directors, including appointment as the Chair.

6.2. Council of Governors

- 6.2.1. The Trust is to have a Council of Governors which shall comprise both elected and appointed Governors.
- 6.2.2. The composition of the Council of Governors is specified in **Annex 3** of this Constitution.
- 6.2.3. The role and responsibilities of the Council of Governors are to be carried out in accordance with the Constitution and the Trust's Licence conditions. The role and responsibilities are set out in **Annex 5** of this Constitution.
- 6.2.4. All Governors shall, in discharging their roles and responsibilities under the 2006 Act and under this Constitution, act at all times in the best interests of the Trust.

6.3. Board of Directors

- 6.3.1. The Trust shall be managed by the Board of Directors, who shall exercise all the powers of the Trust subject to any contrary provisions of the 2006 Act as given effect by this Constitution.
- 6.3.2. The role of Directors as members of the Board of Directors is to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions.

6.4. General Provision

Any dispute or complaint arising from application of the procedures set out in the Constitution, or any aspect of the membership or election arrangements for the Trust will be resolved by the Secretary, in consultation with the Chair and Chief Executive.

7. Membership and Constituencies

- 7.1. The Trust shall have members; each of whom shall be a member of one of the following two Constituencies:
- a) a Public Constituency; or
 - b) a Staff Constituency
- 7.2. Application for Membership
- 7.2.1. A person may become a member by application to the Trust in accordance with the Constitution or, where so provided for in this Constitution, by being invited by the Trust to become a member of a class of the Staff Constituency in accordance with paragraph 7.2.4.
- 7.2.2. Where a person applies to become a member, the Trust will consider his/her application for membership as soon as reasonably practicable following its receipt and unless that person is ineligible or is disqualified from membership, the Secretary shall cause his/her name to be entered into the register of members and that person shall thereupon become a member.
- 7.2.3. A person shall become a member on the date upon which his/her name is entered on the Register of Members and that person shall cease to be a member upon the date on which his/her name is removed from the Register of Members as provided for in this Constitution.
- 7.2.4. Where a person is invited by the Trust to become a member of a class of the Staff Constituency in accordance with paragraph 7.8 that person shall automatically become a member and shall have their name entered into the Register of Members unless, within the period specified in the said invitation, that person has informed the Trust that he/she does not wish to become a member.
- 7.3. Restriction on Membership
- 7.3.1. A person who is a member of a Constituency or a class within that Constituency, may not (while that membership continues) be a member of any other Constituency or class.
- 7.3.2. A person 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.
- 7.3.3. A person must be at least 16 years old to become a member of the Trust.
- 7.3.4. Further restrictions 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** of this Constitution.
- 7.3.5. All membership is individual and there shall be no facility for corporate membership.
- 7.4. Disqualification from Membership
- 7.4.1. A person is disqualified from being a member of the Trust if:
- a) he/she is under the age of 16 years

- b) as a member of a Public Constituency he/she does not live within an area specified in **Annex 1** as an area for a Public Constituency of the Trust;
- c) he/she has caused harm or causes harm to a NHS staff member, patient, carer or registered volunteer whether that be verbal or physical assault, violence or serious harassment or has been issued with a Personal Safety and Security Warning by the Trust;
- d) He/she is a vexatious complainant, in that, in the opinion of the Board of Directors, he/she has persistently and without reasonable grounds, made any unjustified complaint the effect of which is to subject the Trust (or any of its staff, agents, patients or carers) to inconvenience, harassment or expense);
- e) the Council of Governors resolves that he/she would or would be likely to:
 - i) prejudice or impede the ability of the Trust to fulfil its purpose under this Constitution or otherwise discharge its duties or functions;
 - ii) 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;
 - iii) adversely affect public confidence in the goods or services provided by the Trust; or
 - iv) otherwise bring the Trust into disrepute

7.4.2. It is the responsibility of each member, not the Trust, to ensure his/her eligibility. A member who becomes aware of his/her ineligibility shall inform the Trust as soon as practicable and that person shall be removed forthwith from the Register of Members and shall cease to be a member. The Secretary will however, take reasonable steps to verify eligibility from the information collected through membership registrations and where the Trust considers that a member may have ceased to be eligible for membership, the Secretary shall carry out all reasonable enquiries to establish if this is the case.

7.4.3. Where the Trust considers that there may be reasons for concluding that a member or an applicant for membership may be ineligible or be disqualified from membership, the Secretary shall advise that individual of those reasons in summary form and invite representations from the member or applicant within 14 days or such other reasonable period as the Secretary may in absolute discretion determine. Any representations received shall be considered by the Secretary who shall make a decision, in conjunction with the Chair and/or Chief Executive, on the member or applicant's eligibility or disqualification as soon as reasonably practicable and shall give notice in writing within 14 days of the decision being made.

7.4.4. If no representations are received within the period specified in 7.4.3 the Secretary shall be entitled nonetheless to proceed and make a decision, notwithstanding the absence of any such representations from him/her

7.4.5. Upon a decision being made under paragraphs 7.4.3 and 7.4.4 above, where appropriate the member's name shall be removed from the Register of Members forthwith and he/she shall thereupon cease to be a member. In the event of a dispute, the Secretary shall refer the matter to the Council of Governors.

7.5. Termination of Membership

7.5.1. A member shall cease to be a member if he/she:

- a) resigns by notice to the Secretary;

- b) ceases to fulfil the requirements of paragraphs 7.7 or 7.8;
 - c) becomes disqualified by reasons set out in paragraph 7.4;
 - d) is expelled under this Constitution as specified in **Annex 8**; or
 - e) is deemed to be disqualified by the application of paragraph 7.4
- 7.5.2. Staff will automatically cease to be eligible for membership of the Staff Constituency upon termination of their employment with the Trust.
- 7.5.3. Former employees will be eligible to become a member of the Public Constituency if they live within the area of the Trust.
- 7.6. Annual Members' Meeting
- 7.6.1. 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.
- 7.6.2. Further provisions about the Annual Members' Meeting are set out in Annex 9.
- 7.7. Membership - Public Constituency
- 7.7.1. 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.
- 7.7.2. Those individuals who live in an area specified for a Public Constituency are referred to collectively as "a Public Constituency".
- 7.7.3. The minimum number of members in each Public Constituency is specified in **Annex 1**.
- 7.7.4. The individual areas that make up the composite "Public Constituency" area may not be sub-divided.
- 7.8. Membership - Staff Constituency
- 7.8.1. 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:
- a) he/she is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - b) he/she has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 7.8.2. Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as "the Staff Constituency".
- 7.8.3. An individual who is eligible to become a member of the Staff Constituency and is invited by the Trust to become a member of the appropriate class of the Staff Constituency shall become a member of the Trust as a member of the relevant class within the Staff Constituency without an application being made, unless he/she informs the Trust that he/she does not wish to do so.
- 7.8.4. The Staff Constituency shall be divided into 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.

- 7.8.5 The minimum number of members in each class of the Staff Constituency is specified in **Annex 2**.
- 7.8.6 The Secretary shall make the final decision about the class of which an individual is eligible to be a member, in conjunction with the Chair and/or the Chief Executive.

8. Council of Governors

8.1. Composition of Council of Governors

- 8.1.1. The Trust is to have a Council of Governors which shall comprise both elected and appointed Governors. Only persons elected or appointed under the provisions of paragraphs 8.3, 8.4, 8.5 and 8.6, may serve as members of the Council of Governors.
- 8.1.2. The composition of the Council of Governors is specified in **Annex 3**.
- 8.1.3. More than half of the Council of Governors must be from the Public Constituency.
- 8.1.4. The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected to each constituency, or, where appropriate, by each class of constituency, is specified in **Annex 3**.
- 8.1.5. The Council of Governors may appoint advisors to assist it. The advisors may not be designated as Governors and may not be given voting rights. The appointment of advisors to the Council of Governors must be approved by the Board of Directors.

8.2. Election of Governors

- 8.2.1. Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules, as may be varied from time to time. The process or part of that process may be conducted by electronic means.
- 8.2.2. The Model Election Rules, as published from time to time by the Department of Health, form part of this Constitution. The Model Election Rules current at the date of the Trust's Authorisation are attached at **Annex 4**.
- 8.2.3. A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this Constitution. For the avoidance of doubt, the Trust cannot amend the Model Election Rules.
- 8.2.4. If contested, the election must be by secret ballot.
- 8.2.5. Elections shall not be invalidated by any administrative or clerical error on the part of the Trust or any acts or omissions of the Returning Officer acting in good faith on the basis of such error.
- 8.2.6. Notwithstanding any provision of the Election Rules, the Trust and the Returning Officer shall:
 - (a) not be obliged to send any information or photographs unless received by the Trust from the candidate;

- (b) not be in breach of any obligation to include in any communication, or otherwise provide, information, which is equivalent in size and content for all candidates if the information provided by one or more of the candidates does not so allow;
- (c) have the right to edit or not publish any election statement if it exceeds the permitted number of words or because it contains statements, which the Trust or the Returning Officer reasonably believes are factually inaccurate, offensive or libellous.

8.3. Public Governors - Elections

- 8.3.1. Members of a Public Constituency may elect any of their number to be a Public Governor from within their Constituency in accordance with the Model Election Rules. The Rules are set out in **Annex 4**.
- 8.3.2. Members of a Public Constituency may stand for election as a Public Governor for that Public Constituency.
- 8.3.3. A member of a Public Constituency standing for election as a Public Governor must make a declaration as to his/her eligibility in accordance with the 2006 Act. Under Section 60 of the 2006 Act, it is an offence to knowingly or recklessly make a declaration which is false in a material particular.

8.4. Staff Governor - Elections

- 8.4.1. Members of a class of the Staff Constituency may elect any of their number to be a Staff Governor from within their class in accordance with the Model Election Rules as set out in **Annex 4**.
- 8.4.2. Members of the Staff Constituency may stand for election as a Staff Governor.
- 8.4.3. A member of the Staff Constituency standing for election as a Staff Governor must make a declaration as to his/her eligibility in accordance with the 2006 Act.

8.5. Partnership Governors

- 8.5.1. The Secretary, in conjunction with the Chair and Chief Executive, shall agree and implement the process for appointing of Local Authority and Partnership Governors.
- 8.5.2. If and to the extent that a partnership organisation referred to in **Annex 1** fails to make an appointment within three months of being invited to do so by the Trust, the Trust may seek an appointment from an alternative organisation which in the Trust's opinion has similar objectives or provides similar services to the organisation for which it shall stand in substitution.

8.6. Local Authority Governors

At least one member shall be appointed by a qualifying Local Authority; pursuant to a process agreed with the Secretary, in conjunction with the Chair and with the organisations concerned.

8.7. Council of Governors - Tenure

- 8.7.1. An elected Governor may hold office for a period of up to 3 years.
- 8.7.2. An elected Governor shall cease to hold office if he/she ceases to be a member of the Constituency or class by which he/she was elected.

- 8.7.3. An elected Governor shall be eligible for re-election at the end of his/her term but may not serve more than three consecutive terms or nine years, whichever is the less.
 - 8.7.4. An appointed Governor may hold office for a period of up to 3 years.
 - 8.7.5. An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him/her.
 - 8.7.6. An appointed Governor shall be eligible for re-appointment at the end of his/her term but may not serve more than three consecutive terms or nine years, whichever is the less.
 - 8.7.7. Appointed and elected Governors will be deemed to have held successive periods of office for more than nine years if they are elected for three successive terms of three years, whether or not they serve the full term and whether or not one of those terms was as a Governor of another Constituency or class within a Constituency.
- 8.8. Council of Governors – Disqualification and Removal
- 8.8.1. A person may not become a member of the Council of Governors (and if already holding office shall cease to do so) if:
 - a) he/she was not at least 18 years of age at the date he/she was nominated for election or appointment;
 - b) he/she is an Executive Director or Non-Executive of the Trust or an Executive Director, Non-Executive Director or Governor of another NHS Foundation Trust; though this does not apply to anyone who is appointed as a Partnership Governor of this Trust by the NHS Foundation Trust of which he/she is an Executive Director, Non-Executive Director or Governor;
 - c) he/she has been adjudged bankrupt or his/her estate has been sequestrated and in either case, he/she has not been discharged;
 - d) he/she has been made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
 - e) he/she has within the preceding five years 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;
 - f) he/she has in the preceding two years been dismissed by the Trust or its predecessor on any grounds, or in the case of another organisation, on any grounds other than redundancy or ill health; or
 - g) he/she has verbally or physically abused any member of NHS staff, patient, carer or registered volunteers, or has been issued with a Personal Safety and Security Warning Letter by the Trust.
 - 8.8.2. Where a person appointed as a Governor becomes disqualified from serving in that capacity by virtue of paragraph 8.8.1 he/she shall notify the Secretary in writing without delay.

- 8.8.3. 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**.
- 8.8.4. This Constitution makes provisions for the termination of office and removal of Governors which are set out in **Annex 5**.
- 8.9. Council of Governors - Vacancies
- 8.9.1. Where the membership of any member of the Council of Governors ceases for one of the reasons set out in paragraph 8.8 or in the further provisions set out in **Annex 5**, Public and Staff Governor vacancies shall be filled in accordance with the process set out in **Annex 5**.
- 8.9.2. Local Authority Governors, Partnership Governors are to be replaced in accordance with the processes agreed with the appointing organisations and the initial terms of office of those replacement Governors shall be as for the unexpired balance of the retiring Governor's terms of office.
- 8.10. Council of Governors - Duties of Governors
- 8.10.1. The general duties of the Council of Governors are;
- a) to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and
 - b) to represent the interests of the members of the Trust as a whole and the interests of the public.
- 8.10.2. The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.
- 8.11. Council of Governors - Meetings
- 8.11.1. The Chair of the Trust (i.e., the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 9.3 or 9.4 below) or in his/her absence, the Deputy Chair (appointed in accordance with the provisions of paragraph 9.5 below), shall preside at meetings of the Council of Governors.
- 8.11.2. Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from all or part of any meeting for confidential or special reasons, following appropriate resolution by the Council of Governors made in accordance with its Standing Orders. The Chair of the Council of Governors may exclude any members of the public from a meeting if they are interfering with or preventing proper conduct of the meeting.
- 8.11.3. For the purposes of 8.11.2 and without limitation, the Council of Governors may treat the following matters of a confidential or special reason:
- a) any matter arising from a contract of employment;
 - b) any matter which involves the consideration of confidential information held by the Trust;
 - c) commercial matters;
 - d) legal matters;
 - e) actual or anticipated litigation, including any arbitration or dispute resolution process; or
 - f) recommendations or advice from sources other than the Board of Directors and any committee or sub-committee referred to in this Constitution

- 8.11.4. For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.
 - 8.11.5. The Council of Governors is to meet at least four times per year.
 - 8.11.6. A general meeting shall be held prior to 31st October each year at which the Council of Governors is to be presented with the Annual Accounts, any report of the Auditor on them and the Annual Report.
 - 8.11.7. Joint meetings between the Council of Governors and Board of Directors may be held.
 - 8.11.8. A Governor may only vote at a meeting of the Council of Governors if he/she is not within paragraph 8.8 or in the further provisions set out in **Annex 5**.
- 8.12. Council of Governors – Committees and Sub-Committees
- 8.12.1. The Council of Governors may appoint committees consisting of its members to assist in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.
 - 8.12.2. These committees or sub-committees may call upon outside advisers to help them in their tasks. The advisers may not be designated as Governors, may not be given voting rights or count towards the total members on the Council or its committees. The appointment of advisers to the Council of Governors must be approved by the Board of Directors.
 - 8.12.3. Meetings of any committee or sub-committees of the Council of Governors shall not be open to the public.
- 8.13. Council of Governors – Standing Orders
- 8.13.1. The Council of Governors is to adopt its own Standing Orders for the practice and procedure, in particular for its procedure at meetings, as may be varied from time to time. These Standing Orders are attached as **Annex 6**.
 - 8.13.2. The Council of Governors shall review its Standing Orders as and when necessary but at least every three years.
- 8.14. Council of Governors – Conflicts of Interest
- 8.14.1. If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. 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 the interest has been disclosed.
- 8.15. Council of Governors – Travel Expenses
- The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust, subject to the Trust's policy on payment of such expenses.

Governors shall not receive any remuneration for serving as a Governor.

8.16. Council of Governors – Further Provisions

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

8.17. Council of Governors - Referral to the Panel

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

- a) to act in accordance with its Constitution, or
- b) to act in accordance with provision made by or under Chapter 5 of the 2006 Act.

8.17.2. 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.

9. Board of Directors

9.1. Composition of Board of Directors

9.1.1. The Trust is to have a Board of Directors which shall comprise both Executive and Non-Executive Directors. The Board of Directors is to comprise:

- a) a Non-Executive Chair
- b) 5 – 7 other Non-Executive Directors, and
- c) 5 – 7 Executive Directors

9.1.2. At least half of the Board of Directors, excluding the Chair, shall be Non-Executive Directors.

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

9.1.4. The Chief Executive will be the Accounting Officer.

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

9.1.6. One of the Executive Directors is to be a Registered Medical Practitioner or a Registered Dentist (within the meaning of the Dentists Act 1984).

9.1.7. One of the Executive Directors is to be a Registered Nurse or a Registered Midwife.

9.1.8. Each Director shall be able to exercise one full vote.

9.1.9. The Trust shall have a Trust Secretary who shall be neither a Governor nor a Director but a senior manager who is accountable to the Board of Directors and reports to the Chief Executive. The appointment and removal of the Trust Secretary shall be a matter for the Chief Executive and Chair jointly.

9.1.10. It is for the Board of Directors to decide any changes to the title or function of the posts designated as Executive Directors, subject to Section 16 of Schedule 7 of the 2006 Act.

- 9.2 Board of Directors - General Duty
- 9.2.1. 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.
- 9.3. Board of Directors – Qualification for Appointment as a Non-Executive Director
- 9.3.1. A person may be appointed as a Non-Executive Director only if:
- a) he/she is a member of the Public Constituency;
 - b) he/she is not disqualified by virtue of paragraph 9.9 below
- 9.4. Board of Directors – Appointment and Removal of Chair and Other Non-Executive Directors
- 9.4.1. The Council of Governors at a General meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other Non-Executive Directors. Further provisions for the appointment of the Chair and the other Non-Executive Directors and the role of the Council of Governors in the said appointments are set out in **Annex 5**.
- 9.4.2. Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.
- 9.4.3. Removal of the Chair or another Non-Executive Director shall require a resolution to be submitted by one Governor which must be seconded by not fewer than ten Governors including at least two Elected Governors and two Appointed Governors, and requires the resolution in question to be approved by three-quarters of the members of the Council of Governors.
- 9.4.4. The Governor sponsoring the resolution mentioned in paragraph 9.3.3 above shall provide written reasons in support of the resolution to the Chair or Non-Executive Director in question and who shall be given the opportunity to respond to such reasons.
- 9.4.5. The Chair or another Non-Executive Director can be suspended while a decision to remove them is made.
- 9.4.6. The initial Chair and the initial Non-Executive Directors are to be appointed in accordance with paragraph 9.4 below.
- 9.5. Board of Directors – Appointment of Initial Chair and Initial Other Non-Executive Directors
- 9.5.1. The Chair of the applicant NHS Trust shall be appointed as the initial Chair of the Trust if he/she wishes to be appointed.
- 9.5.2. The power of the Council of Governors to appoint the other Non-Executives of the Trust is to be exercised, so far as possible, by appointing as the initial Non-Executive Directors of the Trust any of the Non-Executive Directors of the applicant NHS Trust (other than the Chair) who wish to be appointed.
- 9.5.3. The criteria for qualification of appointment as a Non-Executive Director set out in paragraph 9.2., above (other than disqualification by virtue of paragraph 9.9 below) do not apply to the appointment of the initial Chair and the initial other Non-Executive Directors in accordance with the procedures set out in this paragraph.

- 9.5.4. An individual appointed as the initial Chair or as an initial Non-Executive Director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his/her term of office as Chair or (as the case may be) Non-Executive Director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he/she shall be appointed for 12 months.
- 9.5.5. On expiry of the initial Chair and Non-Executive Directors' current terms of appointment (or a period of 12 months from appointment as a Director of this Foundation Trust whichever is the greater), a committee of the Council of Governors shall consider whether to recommend, to the Council of Governors that the Council of Governors reappoint the retiring Non-Executive Director, or Chair, or Deputy Chair.
- 9.6. Board of Directors – Appointment of Deputy Chair
- The Council of Governors, at a general meeting of the Council of Governors, shall appoint one of the Non-Executive Directors as Deputy Chair for such a period as they may specify (not to exceed the remainder of his/her term as a Non-Executive Director).
- 9.7. Board of Directors – Appointment of Senior Independent Director
- The Board of Directors may appoint one of the Non-Executive Directors to be the Senior Independent Director, in consultation with the Council of Governors. The Senior Independent Director could be the Deputy Chair.
- 9.8. Board of Directors – Appointment and Removal of the Chief Executive and other Executive Directors
- 9.8.1. The Non-Executive Directors shall appoint or remove the Chief Executive.
- 9.8.2. The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 9.8.3. The initial Chief Executive is to be appointed in accordance with the paragraph 9.8 below.
- 9.8.4. A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.
- 9.8.5. On termination of his/her contract of employment, an Executive Director (including the Chief Executive) shall cease to be a member of the Board of Directors.
- 9.8.6. If an Executive Director is suspended from his/her contract of employment or is (or is expected to be) absent for any long-term period (long-term illness, maternity leave, secondments and sabbaticals for example), the Chair and Non-Executive Directors in the case of the Chief Executive, and the Chief Executive in the case of other Executive Directors, may appoint another person as Executive Director in an acting capacity in his/her place and such acting Director shall be disregarded for the purposes of paragraphs 9.1.1(c) and 9.1.2 above. Upon the Executive Director's return to his/her post, the appointment of the acting Director as a Director of the Trust shall immediately and automatically terminate.
- 9.8.7. If an Executive Director post is vacant ("Vacant Position"); and the Board of Directors agree that the Vacant Position needs to be filled by an interim post-holder pending appointment of a permanent post-holder, then the Chair (if the Vacant Position is the Chief Executive) or the Chief Executive (in any other case) may appoint a Director as an interim Director ("Interim Director") to fill

the Vacant Position pending appointment of a permanent post-holder. The appointment of the interim director as a Director of the Trust shall immediately and automatically terminate on the appointment of a permanent post-holder or, if earlier, the date on which the person entitled to appoint him/her under this paragraph notifies him/her that he/she is no longer to act as an Interim Director.

9.9. Board of Directors – Appointment and Removal of the Initial Chief Executive

- 9.9.1. The Chief Executive of the applicant NHS Trust shall be appointed as the initial Chief Executive of the Trust if he/she wishes to be appointed.
- 9.9.2. The appointment of the Chief Executive of the applicant NHS Trust as the initial Chief Executive of the Trust shall not require the approval of the Board of Governors.

9.10. Board of Directors – Disqualification and Termination

A person may not become or continue as a member of the Board of Directors if:

- 9.10.1. he/she has been adjudged bankrupt or his/her estate has been sequestrated and (in either case) he/she has not been discharged;
- 9.10.2. he/she has made a composition or arrangement with, or granted a Trust deed for, his/her creditors and he/she has not been discharged in respect to it;
- 9.10.3. he/she has, within the preceding five years, been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him/her;
- 9.10.4. in the case of the Chair and Non-Executive Directors, he/she does not meet the requirements of Section 16 of Schedule 7 to the 2006 Act;
- 9.10.5. he/she is a person whose tenure of office as Chair or as a Director of a Health Service Body has been terminated on the grounds that his/her appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 9.10.6. he/she has in the preceding two years been dismissed by the Trust or its predecessor on any grounds, or in the case of another organisation, on any grounds other than redundancy or ill-health;
- 9.10.7. he/she has failed to declare an interest in accordance with Standing Orders or, contrary to Standing Orders, has voted at a meeting on a matter on which he/she has an interest, or, has failed to declare any interests to the Secretary as required by this Constitution or the Standing Orders and in this subparagraph, interest includes a pecuniary and a non-pecuniary interest, in either case whether direct or indirect;
- 9.10.8. he/she has become a member of the Council of Governors;
- 9.10.9. he/she has resigned from office by giving notice; or
- 9.10.10. in the case of a Non-Executive Director (other than the initial Chair and the other initial Non-Executive Directors), he/she is no longer a member of the Public Constituency.

9.10.11. in the case of the Chair, he/she has been appointed as a Chair of another NHS Trust or NHS Foundation Trust.

9.11. Board of Directors - Meetings

9.11.1. The Chair of the Trust is to preside at meetings of the Board of Directors. In the absence of the Chair, a Non-Executive Director appointed by the Council of Governors as Deputy Chair of the Board of Directors will preside at meetings.

9.11.2. All meetings of the Board of Directors shall be open to the public. Members of the public may be excluded from a meeting for confidential or special reasons, following appropriate resolution by the Board of Directors made in accordance with its Standing Orders. The Chair of the Board of Directors may exclude any members of the public from a meeting if they are interfering with or preventing proper conduct of the meeting.

9.11.3. For the purposes of 9.11.2 and without limitation, the Board of Directors may treat the following matters of a confidential or special reason:

- a) any matter arising from a contract of employment;
- b) any matter which involves the consideration of confidential information held by the Trust;
- c) commercial matters;
- d) legal matters;
- e) actual or anticipated litigation, including any arbitration or dispute resolution process; or
- f) recommendations or advice from sources other than the Board of Directors and any committee or sub-committee referred to in this Constitution

9.11.4. 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.

9.11.5. A general meeting shall be held prior to 31st October each year at which the Board of Directors shall present the Council of Governors with the Annual Accounts, any report of the Auditor on them and the Annual Report.

9.11.6. Joint meetings between the Council of Governors and the Board of Directors may be held.

9.11.7. The Chair of the Trust shall preside at joint meetings or in the absence of, or at the request of the Chair due to a conflict of interest affecting the Chair, the Deputy Chair will preside.

9.11.8. Joint meetings of the Council of Governors and Board of Directors will not be open to the public, unless the Board determines otherwise.

9.11.9. Decisions made at joint meetings will be formally recorded.

9.12. Board of Directors – Committees and Sub-Committees

9.12.1. The Board of Directors shall establish an Audit Committee comprising Non-Executive Directors and a Nomination and Remuneration Committee comprising Non-Executive Directors and the Chair.

- 9.12.2. The Board of Directors may appoint other committees consisting of its members to assist in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee or joint committee. These committees, sub-committees or joint committees may call upon external advisers to help them in their tasks.
- 9.12.3. Meetings of any committees or sub-committees of the Board of Directors shall not be open to the public.

9.13. Board of Directors – Standing Orders

The Board of Directors is to adopt Standing Orders for the practice and procedure of its business and conduct at meetings, as may be varied from time to time, are attached at **Annex 7**. The proceedings shall not be invalidated by any vacancy in its membership or any defect in a Director's appointment.

Trust Standing Financial Instructions, Scheme of Delegation and Scheme of Matters Reserved to the Board of Directors should be read in conjunction with the Standing Orders for the Practice and Procedure of the Board of Directors.

9.14. Board of Directors – Conflicts of Interest

- 9.14.1. The duties that a Director of the Trust has by virtue of being a Director include in particular –
- i) 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.
 - ii) 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.
- 9.14.2. The duty referred to in sub-paragraph 9.14.1 part (i) is not infringed if –
- (i) The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - (ii) The matter has been authorized in accordance with the constitution.
- 9.14.3. The duty referred to in sub-paragraph 9.14.1 part ii is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 9.14.4. In sub-paragraph 9.14.1 part (ii), “third party” means a person other than –
- (i) The Trust, or
 - (ii) A person acting on its behalf.
- 9.14.5. 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.
- 9.14.6. If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 9.14.7. Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 9.14.8. 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.

- 9.14.9. A Director need not declare an interest –
- (i) If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - (ii) If, or to the extent that, the Directors are already aware of it;
 - (ii) If, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered –
 - a) By a meeting of the Board of Directors, or
 - b) By a committee of the Directors appointed for the purpose under the Constitution.

9.15. Board of Directors – Remuneration and Terms of Office

- 9.15.1. The Council of Governors at a General meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and Non-Executive Directors.
- 9.15.2. The Chair shall not be present during discussion relating to the Trust Chair's remuneration and allowances, and the other terms and conditions of office; a temporary Chair of this meeting may be nominated for this part of the meeting if the Deputy Chair is not available.
- 9.15.3. The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors. The remuneration and allowances, and the other terms of conditions of office of the Chief Executive and other Executive Directors shall remain those applying to the same Directors of the applicant NHS Trust at the time that the Foundation Trust is authorised, until such time as the committee is constituted and considers this issue.
- 9.15.4. The remuneration and allowances for the Board of Directors are to be published in the Annual Report.
- 9.15.5. The Secretary, in liaison with the Executive Director responsible for advising the Trust on such matters, shall set out guidelines for the Council of Governors on remuneration and allowances for Non-Executive Directors and facilitate external advice where required.

10. Registers

- 10.1. The Trust shall have:
- 10.1.1. a register of members showing, in respect of each member, the Constituency to which he belongs and, where there are classes within it, the class to which he belongs;
 - 10.1.2. a register of members of the Council of Governors;
 - 10.1.3. a register of interests of members of the Council of Governors;
 - 10.1.4. a register of Directors; and
 - 10.1.5. a register of interests of the Directors

10.2. Admission to and removal from the Registers

The Secretary shall be responsible for compiling and maintaining the registers and will in accordance with the provisions of this Constitution, update the registers with new or amended information as soon as it is practical through a regular review of the registers.

The Secretary shall send to Monitor a list of persons who were first elected or appointed to the Council of Governors and Board of Directors.

10.3. Registers - Inspection and Copies

10.3.1. The Trust shall make the registers specified in 10.1 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

10.3.2. 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 that member so requests.

10.3.3. So far as the registers are required to be available:

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

b) a person who requests a copy of, or an extract from, the registers is to be provided with a copy or extract.

10.3.4. 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.

11. Documents Available for Public Inspection

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

11.1.1. a copy of the current Constitution;

11.1.2. a copy of the current Licence issued by Monitor

11.1.3. a copy of the latest Annual Accounts and of any report of the Auditor on them;

11.1.4. a copy of the latest Annual Report;

11.2. 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:

11.2.1. 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

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

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

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

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

- 11.2.6. 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.
- 11.2.7. a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
- 11.2.8. a copy of any final report published under section 65I (administrator's final report),
- 11.2.9. 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.
- 11.2.10. a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.

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

11.4. 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.

12. Auditor

12.1. The Trust shall have an auditor and is to provide the auditor with every facility and all information which he or it may reasonable require for the purposes of its functions under Schedule 10 of the 2006 Act

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

12.3. The appointed auditor must be a member of one or more of the bodies referred in paragraph 23(4) of Schedule 7 of the 2006 Act.

12.4. The auditor is to carry out duties in accordance with Schedule 10 of the 2006 Act and in accordance with directions given by Monitor on standards, procedures and techniques to be adopted.

12.5. An officer of the Audit Commission may be appointed as auditor with the agreement of the Audit Commission.

12.6. The Trust will formally reappoint the auditor at a general meeting of the Council of Governors.

13. Audit Committee

The Trust shall establish a committee of Non-Executive Directors as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate. The Committee shall include at least 3 independent Non-Executive Directors.

14. Accounts

14.1. The Trust shall keep proper accounts and proper records in relation to its accounts.

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

14.3. The accounts are to be audited by the Trust's Auditor.

- 14.4. The Trust shall prepare in respect of each financial year, annual accounts in such form as Monitor may, with the approval of the Secretary of State, direct.
- 14.5. The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

15. Annual Report, Forward Plans and non-NHS work

- 15.1. The Trust shall prepare an Annual Report and send it to Monitor.
- 15.2. The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 15.3. The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 15.4. In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 15.5. Each forward plan must include information about –
 - 15.5.1. 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
 - 15.5.2. the income it expects to receive from doing so.
- 15.6. Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 15.5.1, the Council of Governors must –
 - 15.6.1. determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and
 - 15.6.2. notify the Directors of the Trust and its determination.
- 15.7. 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 health service in England may implement the proposal only if more than half of the members of Council of Governors of the Trust voting approve its implementation.

16. Presentation of the Annual Accounts and Reports to the Governors and members

- 16.1. The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
 - 16.1.1. the Annual Accounts
 - 16.1.2. any report of the auditor on the Accounts
 - 16.1.3. the Annual Report
- 16.2. The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 16.3. The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 16.1 with the Annual Members' Meeting.

17. Indemnity

Members of the Council of Governors, members of the Board of Directors, the Secretary and other officers who act honestly and in good faith will not have to meet, out of their personal resources, any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust and the Trust shall maintain insurance arrangements for this purpose.

18. Instruments

18.1. The Trust shall have a seal and this will not be affixed except under the authority of the Board of Directors.

18.2. A document purporting to be duly executed under the Trust's seal or to be signed on its behalf, is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

19. Communication between the Council of Governors and the Board of Directors

19.1. The Board of Directors shall promote effective communication between the Council of Governors and the Board of Directors and shall have regard to the views of the Council of Governors on this.

19.2. The Council of Governors and the Board of Directors shall each use their best endeavours to resolve any difference of view through discussion but in the event of any conflict, the Board of Directors will decide the disputed matter.

19.3. Disputes between the Board of Directors and the Council of Governors are to be resolved in accordance with **Annex 8**.

19.4. The Trust shall establish appropriate disputes resolution procedures with its employees, contractors and members.

20. Amendment of the Constitution

20.1. The Trust may make amendments to this Constitution only if:

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

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

20.2. Amendments made under paragraph 20.1 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.

20.3. Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):

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

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

20.4. If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

- 20.5. Amendments by the Trust of its Constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act
- 20.4. Save as permitted by law, at any meeting of the Trust, the Chair shall be the final authority on the interpretation of the Constitution and Standing Orders (on which he/she should be advised by the Chief Executive and Secretary).

21. Mergers and Significant Transactions

- 21.1. 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.
- 21.2. 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.
- 21.3. The Trust understands and defines a significant transaction as:
- a) A Joint Venture
 - b) Social Enterprise arrangement
 - c) Setting up of a company – including acquisition of an existing company
 - d) Divestment of an organisational function (including outsourcing of same)
 - e) Acquisition / subsuming other NHS services i.e., urgent care centre
 - f) Diversification – acquiring services outside current scope; and

where relevant, that fall within the categories below:

		Categories*
Ratio	Description	Significant Transaction
Assets	The gross assets** subject to the transaction, divided by the gross assets of the foundation trust	>25%
Income	The income attributable to: <ul style="list-style-type: none"> • The assets; or • The contract Associated with the transaction, divided by the income of the foundation trust	>25%
Consideration to total NHS foundation trust capital	The gross capital*** of the company or business being acquired/divested, divided by the total capital**** of the foundation trust following completion, or the effects on the total capital of the foundation trust resulting from a transaction.	>25%

*For non-healthcare/international transactions the thresholds will be reduced by 50% for investments only

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

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

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

ANNEX 1 – THE PUBLIC CONSTITUENCIES

(Paragraphs 7.7.1 – 7.7.4)

A1 1.0 Provides for four Public Constituencies.

Name of Constituency	Areas defined by electoral districts	Number of Governors	Minimum Number of Members
North of Tyne	Northumberland		
	Newcastle upon Tyne		
	North Tyneside		
		6	600
South of Tyne	Gateshead		
	South Tyneside		
	Sunderland		
		5	500
Durham	Chester-le-Street		
	City of Durham		
	Darlington		
	Derwentside		
	Easington		
	Sedgefield		
	Teesdale		
	Wear Valley		
		5	500
Teesside	Hartlepool		
	Middlesbrough		
	Redcar and Cleveland		
	Stockton-on-Tees		
		5	500

A1 1.1. The Trust's volunteers may become members of this Constituency by application to the Trust in accordance with the Constitution.

A1 1.2. The Trust will aim to achieve a minimum of 4,200 public constituency members irrespective of the minimum numbers stated above in each constituency which will be maintained at all times.

A1 1.3. Should an individual area within the Public Constituency fail to achieve the minimum number specified above, no election shall take place in that area until such time as the minimum number is reached. An election within that individual area will then take place within a time period determined jointly by the Council of Governors and the Board of Directors.

A1 1.4. In the case of dispute, the Secretary, in conjunction with the Chair and Chief Executive, will have the final decision about the Constituency of which an individual is eligible to be a member.

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 7.8.1 – 7.8.7)

A2 1.0 Staff membership will be constructed via an ‘opt out’ process and will be broken down into the following role definitions or **classes**. The table below illustrates how the NEAS role structure relates to the staff classes. The Staff Constituency shall have four staff classes with one Governor elected by the staff from each class:

Staff Class	Number of Governors	Minimum number of Members
Accident & Emergency and Urgent Tier (staff and managers)	1	300
Patient Transport Services Tier (staff and managers)	1	300
Control & Contact Centres (staff and managers)	1	50
Support Services (staff and managers not included in one of the other classes above)	1	100

A2 1.1 The Trust will aim to achieve a minimum of 1,000 staff members irrespective of the minimum numbers stated above in each class which will be maintained at all times.

A2 1.2 Should an individual class within the Staff Constituency fail to achieve the minimum number as specified above, no election shall take place in that class until such time as the minimum number is reached. An election within that class will then take place within a time period determined jointly by the Council of Governors and the Board of Directors.

A2 1.3 In the case of dispute, the Secretary, in conjunction with the Chair and Chief Executive, will have the final decision about the class of which an individual is eligible to be a member.

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraphs 8.1.1 – 8.1.5)

A3 1.0 The composition of the Council of Governors shall comprise:

MEMBERS OF THE COUNCIL OF GOVERNORS		
Constituency	Area/Class	Number of members
Public	North of Tyne	6
	South of Tyne	5
	Durham	5
	Teesside	5
Staff	Accident & Emergency (A&E)	1
	Patient Transport Service and Managers	1
	Emergency Control/Contact Centre and Managers	1
	Support Staff and Managers (not included in one of the above classes)	1
Appointed	Commissioning body (as agreed by Secretary, Chair and Chief Executive)	1
	Local Authority Governor – to be appointed by The Association of North East Councils in liaison with the twelve Local Authorities to represent rural, semi-rural and urban communities across the North East:: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> Darlington Borough Council Gateshead Council Middlesbrough Borough Council North Tyneside Council South Tyneside Council Sunderland City Council </div> <div style="width: 45%;"> Durham County Council Hartlepool Borough Council Newcastle City Council Northumberland County Council Redcar and Cleveland Borough Council Stockton on Tees Borough Council </div> </div>	4
Partnership	University of Teesside - in consultation with the following other Universities University of Northumbria Newcastle University Sunderland University Durham University	1
	Local Resilience Forum - in consultation with the Local Resilience Fora in the North East Region that comprise Emergency Services	1
	Northumbria Healthcare NHS FT – in consultation with the following other Acute NHS Organisation The Newcastle upon Tyne Hospitals NHS FT Gateshead Health NHS FT South Tyneside Health Care NHS FT City Hospitals Sunderland NHS FT County Durham & Darlington NHS FT North Tees & Hartlepool NHS FT South Tees Hospitals NHS Trust	1
	Tees Esk & Wear Valley NHS FT – in consultation with its healthcare partner Northumberland, Tyne and Wear NHS Trust	1
	The Voluntary Organisations Network North East (VONNE) – as the umbrella network – and in consultation with the following other voluntary organisations including: British Red Cross Society St John's Ambulance Service Mountain Rescue Services Great North Air Ambulance Service	1
	TOTAL:	34

A3.1.1 The process for the appointment of the Partnership Governor will be agreed by the Secretary, in conjunction with the Chair and Chief Executive.

ANNEX 4 – CONDUCT OF ELECTIONS

(Paragraph 8.2 – 8.6)

Model Election Rules

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1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning officer

4. Returning officer
5. Staff
6. Expenditure
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10. Candidate's consent and particulars
11. Declaration of interests
12. Declaration of eligibility
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Action to be taken before the poll

22. List of eligible voters
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The poll

26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
29. Lost ballot papers
30. Issue of replacement ballot paper
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Procedure for receipt of envelopes

32. Receipt of voting documents
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35. Sealing of packets

Part 6 - Counting the votes

36. Interpretation of Part 6 - not used
37. Arrangements for counting of the votes
38. The count
39. Rejected ballot papers
40. Not used
41. “
42. “
43. “
44. “
45. “
46. Equality of votes

Part 7 – Final proceedings in contested and uncontested elections

47. Declaration of result for contested elections
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Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll
50. Delivery of documents
51. Forwarding of documents received after close of the poll
52. Retention and public inspection of documents
53. Application for inspection of certain documents relating to election

Part 9 – Death of a candidate during a contested election

54. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

55. Expenses incurred by candidates
56. Expenses incurred by other persons
57. Personal, travelling, and administrative expenses

Publicity

58. Publicity about election by the corporation
59. Information about candidates for inclusion with voting documents
60. Meaning of “for the purposes of an election”

Part 11 – Questioning elections and irregularities

61. Application to question an election

Part 12 – Miscellaneous

62. Secrecy
63. Prohibition of disclosure of vote
64. Disqualification
65. Delay in postal service through industrial action or unforeseen event

Part 1 - Interpretation

1. Interpretation – (1) In these rules, unless the context otherwise requires:

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

“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;

“the regulator” means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act ; and

“the 2006 Act” means the NHS Act 2006

(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 election

2. Timetable - The proceedings at an election shall be conducted in accordance with the following timetable:

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

3. Computation of time - (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.

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

Part 3 – Returning officer

4. Returning officer – (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.

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

5. Staff – Subject to rule 64, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

- 6. Expenditure** - The corporation is to pay the returning officer:
- (a) any expenses incurred by that officer in the exercise of his or her functions under these rules;
 - (b) such remuneration and other expenses as the corporation may determine.
- 7. Duty of co-operation** – The corporation is to co-operate with the returning officer in the exercise of his or her functions under these rules.

Part 4 - Stages Common to Contested and Uncontested Elections

- 8. Notice of election** – 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 papers may be obtained;
 - (e) the address for return of nomination papers 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; and
 - (h) the date and time of the close of the poll in the event of a contest.
- 9. Nomination of candidates** – (1) Each candidate must nominate themselves on a single nomination paper.
- (2) The returning officer:
- (a) is to supply any member of the corporation with a nomination paper; and
 - (b) is to prepare a nomination paper 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.
- 10. Candidate's particulars** – (1) The nomination paper must state the candidate's -
- (a) full name
 - (b) contact address in full, and
 - (c) Constituency, or class within a Constituency, of which the candidate is a member.
- 11. Declaration of interests** – The nomination paper 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** – The nomination paper must include a declaration made by the candidate:

- (a) that he or she is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the Constitution; and
 - (b) for a member of the public or patient Constituency, of the particulars of his or her qualification to vote as a member of that Constituency, or class within that Constituency, for which the election is being held .
- 13. Signature of candidate** – The nomination paper must be signed and dated by the candidate, 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.
- 14. Decisions as to the validity of nomination** – (1) Where a nomination paper 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 paper 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.
- (2) The returning officer is entitled to decide that a nomination paper 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 papers, 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, as required by rule 13
- (3) The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated
- (4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision
- (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 paper
- 15. Publication of statement of candidates** – (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election
- (2) The statement must show:
- (a) the name, contact 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 paper
- (3) The statement must list the candidates standing for election in alphabetical order by surname

- (4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement
- 16. Inspection of statement of nominated candidates and nomination papers –** (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times
- (2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge
- 17. Withdrawal of candidates -** 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 –** (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
- (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
- (3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be Council of Governors, then:
- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules; and
- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation

Part 5 – Contested elections

- 19. Poll to be taken by ballot –** (1) The votes at the poll must be given by secret ballot.
- (2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules
- 20. The ballot paper –** (1) The ballot of each voter 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
- (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;
- (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

- (3) Each ballot paper must have a unique identifier
 - (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced
- 21. The declaration of identity (public and patient constituencies)** – (1) In respect of an election for a public or patient Constituency a declaration of identity must be issued with each ballot paper
- (2) The declaration of identity is to include a declaration:
 - (a) that the voter is the person to whom the ballot paper was addressed;
 - (b) that the voter has not marked or returned any other voting paper in the election; and
 - (c) for a member of the public or patient Constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a Constituency for which the election is being held
 - (3) The declaration of identity is to include space for:
 - (a) the name of the voter;
 - (b) the address of the voter;
 - (c) the voter's signature; and
 - (d) the date that the declaration was made by the voter
 - (4) The voter must be required to return the declaration of identity together with the ballot paper
 - (5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid

Action to be taken before the poll

- 22. List of eligible voters** – (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 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election
- (2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent
- 23. Notice of poll** - 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 address for return of the ballot papers, and the date and time of the close of the poll;
 - (g) the address and final dates for applications for replacement ballot papers; and
 - (h) the contact details of the returning officer

- 24. Issue of voting documents by returning officer** – (1) 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 documents to each member of the corporation named in the list of eligible voters:
- (a) a ballot paper and ballot paper envelope;
 - (b) a declaration of identity (if required);
 - (c) information about each candidate standing for election, pursuant to rule 59 of these rules; and
 - (d) a covering envelope
- (2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters
- 25. Ballot paper envelope and covering envelope** – (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
- (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
- (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 declaration of identity if required, and
 - (b) the ballot paper envelope, with the ballot paper sealed inside it

The poll

- 26. Eligibility to vote** – 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
- 27. Voting by persons who require assistance** – (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made
- (2) Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.
- 28. Spoilt ballot papers** (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 a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper
- (2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it
- (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 declaration of identity, if required, has not been returned

- (4) After issuing a replacement ballot paper for a spoiled ballot paper, the returning officer shall enter in a list (“the list of spoiled ballot papers”):
 - (a) the name of the voter;
 - (b) the details of the unique identifier of the spoiled ballot paper (if that officer was able to obtain it); and
 - (c) the details of the unique identifier of the replacement ballot paper
- 29. Lost ballot papers** – (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper
- (2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she:
 - (a) is satisfied as to the voter’s identity;
 - (b) has no reason to doubt that the voter did not receive the original ballot paper; and
 - (c) has ensured that the declaration of identity if required has not been returned
- (3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”):
 - (a) the name of the voter; and
 - (b) the details of the unique identifier of the replacement ballot paper
- 30. Issue of replacement ballot paper**– (1) If a person applies for a replacement ballot paper under rule 28 or 29 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 a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter
- (2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”):
 - (a) the name of the voter; and
 - (b) the details of the unique identifier of the replacement ballot paper issued under this rule
- 31. Declaration of identity for replacement ballot papers (public and patient constituencies)** – (1) In respect of an election for a public or patient Constituency a declaration of identity must be issued with each replacement ballot paper
- (2) The declaration of identity is to include a declaration:
 - (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration; and
 - (b) of the particulars of that member’s qualification to vote as a member of the public or patient Constituency, or class within a Constituency, for which the election is being held
- (3) The declaration of identity is to include space for:
 - (a) the name of the voter;
 - (b) the address of the voter;
 - (c) the voter’s signature; and
 - (d) the date that the declaration was made by the voter

- (4) The voter must be required to return the declaration of identity together with the ballot paper
- (5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid

Procedure for receipt of envelopes

32. Receipt of voting documents – (1) Where the returning officer receives a:

- (a) covering envelope; or
- (b) any other envelope containing a declaration of identity 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 33 and 34 are to apply

- (2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, 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

- (3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents

33. Validity of ballot paper – (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 a declaration of identity if required that has been correctly completed, signed, and dated

- (2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to:

- (a) put the declaration of identity if required in a separate packet; and
- (b) put the ballot paper aside for counting after the close of the poll

- (3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to:

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

34. Declaration of identity but no ballot paper (public and patient Constituency) – Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to:

- (a) mark the declaration of identity “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 declaration of identity in a separate packet

- 35. Sealing of packets** – As soon as is possible after the close of the poll and after the completion of the procedure under rules 33 and 34, the returning officer is to seal the packets containing:
- (a) the disqualified documents, together with the list of disqualified documents inside it;
 - (b) the declarations of identity if required;
 - (c) the list of spoilt ballot papers;
 - (d) the list of lost ballot papers;
 - (e) the list of eligible voters; and
 - (f) the list of tendered ballot papers

Part 6 - Counting the votes

36. Interpretation of Part 6 – not used

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

38. The count – (1) The returning officer is to:

- (a) count and record the number of ballot papers that have been returned; and
 - (b) count the votes according to the provisions in this Part of the rules
- (2) The returning officer, while counting and recording the number of ballot papers 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
- (3) The returning officer is to proceed continuously with counting the votes as far as is practicable

39. Rejected ballot papers – (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 paragraphs (2) and (3) below, be rejected and not counted

- (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
- (3) A ballot paper on which a vote is marked:
- (a) elsewhere than in the proper place;
 - (b) otherwise than by means of a clear mark;
 - (c) by more than one mark

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

- (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 paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted
- (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

40. First stage – not used

41. The quota – not used

42. Transfer of votes – not used

43. Supplementary provisions on transfer – not used

44. Exclusion of candidates – not used

45. Filling of last vacancies – not used

46. Order of election of candidates – not used

46. Equality of votes – 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

47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Governors from the Constituency, or class within a Constituency, for which the election is being held to be elected;
- (b) give notice of the name of each candidate who he or she has declared elected –
 - (i) where the election is held under a proposed Constitution pursuant to powers conferred on the North East Ambulance Service NHS Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Trust, or
 - (ii) in any other case, to the Chair of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected

(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 fpp39(5)

available on request

48. Declaration of result for uncontested elections – In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:

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

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll – (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;
- (b) the ballot papers endorsed with “rejected in part”;
- (c) the rejected ballot papers; and
- (d) the statement of rejected ballot papers

(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 declarations of identity;
- (c) the list of spoilt ballot papers;
- (d) the list of lost ballot papers;
- (e) the list of eligible voters; and
- (f) the list of tendered ballot papers

(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

50. Delivery of documents – Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 49, the returning officer is to forward them to the Chair of the corporation

51. Forwarding of documents received after close of the poll – Where:

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

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

52. Retention and public inspection of documents – (1) The corporation is to retain the documents relating to an election that are forwarded to the Chair by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed

(2) With the exception of the documents listed in rule 53(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

(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

53. Application for inspection of certain documents relating to an election – (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing:

- (a) any rejected ballot papers, including ballot papers rejected in part;
- (b) any disqualified documents, or the list of disqualified documents;
- (c) any counted ballot papers;
- (d) any declarations of identity; or
- (e) the list of eligible voters

by any person without the consent of the Regulator

(2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator 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

(3) The Regulator'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; and
- (d) production or opening

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

(4) On an application to inspect any of the documents listed in paragraph (1):

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

must 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 the regulator has declared that the vote was invalid

Part 9 – Death of a candidate during a contested election

- 54. Countermand or abandonment of poll on death of candidate** – (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 ballot papers have 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
- (2) Where a new election is ordered under paragraph (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
- (3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply
- (4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35
- (5) The returning officer is to:
- (a) count and record the number of ballot papers that have been received; and
 - (b) seal up the ballot papers into packets, along with the records of the number of ballot papers
- (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
- (7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the Chair of the corporation, and rules 52 and 53 are to apply

Part 10 – Election expenses and publicity

Election expenses

- 55. Election expenses** – 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 to the regulator under Part 11 of these rules
- 56. Expenses and payments by candidates** - 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
- 57. Election expenses incurred by other persons** – (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
- (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 58 and 59

Publicity

58. Publicity about election by the corporation – (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

- (2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, 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
- (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.

59. Information about candidates for inclusion with voting documents - (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

- (2) The information must consist of:
- (a) a statement submitted by the candidate of no more than 250 words; and
 - [(b) a photograph of the candidate

60. Meaning of “for the purposes of an election” - (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

- (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

61. Application to question an election – (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the Regulator

- (2) An application may only be made once the outcome of the election has been declared by the returning officer
- (3) An application may only be made to the Regulator 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
- (4) The application must:
 - (a) describe the alleged breach of the rules or electoral irregularity; and
 - (b) be in such a form as the Regulator may require
- (5) The application must be presented in writing within 21 days of the declaration of the result of the election
- (6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable
 - (a) The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator
 - (b) The determination by the person or persons nominated in accordance with Rule 61(7) 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
 - (c) The Regulator may prescribe rules of procedure for the determination of an application including cost

Part 12 – Miscellaneous

62. Secrecy – (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 a ballot paper or who has or has not voted;
 - (ii) the unique identifier on any ballot paper; or
 - (iii) the candidate(s) for whom any member has voted;
- (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

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

63. Prohibition of disclosure of vote – No person who has voted at an election shall, in any legal or other proceedings to question the election, be required to state for whom he or she has voted

64. Disqualification – 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

65. Delay in postal service through industrial action or unforeseen event – 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 and declarations of identity

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

Contents:

- A5.1. Eligibility, Termination of Office and Removal of Governors
- A5.2. Requirement to Notify the Trust
- A5.3. Initial Tenure of Office for Council of Governors
- A5.4. Governor Vacancies
- A5.5. Election of Governors
- A5.6. Governor – Roles and Responsibilities
- A5.7. Appointment of Non-Executive Directors (including the Chair and Deputy Chair
- A5.8. Remuneration of the Chair and Other Non-Executive Directors
- A5.9. Staff Constituency – Time Taken Out of Normal Working Hours to Perform Council of Governors Duties
- A5.10. Role of Chair

A5 1 Eligibility, Termination of Office and Removal of Governors (also see paragraphs under section 8.8. of this Constitution)

A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so, if he/she:

- A5 1.1 Is incapable by reason of mental disorder, illness or injury of managing or administering his/her property and affairs;
- A5 1.2 On the basis of disclosures obtained through an application to the Criminal Records Bureau, is not considered suitable by the Trust's Executive Director who is responsible for advising the Trust on such matters;
- A5 1.3 Has previously been removed from office as a Governor of the Trust;
- A5 1.4 Being a member of the Public Constituency fails to sign a declaration in the form specified by the Council of Governors of the particulars of his/her qualification to vote as a member of the Trust, and that he/she is not prevented from being a member of the Council of Governors;
- A5 1.5 Has had his/her name removed from any list maintained under regulations pursuant to Sections 91, 106, 123 or 146 of the 2006 Act., and has not subsequently had his/her name included in such a list, and due to the reason(s) for such removal, he/she is not considered suitable by the Executive Director responsible for advising the Trust on such matters, after due enquiry;
- A5 1.6 Is the spouse, partner, parent or child of a member of the Council of Governors or Board of Directors of the Trust;
- A5 1.7 Is a member of a Local Authority's Overview & Scrutiny Committee covering health matters;
- A5 1.8 He/she has failed to declare an interest in accordance with Standing Orders or, contrary to the Standing Orders, has voted at a meeting on a matter on which he/she has an interest or, has failed to declare any interest to the Secretary as required by this Constitution of the Standing Orders and in this sub-paragraph, interest includes a pecuniary and a non-pecuniary interest, in either case whether direct or indirect;
- A5 1.9 He/she resigns by giving notice in writing to the Secretary;
- A5 1.10 It otherwise comes to the notice of the Secretary at the time that the Governor takes office or later that the Governor is disqualified;

- A5 1.11 He/she has failed to undertake those training sessions for Governors as recommended by the Trust, unless the Council of Governors is satisfied that the failure was due to reasonable causes and he will be able to undertake the training within such a period as is the Council considers reasonable;
- A5.1.12 He/she is a vexatious complainant, in that, in the opinion of the Board of Directors, he/she has persistently and without reasonable grounds, made any unjustified complaint the effect of which is to subject the Trust (or any of its staff, agents, patients or carers) to inconvenience, harassment or expense);
- A5 1.13 He/she has failed to abide by the terms of any declaration made on nomination or appointment, or of any code of conduct, values and principles which the Trust may publish from time to time;
- A5 1.14 He/she has committed a serious breach of the Trust's Code of Conduct or has acted in a manner detrimental to the interests of the Trust;
- A5 1.15 He/she has failed to discharge his/her responsibilities as a Governor;
- A5 1.16 In the case of a Public Governor he/she ceases to be a member of the Public Constituency by which he/she was elected;
- A5 1.17 In the case of a Staff Governor he/she ceases to be employed by the Trust or ceases to be a member of the class of the Staff Constituency by which he/she was elected;
- A5 1.18 In the case of an appointed Governor, the organisation which has appointed him/her withdraws their appointment of him/her or, if that appointment arises from his/her employment by the appointing organisation, he/she ceases to be employed by the appointing organisation;
- A5 1.19 Consideration will be given to the removal of a Governor if he/she breaches any requirement for attendance at Council of Governor meetings set by the Council of Governors;
- A5 1.20 Removal of a Governor will require the approval of a majority of the Governors present at a General meeting of the Council of Governors.
- A5 1.21 The Council of Governors may, by a resolution, terminate a Governor's tenure of office for reasonable cause if it considers that his/her continuing as a Governor would or would likely to:
- i) prejudice or impede the ability of the Trust to fulfil its purpose under this Constitution or otherwise discharge its duties or functions;
 - ii) 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;
 - iii) adversely affect public confidence in the goods or services provided by the Trust; or
 - iv) otherwise bring the Trust into disrepute
- A5 1.22 The Governor concerned will be eligible to make representation to the Council of Governors but not to vote on any resolution relating to his removal or any associated issues.
- A5 1.23 Where there is disagreement about whether a proposal to remove a Governor is justified, it shall be referred to an independent assessor agreeable to both parties who will be requested to consider the evidence and conclude upon the matter.

A5 2 Requirement of Governor to Notify the Trust

Where a person has been elected or appointed to be a Governor and he becomes disqualified from office under section 8.8.1 of this Constitution, he/she shall notify the Trust Secretary in writing of such disqualification.

A5.3 Initial Tenure of Office for Council of Governors

A5.3.1 In the first elections of Public Constituency members to the Council of Governors, the tenure of office will be:

Constituency	2 years Tenure (no of seats)	3 years Tenure (no. of seats)
North of Tyne	3	3
South of Tyne	2	3
Durham	2	3
Teesside	2	3
Total:	9	12

A5.3.2 The determination of those seats that will be elected for three years will be determined by the number of votes polled, with three years' tenure going to those individuals receiving the most votes until all three year tenure seats are filled. The remaining Governors will be elected initially for two years.

A5 3.3 In the event of more than one candidate being elected unopposed, or successful candidates having tied votes, lots will be cast to determine the order of election.

A5 3.4 The tenure of office for Staff Governors shall be three years.

A5 4 Governor Vacancies

A5 4.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply;

A5 4.2 Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.

A5 4.3 Where membership of the Council of Governors ceases for one of the reasons set out in section A5 1 above:

(i) Public Governors shall be replaced by way of a by-election, in accordance with the relevant Electoral Scheme set out in **Annex 4** save that, if there is still a majority of Public Governors on the Council and/or there are no fewer than four Public Governors within each constituency, the relevant Governor post may remain vacant until the next cycle of elections; and

(ii) Partnership Governors are to be replaced in accordance with the process agreed pursuant to paragraph 8.5.1.

A5 4.4 The validity of any act of the Trust is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

A5 4.5 Where an elected Public Governor or Staff Governor ceases to hold office within six months of his/her appointment, 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 class or Constituency in which the vacancy has arisen ('the Reserve Candidate'), the opportunity to assume the vacant office for the unexpired balance of the retiring Governor's term of office. If that Reserve Candidate does not accept the invitation to fill the vacancy, it will then be offered to the next Reserve Candidate who secured the next highest number of votes until the vacancy is filled.

- A5 4.6 Where candidates have tied votes, lots will be cast to determine the order of the offer as the next Reserve Candidate.
- A5 4.7 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 in the preceding paragraphs.
- A5 4.8 Steps may be taken to encourage members to stand for election in the event that there are insufficient nominations in order to seek to ensure that members have a choice of candidates at an election. Steps may include writing to members of the relevant Constituency and engaging with people who may be interested in standing as a Governor. Elections would be held when further nominations had been received.

A5 5 Election of Governors

- A5 5.1 An elected Governor may hold office for a period of up to 3 years.
- A5 5.2 An elected Governor shall be eligible for re-election at the end of his/her term but may not serve more than three consecutive terms or nine years, whichever is the less.
- A5 5.3 An appointed Governor may hold office for a period of up to 3 years.
- A5 5.4 An appointed Governor shall be eligible for re-appointment at the end of his/her term but may not serve more than three consecutive terms or nine years, whichever is the less.
- A5 5.5 Appointed and elected Governors will be deemed to have held successive periods of office for more than nine years if they are elected for three successive terms of three years, whether or not they serve the full term and whether or not one of those terms was as a Governor of another Constituency or class within a Constituency.
- A5 5.6 A member of one of the Constituencies may nominate himself/herself for election as a Governor in his Constituency and class and does not require sponsors.

A5 6 Governor – Roles and Responsibilities

The Council of Governors will:

- A5 6.1 Hold the Non-Executive Directors' individually and collectively to account for the performance of the Board of Directors'.
- A5 6.2 Represent the interests of members as a whole and of the public.
- A5 6.3 Approve at a General meeting, the remuneration and allowances and other terms and conditions of the office of the Chair and Non-Executive Directors;
- A5 6.4 Appoint or remove at a General meeting the Chair and other Non-Executive Directors, subject to paragraphs 9.3 and 9.4;
- A5 6.5 At a General meeting, to appoint the Trust's Auditors for a period of time which allows the auditor to develop a strong understanding of the NHS Foundation Trust;
- A5 6.6 To receive a report from the Trust Audit Committee in relation to the performance of any existing External Auditor, including detail such as the quality and value of work and the timeliness of reporting and fees, to enable the Council of Governors to consider their reappointment;
- A5 6.7 Approve the appointment of the Chief Executive, subject to paragraphs 9.7 and 9.8;

- A5 6.8 Respond appropriately when asked for its views by the Board of Directors in accordance with this Constitution;
- A5 6.9 Be presented with and consider the Annual Accounts, Auditors' report and the Annual Report;
- A5 6.10 Canvass the opinion of their members and, for appointed Governors, the body they represent, on matters of significance, including the NHS Foundation Trust's forward plans, objectives, priorities and strategy and to represent the interests of members;
- A5 6.11 Taking account of the opinion of their membership, provide the views of the Council of Governors to the Board of Directors for the purposes of preparation, by the Board of Directors, of the document containing the information as to the Trust's forward planning in respect of each financial year to be given to Monitor;
- A5 6.12 Where a proposal is included in a forward plan for non-NHS funded services the Council of Governors must consider whether it is satisfied that it will not, to any significant extent, interfere with the fulfilment of the FTs primary purpose and inform the Board of Directors of its decision.
- A5 6.13 More than half of the members of the Council of Governors of the Trust voting, must approve implementation of proposals to increase by 5% or more, the proportion of the Trust's total income in any financial year attributable to activities other than the provision of goods and services for the purposes of health service in England;
- A5 6.14 Remove from office, the Chair or a Non-Executive Director; but only with the approval of three quarters of the members of the Council of Governors;
- A5 6.15 Appoint as necessary, committees or sub-committees consisting of Governors to advise and assist the Council of Governors in carrying out its functions e.g., a Nominations and Remuneration Committee;
- A5 6.16 Nominate a Lead Governor through whom the Council of Governors should communicate directly with Monitor if the Foundation Trust is at risk of significantly breaching the terms of its Licence and if these concerns cannot be satisfactorily resolved. Monitor will contact the Lead Governor where it has concerns as to Board leadership. The role and responsibilities of the Lead Governor will include the relevant provisions set out in the NHS Foundation Trust Code of Governance.
- A5 6.17 Require one or more Directors to attend a meeting of the Council to obtain information on the performance of the Trust.
- A5 6.18 The Council of Governors should also undertake the following roles and responsibilities:
- **Advisory** – by communicating to the Board of Directors the wishes of members and the wider community
 - **Guardianship** - by ensuring that the Trust is operating in accordance with its Terms of its Authorisation. In this regard it acts as a Trustee role for the welfare of the organisation
 - **Strategic** - by advising on the longer term direction to help the Board of Directors effectively determine its policies
- A5 6.19 In fulfilling its responsibilities and functions, the Council of Governors shall:
- a) Ensure that the Trust complies with the terms of its Licence;
 - b) Take systematic account of the views of members;
 - c) Consider advice tendered by the Board of Directors, or by individual Directors or officers;
 - d) Act within statutory and other constraints;
 - e) Conduct its business as efficiently and effectively as possible;

- f) Ensure that its interaction and relationship with the Board of Directors is appropriate and effective by agreeing availability and timely communication of relevant information, discussion and the setting of Agenda in advance of meetings;
- g) Use clear, unambiguous language;
- h) Be clear what decisions and information are appropriate to the Council of Governors;
- i) Specify its requirements for financial and other information succinctly to ensure the Council of Governors can fully undertake its responsibilities;
- j) Ensure that there are proper and independent assurances given on the soundness and effectiveness of systems and processes in place for meeting its objectives and delivering appropriate outcomes;
- k) Demonstrate that it is doing its reasonable best to achieve its objectives and outcomes;
- l) Ensure that the Annual Report and Accounts, and all spoken and written public statements and reports issued by the Board of Directors, are clear, comprehensive, balanced and fully represent the facts;
- m) Ensure that Annual and other key reports are issued in good time to all members, partners and stakeholders with a legitimate interest in health issues;
- o) In consultation with the Board of Directors, consult with and involve the public on the planning and delivery of local health services;
- p) Establish and operate as necessary the process for appointing the Chair and Non-Executive Directors; and
- q) Not use the Council of Governors to obstruct the implementation of agreed actions and strategies

A5 7 Appointment of Non-Executive Directors (including the Chair and Deputy Chairman)

- A5 7.1 The Council of Governors shall establish a committee to assist in the process of the appointment of Non-Executive Directors. The committee shall consist of a majority of Governors and may have an independent assessor in attendance if appropriate who shall not be a member of, or have a vote, on the committee. The committee shall be Chaired by the Chair.
- A5 7.2 That committee shall identify the balance of individual skills, knowledge and experience that is required at the time a vacancy arises and, accordingly, draw up a job description and person profile for each new appointment.
- A5 7.3 Suitable candidates shall be identified, after public advertisement, by the committee which may, if it considers it appropriate in particular circumstances, engage an external organisation, recognised as an expert in this field, to assist it in the whole process.
- A5 7.4 On expiry of the initial Non-Executive Directors' current terms of appointment (or a period of 12 months from appointment as a Director of this Foundation Trust whichever is the greater), the Committee shall consider whether to recommend to the Council of Governors, that the Council of Governors reappoint the retiring Non-Executive Director, or Chair, or Deputy Chair.
- A5 7.5 If the Council of Governors does not so appoint, or if the individual does not wish to continue, or if the committee does not consider the reappointment appropriate, then suitable new candidates will be identified in accordance with the procedure outlined in A5 7.2 and A5 7.3 above.
- A5 7.5 Non-Executive Directors may serve longer than six years (e.g., two three-year terms), subject to annual re-appointment by the committee.

A5 8 Remuneration of the Chair and Other Non-Executive Directors

In order to determine the proper level of remuneration and allowances that should be paid to the Chair and other Non-Executive Directors, the Council of Governors may, from time to time, and at least every three years shall, consult at the Trust's expense, with external professional advisers recommended by the Secretary and the Executive Director with responsibility for advising the Trust on such matters.

A5 9 Staff Constituency – Time Taken Out of Normal Working Hours to Perform Council of Governors Duties

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

A5 10 Role of Chair

A5 10.1. The Chair is responsible for leading the Council of Governors and the Board of Directors. In respect of the Council of Governors, he/she is responsible for ensuring that it successfully discharges its responsibility for ascertaining the preferences and aspirations of the members, and reflecting them faithfully to the Board of Directors!

A5.10.2 The Chair will:

- a) Provide leadership to the Council of Governors, ensuring its effectiveness in all aspects of its role;
- b) Enable all Governors to make a full contribution to the Council of Governors' affairs and development of the Trust;
- c) Encourage constructive debate and challenge, and ensure that the Council of Governors acts as a team;
- d) Set the agenda of the Council of Governors, to ensure that key and appropriate issues are discussed by the Council of Governors in a timely manner;
- e) Ensure that the Council of Governors has adequate support, and is provided efficiently with all the necessary information on which to base informed decisions and monitor its strategies and policies;
- f) Chair and lead those Committees that are established to assist in the process of appointment of Non-Executive Directors, remuneration and allowances, and the other terms and conditions of office;
- g) Ensure the appropriate evaluation of the performance of the Council of Governors, its committees, and its individual Governors;
- h) Ensure that the Council of Governors articulates clear priorities for the Trust;
- i) Ensure the development of Governors and members;
- j) Ensure effective communications with members through a communications strategy; and
- k) Ensure effective communications with the Board of Directors

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

FOREWORD

The North East Ambulance Service NHS Foundation Trust (“the Trust”) is a public benefit corporation that was established in accordance with the provisions of the National Health Service Act 2006

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

The Council of Governors will conduct its business in an open a way as possible and will observe the Nolan principles of Public Life:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership;

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

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

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1. INTERPRETATION

- 1.1. Any expression to which a meaning is given in the National Health Service Act 2006 has the same meaning in this interpretation and in addition:

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

“CHAIR OF THE TRUST” means the person appointed by the Council of Governors as Chair and a Non-Executive Director and a member of the Board of Directors, with responsibility for the leadership of the Council of Governors and will Chair the Council of Governors

“CHAIR” is the Chair of the Trust

“COMMITTEE OF THE COUNCIL” means a committee established by the Council of Governors with specific Terms of Reference, Chair and membership approved by the Council

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

“COUNCIL MEMBER” means a person elected or appointed to the Council of Governors

“DIRECTOR” means a person appointed to the Board of Directors

“MEMBER” means a person registered as a member of a Constituency

“MONITOR” means the corporate body known as Monitor, as provided by Section 61 of the Health & Social Care Act 2012

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

“OFFICER” means an employee of the Trust

“SECRETARY” means the Trust Secretary

“TRUST” means the North East Ambulance Service NHS Foundation Trust

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

2. GENERAL INFORMATION

- 2.1. The purpose of the Council of Governors’ Standing Orders is to ensure that the highest standard of Corporate Governance and conduct are applied to all Council meetings and associated deliberations.

- 2.2. The Trust believes that public service values lie at its heart. High standards of corporate and personal integrity based on a recognition that patients come first, is a fundamental value of the Trust. There should be sufficient transparency about the Trust’s activities to promote confidence between the Trust and its staff, patients and the public. Everything that the Trust does should be able to stand the test of scrutiny, public judgement on propriety and professional codes of conduct

- 2.3. All business shall be conducted in the name of the Trust

- 2.4. A member of the Council of Governors who has acted honestly and in good faith, will not have to meet out of his or her own personal resources any personal or civil liability which is incurred in the execution or purported execution of his or her function as a member of the Council of Governors save where the member of the Council of Governors has acted recklessly
On behalf of the Council of Governors and as part of the Trust's overall insurance arrangements, the Board shall put in place appropriate insurance provision to cover such indemnity

These Standing Orders shall not override either the terms of the Licence issued by Monitor or the Constitution and in the event of conflict the terms of the Licence issued by Monitor or the Constitution shall prevail, as the case may be.

3. COMPOSITION AND ROLE OF THE COUNCIL OF GOVERNORS

- 3.1. **The composition** of the Council of Governors is outlined in the Constitution (Annex 3)

- 3.2. **Appointment of the Chair of the Council of Governors** – The Chair or in the absence or incapacity of the Chair, the Deputy Chair of the Trust will preside over meetings of the Council of Governors.

- 3.3. **Role of the Council of Governors** – the Governors are responsible for representing the interests of the Trust's members and partner organisations in the governance of the Trust. In doing so, the Governors must act in the best interests of the Trust and adhere to its values. The Council of Governors has three main roles:

Advisory Communicating to the Board the wishes of members and the wider community

Guardianship Ensuring that the Trust is operating in accordance with its principal purpose and is compliant with the terms of its Licence. In this regard it acts in a trustee role for the welfare of the organisation

Strategic Advising on the longer term direction to help the Board effectively determine its policies

- 3.4. The Council of Governors must work closely with the Board of Directors to discharge these roles and must agree with the Board of Directors how those roles, and any others, will be undertaken. Governors should not use the Council of Governors to obstruct the implementation of actions and strategies that have been agreed by the Board of Directors.

- 3.5. The Council of Governors should ensure that its interaction and relationship with the Board of Directors is appropriate and effective, in particular by agreeing availability and timely communication of relevant information and discussion that is clear and unambiguous.

4. MEETINGS OF THE COUNCIL OF GOVERNORS

4.1. Meetings held in Public

- 4.1.1. Meetings of the Council of Governors must be open to the public subject to the provisions of paragraph 4.1.2 below.

- 4.1.2. The Council of Governors may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that:

i) Publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or

ii) There are special reasons stated in the resolution and arising from the nature of the business of the proceedings

- 4.1.3. The Chair may exclude any member of the public from the meeting of the Council if they are interfering with or preventing the reasonable conduct of the meeting.
- 4.1.4. Nothing in these Standing Orders shall require the Council of Governors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council of Governors. Proceedings shall not be transmitted in any manner whatsoever without the prior agreement of the Council of Governors.
- 4.1.5. Meetings of the Council of Governors shall be held at least four times each year, inclusive of an Annual General Meeting, at times and places that the Council of Governors may determine.
- 4.1.6. The Council may invite the Chief Executive of the Trust and other members of the Board of Directors, to attend any meeting of the Council of Governors and enable members of the Council of Governors to raise questions about the affairs of the Trust.

4.2. Calling Meetings

- 4.2.1. Notwithstanding 4.1.5 above, the Chair may, in exceptional circumstances, call a meeting of the Council of Governors.
- 4.2.2. In exceptional circumstances, members of the Council of Governors may require a meeting by presenting a request for that purpose, signed by at least one-third of the whole Council of Governors. If the Chair refuses to call a meeting after receipt of a request, or fails to convene a meeting within fourteen days of receipt of a request, the Governors who signed the request may convene a meeting of the Council of Governors in default of the Chair.

4.3. Notice of Meetings

- 4.3.1. Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair, or in his/her absence by the Secretary, or by another officer of the Trust authorised by the Chair to sign on his/her behalf, shall be delivered to every Governor, or sent by post to the usual place of residence of such Governor, in order to be available to him/her at least five clear days before the meeting. Supporting papers shall accompany the agenda whenever possible but will certainly be despatched no later than three clear days before the meeting, save in emergency.
- 4.3.2. In the case of a meeting called by Governors in default of the Chair, the notice shall be signed by those Governors stating the business to be transacted, and no business shall be transacted at the meeting other than that specified on the notice.
- 4.3.3. A notice shall be presumed to have been served one day after posting. Lack of service of the notice on any Governor shall not affect the validity of a meeting.
- 4.3.4. Before each meeting of the Council of Governors, a public notice of the time and place of the meeting, and the public part of the agenda, will be displayed at the Trust's headquarters at least three days before the meeting.

4.4. Setting the Agenda

- 4.4.1. The Council of Governors may determine that certain matters shall appear on every Agenda for a meeting of the Council and shall be addressed prior to any other business being conducted.
- 4.4.2. A Governor desiring a matter to be included on an Agenda shall make his/her request in writing to the Chair at least ten clear working days before the meeting.

The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than ten days before a meeting may be included on the Agenda at the discretion of the Chair

4.5. **Chair of the Meeting**

At any meeting of the Council of Governors, the Chair, if present, shall preside. If the Chair is absent from the meeting (including absence due to a declared conflict of interest), the Deputy Chair shall preside. Otherwise, such member of the Council of Governors as the members of the Council of Governors present shall choose shall preside.

4.6. **Notices and Motions**

4.6.1. A member of the Council of Governor desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the Meeting to the Chair, who shall insert in the agenda for the Meeting. It must also be seconded by another Governor. All notices so received are subject to the notice given being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to section 4.3 of these Standing Orders.

4.6.2. A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

4.6.3. Notice of a motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the members of the Council of Governors who give it and also the signature of four other members of the Council. When any such motion has been disposed of by the Council of Governors it shall not be competent for any member of the Council of Governors, other than the Chair, to propose a motion to the same effect within six months; however the Chair may do so if he considers it appropriate.

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

4.6.5. When a motion is under discussion or immediately prior to discussion, it shall be open to a member of the Council of Governors to move:

- a) an amendment to the motion;
- b) the adjournment of the discussion or the meeting;
- c) the appointment of an ad hoc Committee to deal with a specific item of business;
- d) that the meeting proceed to the next business*;
- e) that the motion shall be now put*

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

Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

4.6.6. A motion to remove the Chair or Non-Executive Director must be seconded by ten members of the Council of Governors including at least two Elected Governors and two Appointed Governors, and requires the resolution in question to be approved by three-quarters of the members of the Council of Governors.

- 4.6.7. Subject to the agreement of the Chair, a member of the Council of Governors may give written notice of an emergency motion after the issue of the notice of the meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared at the commencement of the business of the meeting as an additional agenda item included in the agenda. The Chair's decision to include the item is final.
- 4.6.8. The Chair may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:
- a) the reception of a report;
 - b) consideration of any item of business before the meeting;
 - c) the accuracy of the minutes;
 - d) that the Council of Governors proceed to next business; or
 - e) that the question be now put

4.7. **Chair's Ruling**

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

4.8. **Voting**

- 4.8.1. A question at a meeting may be determined, at the discretion of the Chair, by a majority of the votes of those Governors present and voting on the question. In the case of the number of votes for and against a motion being equal, the Chair or the person presiding, shall have a second or casting vote.
- 4.8.2. All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A majority of Governors present may require a vote to be taken by anonymous paper ballot.
- 4.8.3. If at least one-third of the members of the Council of Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each governor present voted or abstained.
- 4.8.4. If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.8.5. In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

4.9. **Review of Standing Orders**

- 4.9.1. The Council of Governors shall review its Standing Orders at least every three years. For the avoidance of doubt, no amendment shall be enacted to the Standing Orders without the approval of Monitor first having been obtained in accordance with paragraph 20 of this Constitution.

4.10. **Record of Attendance**

The names of the members of the Council of Governors present at the meeting shall be recorded in the minutes. Governors should make every effort to attend meetings of the Council where appropriate and practicable.

4.11. Minutes

- 4.11.1. The Chair will ensure that all matters of significance in the meeting are recorded and maintained as a public record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding.
- 4.11.2. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 4.11.3. The wider circulation of the minutes shall be in accordance with the members of the Council of Governors' wishes. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded in accordance with section 4.1 of these Standing Orders (required by Code of Practice on Openness in the NHS).

4.12. Quorum

- 4.12.1. No business shall be transacted at a meeting of the Council of Governors unless at least one third of the Governors are present; the majority of which must be Public Governors.
- 4.12.2. If a member of the Council of Governors has been disqualified from participating in the discussion of any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest, he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

5. Committees

5.1. Assisting and Supporting the Council of Governors

- 5.1.1. The Council of Governors may agree, from time to time, to ask its committees, sub-committees or joint-committees which it has formally constituted in accordance with the Constitution, terms of the Licence issued by Monitor and statutory provisions, and individual Governors, to support the Council of Governors by undertaking tasks to assist the Council in performing its statutory role.

6. Committees – Further Provisions

- 6.1.1. Save as stipulated in this Constitution, terms of the Licence or statutory provisions, the Council of Governors may and, if directed, shall appoint committees of the Council, consisting wholly of persons who are member of the Council of Governors. Non-members of the Council of Governors may attend such committees if appropriate under the committee's Terms of Reference but they shall have no vote.
- 6.1.2. A committee so appointed may appoint sub-committees consisting wholly of persons who are members of the Council of Governors.
- 6.1.3. These Standing Orders, as far as they are applicable, shall apply also, with the appropriate alteration, to meetings of any committees or sub-committees established by the Council.
- 6.1.4. Each committee or sub-committee shall have such Terms of Reference and powers and be subject to such conditions (as to reporting back to the Council) as the Council shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 6.1.5. Where committees are authorised to establish sub-committees, they may not delegate their powers to the sub-committee unless expressly authorised by the Council of Governors.

- 6.1.6. The Council of Governors shall approve the membership of all committees and sub-committees that it has formally constituted and shall determine the Chair of each committee and sub-committee.
- 6.1.7. Where the Council of Governors is required to appoint persons to a committee and/or to undertake statutory functions as required by Monitor, and where such appointments are to operate independently of the Council of Governors, such appointments shall be made in accordance with the regulations.
- 6.1.8. There is no requirement to hold meetings of committees established by the Council of Governors in public.

7. CONFIDENTIALITY

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

8. DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

8.1. Declaration of Interests

Members of the Council of Governors are required to comply with the Trust's Standards of Business Conduct and to declare interests that are relevant and material to the Council. All members of the Council of Governors should declare such interests on appointment and annually thereafter and on any subsequent occasion when a conflict arises.

8.1.1. Interests regarded as 'relevant and material' are:

- a) Directorships, including non-executive directorships held in private companies or Public limited companies (with the exception of those of dormant companies);
- b) Ownership of, part-ownership of, or employment with private companies businesses or consultancies likely or possibly seeking to do business with the NHS;
- c) Significant share holdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS;
- d) A position of authority in a charity or voluntary organisation in the field of health and social care;
- e) Any connection with a voluntary or other organisation contracting for NHS services;
- f) Any other commercial interest in the issue before the meeting;
- g) Ministerial appointments made by or on behalf of Ministers;
- h) Positions in elected public office, for example as a District or County Councillor, MP or MEP; and
- i) Public appointments, for example as a Non-Executive Director of an NHS body or Police Authority

- 8.1.2. Any Governor of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her has any pecuniary interest, direct or indirect, shall declare their interest by giving notice in writing of such fact to the Chair or the Secretary as soon as practicable.

- 8.1.3. If a member of the Council of Governors has any doubt about the relevance of an interest, he/she should discuss it with the Chair or Secretary who shall advise him/her whether or not to disclose the interest.
- 8.1.4. At the time members of the Council of Governors' interests are declared, they should be recorded in the Council of Governors' minutes 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.
- 8.1.5. Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information shall be kept up to date for inclusion in succeeding Annual Reports.
- 8.1.6. During the course of a Council meeting, 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.
- 8.1.7. The interests of Governors' spouses and cohabiting partners should also be regarded as relevant and should also be disclosed.

8.2. Register of Interests

- 8.2.1. The Secretary will ensure that a Register of Interests is established to formally record declarations of interests of the Council of Governors.
- 8.2.2. Details of the Register will be kept up to date and reviewed on a monthly basis.
- 8.2.3. The Register will be available for public inspection in accordance with the Constitution.

9. COMPLIANCE – OTHER MATTERS

- 9.1. Members of the Council of Governors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the Trust.
- 9.2. Members of the Council of Governors must behave in accordance with the seven Nolan principles of behaviour in Public Life and both the Trust's and Council of Governors Code of Conduct as amended from time to time:
 - Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership

10. RESOLUTION OF DISPUTES WITH THE BOARD OF DIRECTORS

- 10.1. The Council of Governors and the Board of Directors must be committed to develop and maintain a constructive and positive relationship. The aim at all times should be to resolve any potential or actual differences of opinion quickly, through discussion and negotiation.
- 10.2. If, through informal efforts, the Chair cannot achieve resolution of a disagreement or conflict, the Chair will follow the **dispute resolution procedure** in accordance with this Constitution (**Annex 8**).
- 10.3. Where the dispute or disagreement relates to a proposal to remove a Governor from the Council of Governors and as to whether this is justified, an independent assessor agreeable to both parties should be requested to consider the evidence and conclude whether the proposed removal is reasonable or otherwise.

11. CANVASSING OF, AND RECOMMENDATIONS BY, GOVERNORS IN RELATION TO APPOINTMENTS

- 11.1. The canvassing of any Governor, directly or indirectly, for any appointment under the Trust shall disqualify the candidate for such appointment.
- 11.2. A Governor shall not solicit for any person any appointment with the Trust or recommend any person for such appointment but this Standing Order shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 11.3. Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 11.4. Relatives of Governors
 - 11.4.1. Candidates for any staff appointment under the Trust shall, when making application, disclose in writing to the Trust, whether they are related to any Governor or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
 - 11.4.2. Governors shall disclose to the Chair or Secretary, any relationship with a candidate of whose candidature that Governor is aware. It shall be the duty of the Chair to report to the Board of Directors any such disclosure made.
 - 11.4.3. On appointment, Governors should disclose to the Trust, whether they are related to any other member or holder of any office in the Trust.

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

FOREWORD

The North East Ambulance Service NHS Foundation Trust (“the Trust”) is a public benefit corporation that was established in accordance with the provisions of the National Health Service Act 2006.

NHS Foundation Trusts are governed by a regulatory framework that confers the functions of the Trust and comprises: Acts of Parliament and in particular the National Health Service Act 2006 (‘the 2006 Act’) and Health and Social Care Act 2012; their Constitutions; and the terms of their Licence granted by Monitor.

These Standing Orders, together with the Trust’s Standing Financial Instructions, provide a comprehensive business and regulatory framework for the conduct of the activities of the Trust. They fulfil the dual role of protecting the Trust’s interests and protecting staff from any possible accusation that they might have acted less than properly.

The Board of Directors will conduct its business in as open a way as possible and will observe the Nolan Principles of Public Life of:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

These Standing Orders are for the regulation of the proceedings and Business of the **Board of Directors**

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1. INTERPRETATION

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

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

“ACCOUNTING OFFICER” shall be the Officer responsible and accountable for funds entrusted to the Trust. He/she shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.

“AUDIT COMMITTEE” means a committee whose functions are concerned with the arrangements for internal control, financial reporting and internal auditing to ensure transparency and accuracy.

“BOARD/BOARD OF DIRECTORS” means the Chair, Executive and Non-Executive Directors of the Trust collectively as a body.

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

“CHAIR” is the person appointed by the Council of Governors to lead the Board and the Council of Governors and to ensure that they successfully discharge their overall responsibility for the Trust as a whole. The expression, ‘Chair’, shall be deemed to include Deputy Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable. The term Chair shall also, for the purposes of Standing Orders refer to the person appointed by Board members to preside in exceptional circumstances should either the Chair or Deputy Chair be temporarily unavailable.

“CHIEF EXECUTIVE” shall mean the Chief Officer of the Trust.

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

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

“DEPUTY CHAIR” means the Non-Executive Director appointed by the Council of Governors to take on the Chair’s duties if the Chair is absent for any reason.

“DIRECTOR OF FINANCE AND RESOURCES” shall mean the Chief Finance Officer of the Trust.

“EXECUTIVE DIRECTOR” means an employee of the Trust holding executive office.

“FUNDS HELD ON TRUST” shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Section 47(2)(c) of the National Health Service Act 2006. Such funds may or may not be charitable.

“MEMBER” means a person registered as a member of a Constituency in terms of paragraphs 6 and 7 of this Constitution.

“MONITOR” means the corporate body known as Monitor, as provided by Section 61 of the Health & Social Care Act 2012.

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

“NOMINATED OFFICER” means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.

“NON-EXECUTIVE DIRECTOR” means a Director of the Trust who is appointed for their independence and expertise but who does not hold executive office.

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

“SFIs” means Standing Financial Instructions.

“SOs” means Standing Orders.

“TRUST” means the North East Ambulance Service NHS Foundation Trust

“SECRETARY” means the Trust Secretary whose role will be to provide independent advice on corporate governance issues to the Chair, Council of Governors and Board of Directors and monitor the Trust’s compliance with these Standing Orders, the Constitution, the terms of the Licence issued by Monitor, statutory provisions and guidance.

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

2.1. All business conducted by the Board of Directors shall be conducted in the name of the Trust. All decisions must be taken objectively in the interests of the Trust.

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

2.3. The powers of the Trust, established under statute, shall be exercised by the Board at its meeting except as stated in Standing Order 5.

2.4. The Board of Directors has resolved that certain powers and decisions may only be exercised or made by the Board. These powers and decisions shall be set out in “Reservation of Powers to the Board” and should be read in conjunction with the Standing Orders. The Board of Directors must adopt Standing Financial Instructions (SFIs), setting out the responsibilities of individuals and this should be read in conjunction with Standing Orders.

2.5. **Composition of the Board of Directors** – The composition of the Board of Directors will be:

- The non-executive Chair of the Trust
- 5 - 7 other Non-Executive Directors
- 5 - 7 Executive Directors including:
 - the Chief Executive
 - the Director of Finance
 - a registered medical or dental practitioner
 - a registered nurse or midwife

2.6. Role of Board and its Directors

The role of the Board of Directors is to provide active leadership of the NHS Foundation Trust within a framework of prudent and effective controls which enables risk to be assessed and managed. The Board of Directors has a duty to promote the success of the trust so as to maximise the benefit for members and for the public.

It is responsible for ensuring compliance with its terms of its Licence, its Constitution, mandatory guidance issued by Monitor, relevant statutory requirements and contractual obligations. In doing so, it should ensure it retains the necessary skills within its Board of Directors and puts in place appropriate succession planning.

The Board as a whole is responsible for ensuring the quality and safety of services, setting the Trust's strategic aims, taking into consideration the views of the Council of Governors, ensuring that the necessary financial and human resources are in place and agreeing the Trust's values and standards of conduct.

The Board of Directors is responsible for ensuring that relevant metrics, measures, milestones and accountabilities are developed and agreed so as to understand and assess progress and delivery of performance. Where appropriate and, in particular, in high risk or complex areas, will commission independent advice to provide an adequate and reliable level of assurance.

The Board includes:

2.6.1. Executive Directors

Executive Directors will exercise their authority within the terms of these Standing Orders and the Trust's Standing Financial Instructions and the Scheme of Delegation.

2.6.2. Chief Executive

The Chief Executive is responsible for the overall performance of the executive functions of the Trust and is the Accounting Officer who shall be responsible for ensuring the discharge of obligations under Financial Directions and in line with the requirements of the NHS Foundation Trust Accounting Officer Memorandum.

2.6.3. Director of Finance and Resources

The Director of Finance and Resources shall be responsible for the provision of financial advice to the Trust for the supervision of financial control and accounting systems and will be responsible, along with the Chief Executive, for ensuring the discharge of obligations under relevant Financial Directions.

2.6.4. Non-Executive Directors

The Non-Executive Directors will not be granted nor will they seek to exercise any individual executive powers on behalf of the Trust. They may however, exercise collective authority when acting as members of, or when Chairing, a committee of the Trust which has delegated powers.

Non-Executive Directors should receive the necessary information and feel able to raise appropriate challenge of recommendations or decisions of the Board, in particular making full use of their skills and experience gained both as a Director of the Foundation Trust and also in other leadership roles. They should expect and apply similar standards of care and quality in their role as a Non-Executive Director of an NHS Foundation Trust as they would in other similar roles.

2.6.5. Chair

The Chair is responsible for the operation of the Board and will Chair all Board meetings when present. The Chair has certain delegated executive powers. The Chair must comply with the terms of appointment and with these Standing Orders.

The Chair will take responsibility either directly or indirectly for the induction of the Non-Executive Directors, their portfolios of interests and assignments, and their performance.

The Chair will work in close harmony with the Chief Executive and will ensure that key and appropriate issues are discussed by the Board in a timely manner with all the necessary information and advice being made available to the Board to inform the debate and ultimate resolutions.

2.7. **Appointments – Chair and Non-executive Directors** – the Chair and Non-Executive Directors are appointed and removed by the Council of Governors

2.7.1. **Deputy Chair** - The Council of Governors, at a general meeting of the Council of Governors, shall appoint one of the Non-Executive Directors as Deputy Chair for such a period as they may specify (not to exceed the remainder of his term as a Non-Executive Director).

2.7.2. **Senior Independent Director** - the Board of Directors may appoint one of the Non-Executive Directors to be the Senior Independent Director, in consultation with the Council of Governors. The Senior Independent Director could be the Deputy Chair.

2.8. **Terms of Office of the Chair and Members of the Board**

2.8.1. The 2006 Act presents how appointments to the Board are to be made and the Trust shall have the relevant nominations processes for identification and nominations of Executive and Non-Executive Directors, as set out in The NHS Foundation Trust Code of Governance and in accordance with this the Trust's Constitution.

2.8.2. The Board shall have a Trust Secretary, who, under the direction of the Chair, shall ensure good information flows within the Board and Council of Governors and their committees, between Directors and members of the Council of Governors, and between senior management and the Board. The Trust Secretary shall also advise the Board and Council of Governors on all governance matters and shall facilitate induction and professional development as required.

2.8.3. A Director of the Trust, who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her function as a Director save where the Director has acted recklessly. On behalf of the Directors and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity.

2.8.4. Non-Executive Directors may, at the Trust's expense, seek external advice or appoint an external adviser on any material matter of concern provided the decision to do so is a collective one by the majority of Non-Executive Directors.

3. **MEETINGS OF THE BOARD OF DIRECTORS**

3.1. **Admission of the Public and the Press** - The public and representatives of the press shall be afforded facilities to attend all formal meetings.

Provision is made for parts of the meeting to be held in closed session, where the Board of Directors resolves the following:

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

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

"that in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board of Directors to complete business without the presence of the public"

3.3. Confidentiality

- 3.3.1. Nothing in these Standing Orders shall require the Board of Directors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Board of Directors. Proceedings shall not be transmitted in any manner whatsoever without the prior agreement of the Board of Directors.
- 3.3.2. Matters to be dealt with by the Board of Directors following the exclusion of representatives of the press, and other members of the public shall be confidential to the members of the Board of Directors.
- 3.3.3. Directors and Officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Board of Directors meeting, without the expressed permission of the Board of Directors. This prohibition shall apply equally to the content of any discussion during the Board of Directors' meeting which may take place on such reports or papers.

3.4. Calling Meetings

- 3.4.1. The Chair of the Trust may call a meeting of the Board of Directors at any time
- 3.4.2. The Directors may require the Chair to convene a meeting by presenting a request for that purpose, signed by at least one-third of the whole of the Board of Directors. If the Chair refuses to call a meeting after receipt of a request, or fails to convene a meeting within seven days of receipt of a request, the Directors who signed the request may convene a meeting of the Board of Directors in default of the Chair.

3.5. Notice of Meetings

- 3.5.1. Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or the Secretary or by an officer authorised by the Chair to sign on his behalf shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him at least five clear days before the meeting but will certainly be despatched no later than three clear days before the meeting, save in emergency.
- 3.5.2. A notice shall be presumed to have been served one day after posting. Want of service of the notice on any Director shall not affect the validity of a meeting.
- 3.5.3. In the case of a meeting called by Directors in default of the Chair (see 3.4.2), the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice or emergency motions allowed under these Standing Orders.
- 3.5.4. Before each meeting of the Board of Directors a public notice of the time and place of the meeting, and the public part of the Agenda, shall be displayed at the Trust's office at least three clear days before the meeting.

3.6. Setting the Agenda

- 3.6.1. The Board of Directors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 3.6.2. A Director desiring a matter to be included on an agenda shall make his request in writing to the Chair at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.

3.7. Petitions

3.7.1. Where a petition has been received by the Trust, the Chair of the Board of Directors shall include the petition as an item for the agenda of the next Board of Directors meeting subject to the powers granted to the Chair by these Standing Orders to regulate arrangements for Board of Directors' meetings.

3.8. Chair of Meeting

3.8.1. At any meeting of the Board of Directors, the Chair of the Board of Directors shall preside. If the Chair is absent from the meeting, the Deputy Chair shall preside. In the absence of the Chair and Deputy Chair, the Directors will select a Non-Executive Director from those present to preside.

3.8.2. If the Chair is absent temporarily on the grounds of a declared conflict of interest, the Deputy Chair shall preside. If the Chair and Deputy Chair are absent, or are disqualified from participating, the Directors will select a Non-Executive Director from those present to preside.

3.9. Chair's Ruling

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

3.10. Annual Public Meeting – The Trust will publicise and hold an annual public meeting

3.11. Notices of Motion

3.11.1. A Director desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, who shall insert in the agenda for the meeting. It must also be seconded by another Director. All notices so received are subject to the notice given being permissible under governing regulations. This paragraph shall not prevent any motion being withdrawn or moved during the meeting, without notice on any business mentioned on the agenda.

3.11.2. A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

3.11.3. Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of four other Directors. When any such motion has been disposed of by the Board of Directors, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within six months; however the Chair may do so if he/she considers it appropriate.

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

3.11.5. When a motion is under discussion or immediately prior to discussion, it shall be open to a Director to move:

- a) an amendment to the motion;
- b) the adjournment of the discussion or the meeting;
- c) the appointment of an ad hoc committee to deal with a specific
- d) item of business;
- e) a motion resolving to exclude the public (including the press);
- f) that the meeting proceed to the next business (*); or
- g) that the motion be now put (*)

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

Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

- 3.11.6. Subject to the agreement of the Chair, a Director may give written notice of an emergency motion after the issue of the notice of the meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared at the commencement of the business of the meeting as an additional agenda item included in the agenda. The Chair's decision to include the item is final.
- 3.11.7. The Chair may exclude from the debate at his/her discretion any such motion of which notice was not given on the notice summoning the meeting, other than a motion relating to:
 - a) the reception of a report;
 - b) consideration of any item of business before the meeting;
 - c) the accuracy of the minutes;
 - d) that the Council of Governors proceed to next business; or
 - e) that the question be now put

3.12. **Voting**

- 3.12.1. A question at a meeting may be determined, at the discretion of the Chair, by a majority of the votes of the Directors present and voting on the question. In the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.
- 3.12.2. All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 3.12.3. If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 3.12.4. If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.12.5. In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.12.6. An officer who has been appointed formally by the Board of Directors to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An officer attending the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An officer's status when attending a meeting shall be recorded in the minutes.

3.13. **Minutes of Meetings of the Board of Directors**

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

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

3.13.3. Minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting, the minutes shall be made available to the public.

3.14. **Record of Attendance**

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

3.15. **Quorum**

3.15.1. No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors appointed, (including at least one Non-Executive Director and one Executive Director) are present.

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

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

3.16. **Adjournment of Meetings**

3.16.1. The Board of Directors may, by resolution, adjourn any meeting to some other specified date, place and time and such adjourned meeting shall be deemed a continuation of the original meeting. No business shall be transacted at any adjourned meeting which was not included in the agenda of the meeting of which it is an adjournment.

3.16.2. When any meeting is adjourned to another day, other than the following day, notice of the adjourned meeting shall be sent to each Director specifying the business to be transacted.

3.17. **Observers at Board of Directors meetings**

3.17.1. The Board of Directors will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Board of Directors meetings and may change, alter or vary these terms and conditions as it deems fit.

4. **ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

4.1. Subject to the Constitution, terms of the licence issued by Monitor, statutory provisions, the Board of Directors may make arrangements for the exercise, on behalf of the Trust, of any of its functions:

- a) by a committee or sub-committee, appointed by virtue of these Standing Orders;
- b) by a Director or officer of the Trust; or
- c) by another body as defined in these Standing Orders

In each case, subject to such restrictions as the Board thinks fit.

4.2. Emergency Powers

4.2.1. The powers which the Board has retained to itself within these Standing Orders may, in emergency, be exercised jointly by the Chief Executive and the Chair after having consulted at least two other Non-executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board for noting.

4.3. Delegation to Committees

4.3.1. The Board shall agree from time to time to the delegation of executive powers to be exercised by committees, sub-committees or joint committees which it has formally constituted in accordance with the Constitution, terms of the Licence issued by Monitor, statutory provisions. The Constitution and Terms of Reference of these committees, sub-committees or joint-committees, and their specific executive powers shall be approved by the Board of Directors.

4.3.2. When the Board of Directors is not meeting as the Trust in public session, it shall operate as a committee and may only exercise such powers as may have been delegated to it by the Trust in public session.

4.4. Delegation to Officers

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

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

4.4.3. Nothing in the Scheme of Delegation by the Board shall impair the discharge of the direct accountability of the Executive Directors to the Board of the Directors to provide information and advise the Board in accordance with the Constitution, the terms of the Licence issued by Monitor, and statutory provisions.

4.4.4. The arrangements made by the Board as set out in the Standing Financial Instructions, Scheme of Delegation and Schedule of Decisions Reserved to the Board shall be read in conjunction with these Standing Orders.

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

5. COMMITTEES

5.1. Subject to the Constitution, the terms of the Licence issued by Monitor, statutory provisions, the Board of Directors may and, if directed, shall appoint committees of the Trust, consisting wholly or partly of the Chair and Directors or wholly of persons who are not members of the Board of Directors.

- 5.2. A committee so formed under SO 5.1 may appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include members of the Board of Directors) or wholly of persons who are not members of the Trust committee (whether or not they include members of the Board of Directors).
- 5.3. These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Board of Directors.
- 5.4. Each such committee or sub-committee shall have such Terms of Reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5. Where committees are authorised to establish sub-committees, they may not delegate their executive powers to the sub-committee unless expressly authorised by the Board.
- 5.6. The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines that persons, who are neither Non-Executive Directors nor Directors, shall be appointed to a committee, the terms of such appointment shall be defined by the Board. Those appointed would be entitled to the payment of travelling and other allowances.
- 5.7. Where the Trust is required to appoint persons to a committee and/or to undertake statutory functions as required by Monitor, and where such appointments are to operate independently of the Board of Directors, such appointments shall be made in accordance with the regulations and directions laid down by the Board of Directors.
- 5.8. The major committees established by the Board of Directors are:
- Audit Committee
 - Nomination and Remuneration Committee
- 5.9. No one, other than the committee Chair and committee members, is entitled to be present at a meeting of the above listed committees. However, other individuals may attend at the invitation of the committee or as established by these Standing Orders.
- 5.10. **Confidentiality**
- 5.10.1. A member of the Board of Directors or a member of a committee shall not disclose any matter reported to the Board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or committee shall resolve that it is confidential or embargoed.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

6.1. Declaration of Interests

- 6.1.1. Paragraph 9.13 of the Constitution requires Board members to declare interests which are relevant and material to the Board of which they are a member. All existing members of the Board should declare such interests. Any Board members appointed subsequently should do so on appointment and annually thereafter.
- 6.1.2. Interests which should be regarded as “relevant and material” are:
- a) Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies);
 - b) Ownership of, part-ownership of, or employment with private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
 - c) Significant or controlling share-holdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS;

- d) A position of trust in a charity or voluntary organisation in the field of health and social care;
- e) Any connection with a voluntary or other organisation contracting for NHS services;
- f) Any other commercial interest in the issue before the meeting;
- g) Ministerial appointments made by or behalf of Ministers;
- i) Positions in elected public office, for example as a District or County Councillor, MP or MEP; and
- j) Public appointments, for example as a Non-Executive Director of an NHS body or Police Authority

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

6.1.4. At the time Board members' interests are declared, they should be recorded in the Board minutes. Any changes in interests should be declared at the next Board meeting following the change occurring.

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

6.1.6. During the course of a Board meeting, if a conflict of interest is established, the Board member concerned should withdraw from the meeting and play no part in the relevant discussion (unless the Board decides otherwise) or decision.

6.1.7. The interests of Board members' spouses or cohabiting partners should be regarded as relevant and should be disclosed.

6.1.8. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

6.1.9. Directors have a duty not to accept benefits from a third party by virtue of their being a Director or for doing or not doing anything in this regard.

6.2. Register of Interests

6.2.1. In accordance with paragraph 10 of the Constitution, a Register of Interests will be established to record formally declarations of interests of Board members. In particular, the Register will include details of all directorships and other relevant and material interests that have been declared by both Executive and Non-Executive Directors, as defined in Standing Order 6.1.2.

6.2.2. These details will be kept up to date by means of a monthly review of the Register in which any changes to interests declared during the preceding month will be incorporated.

6.2.3. Subject to any contrary regulations being passed, the Register will be available for inspection by the public free of charge. The Secretary will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

6.2.4. Copies or extracts of the Register will be provided to members of the NHS Foundation Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the Register.

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

7.1. For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order:
7.1.1. “spouse” shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);

7.1.2. “contract” shall include any proposed contract or other course of dealing;

7.2. **“Pecuniary interest”**

For the purpose of this Standing Order, the Chair or a Director shall be treated as indirectly having a pecuniary interest in a contract if:

- (a) he/she or a nominee of him/her, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matters under consideration; or
- (b) he/she is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in same.

7.3. **Exception to Pecuniary Interests**

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

- a) neither he/she nor any person connected with him/her has any beneficial interest in the securities of a company of which he/she or such person appears as a member;
- b) any interest that he/she or any person connected with him/her may have in the contract is so remote or insignificant that it cannot be reasonably regarded as likely to influence him/her in relation to considering or voting on that contract; or
- c) those securities of any company in which he/she (or any person connected with him/her) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company of the relevant class of such capital, whichever is less.

7.3.2. Provided however, that where paragraph (3) above applies, the person shall nevertheless be obliged to disclose/declare their interest in accordance with these Standing Orders.

7.4. **Exclusion in proceedings of the Trust Board**

7.4.1. Subject to the following provisions of this Standing Order, if the Chair or any member of the Board of Directors has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, he/she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter, without the Chair of the meeting’s agreement, or vote on any question with respect to it.

7.4.2. The Board of Directors shall exclude the Chair or a Director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.

7.4.3. Any remuneration, compensation or allowances payable to a member in the course of their duty to the Chair or a member of the Board shall not be treated as a pecuniary interest for the purpose of this Standing Order.

- 7.4.4. This Standing Order applies to a committee, sub-committee or joint committee as it applies to the Trust and applies to a member of any such committee, subcommittee or joint committee (whether or not he is also a Director of the Trust) as it applies to a Director of the Trust.

8. STANDARDS OF BUSINESS CONDUCT

- 8.1. Directors should comply with the national guidance contained in HSG 1993/05 and the Trust's own Standards of Business Conduct policy documents.

8.2. Interests of Officers in Contracts

- 8.2.1. Any Director or officer of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract which he/she or any person connected with him/her has any pecuniary interest, director or indirect, the officer shall declare their interest by giving notice in writing of such fact to the Chief Executive or the Secretary as soon as practicable.
- 8.2.2. A Director or officer must also declare to the Chief Executive any other employment or business or other relationship of him/her, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Trust requires interests, employment or relationships so declared by staff to be entered in a register of interests of staff.

8.3. Canvassing of and Recommendations by, Members in relation to Appointments

- 8.3.1. Canvassing of members of the Board of Directors or members of any committee of the Board of Directors directly or indirectly for any appointment by the Trust shall disqualify the candidate from such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 8.3.2. A member of the Board of Directors shall not solicit for any person any appointment by the Board of Directors or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a member from giving written testimonial of a candidate's ability, experience or character for submission to the Board of Directors.
- 8.3.3. Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

8.4. Relatives of Members of the Board of Directors

- 8.4.1. Candidates for any staff appointment shall, when making application, disclose in writing whether they are related to any member of the Board or the holder of any office within the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 8.4.2. The Chair, and every Director of the Trust, shall disclose to the Chief Executive any relationship with a candidate of whose candidature that the Chair, members or Director is aware. It shall be the duty of the Chief Executive or nominated Director to report to the Board of Directors any such disclosure made.
- 8.4.3. On appointment, the Chair and members of the Board (and prior to acceptance of an appointment in the case of Directors) should disclose to the Board of Directors whether they are related to any other member or holder of any office under the Trust.
- 8.4.4. Where the relationship of a Director or another member of the Board or another member of the Trust is disclosed, the Standing Order headed "Disability of Directors in proceedings on account of pecuniary interest" shall apply.

9. RESOLUTION OF DISPUTES WITH THE COUNCIL OF GOVERNORS

9.1. The Board of Directors and Council of Governors must be committed to develop and maintain a constructive and positive relationship. The aim at all times should be to resolve any potential or actual differences of opinion quickly, through discussion and negotiation.

9.2. The Council of Governors has three main roles:

- **Advisory** – Communicating to the Board the wishes of members of the Council of Governors and the wider community
- **Guardianship** – Ensuring that the Trust is operating in accordance its Terms of Authorisation. In this regard it acts in a trustee role for the welfare of the organisation
- **Strategic** – Advising on a longer term direction to help the Board effectively determine its policies

9.3. The Board of Directors has overall responsibility for running the affairs of the Trust. Its role is to:

- Note advice from, and consider the views of the Council of Governors
- Promote the success of the Trust so as to maximise the benefits for members and for the public
- Set a the strategic direction and leadership of the Trust
- Ensure the terms of the Licence issued by Monitor are complied with
- Set organisational and operational targets
- Assess, manage and minimise risk
- Assess achievement against the above objectives
- Ensure that action is taken to eliminate or minimise, as appropriate, adverse deviations from objectives
- Ensure that the highest standards of Corporate Governance are applied throughout the organisation

9.4. In recognising the different roles of the Board of Directors and Council of Governors, a **disputes resolution procedure** has developed. If, through informal efforts, the Chair cannot achieve resolution of a disagreement or conflict, the Chair will follow the procedure in accordance with this Constitution (**Annex 8**).

9.5. Where the dispute or disagreement relates to a proposal to remove a Governor from the Council of Governors and as to whether this is justified, an independent assessor agreeable to both parties should be requested to consider the evidence and conclude whether the proposed removal is reasonable or otherwise .

10. NOTIFICATION TO MONITOR AND COUNCIL OF GOVERNORS

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

11. BOARD PERFORMANCE

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

12. CUSTODY OF SEAL, SEALING OF DOCUMENTS

12.1. The Trust seal shall be kept by the Secretary in a secure place.

12.2. The Trust seal shall be affixed under the authority of the Board of Directors or by a committee thereof where the Board of Directors has delegated its powers.

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

12.4. **Register of Sealing**

12.4.1. An entry of every sealing shall be made and numbered consecutively in a register provided for that purpose. The register shall include details of the date of the sealing, the nature of the document and the persons who shall have approved and authorised same, including those who attested the seal. A report of all sealings shall be made to the Board at least annually and shall include details of the seal number, the description of the document and the date of the sealing.

13. **SIGNATURE OF DOCUMENTS**

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

13.2. The Chief Executive (or nominated officer) shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board of Directors or any committee, subcommittee or standing committee with delegated authority.

14. **STANDING ORDERS**

14.1. **Waiver of Standing Orders**

14.1.1. Except where this would contravene any provision of the Constitution or any direction made by Monitor, any one or more of the Standing Orders may be waived at any meeting, provided that at least two-thirds of the Directors are present, including one Executive Director and one Non-Executive director, and that a majority of those present vote in favour of suspension.

14.1.2. A decision to waive Standing Orders shall be recorded in the minutes of the meeting.

14.1.3. The Audit Committee shall review every decision to waive Standing Orders.

14.2. **Variation and Amendment of Standing Orders**

14.2.1. These Standing Orders shall be amended only if:

- a) a notice of motion has been given;
- b) no fewer than half the total of the Trust's Non-Executive Directors vote in favour of amendment;
- c) at least two-thirds of the Directors are present; and
- d) the variation proposed does not contravene a statutory provision or direction made by the Regulator of NHS Foundation Trusts and is approved by Monitor.

14.3. **Dissemination and Responsibilities**

14.4. It is the duty of the Chief Executive to ensure that existing Directors and officers and all new appointees to the Board of Directors are notified of and understand their responsibilities within these Standing Orders, Standing Financial Instructions, the Scheme of Delegation and Schedule of Decisions Reserved to the Board. Updated copies shall be issued to staff designated by the Chief Executive. New designated Officers shall be informed in writing and shall receive copies where appropriate in Standing Orders.

14.5. **Review of Standing Orders**

These Standing Orders will be reviewed as and when necessary but at least every three years.

ANNEX 8 – FURTHER PROVISIONS

Contents:

- A8.1. Expulsion - Members
- A8.2. Voting at Elections – Members of the Public Constituency
- A8.3. Communication and Conflict – Disputes Resolution Procedure – Board of Directors and Council of Governors
- A8.4. Role of the Trust Secretary

R8 1 Expulsion - Members

A member may be expelled by a resolution of the Council of Governors. The following procedure is to be adopted for consideration of such issues and also where the Secretary, in conjunction with the Chair and/or Chief Executive, has determined that a member is disqualified or an applicant is ineligible as a member and where a dispute has arisen following the process outlined in paragraphs 7.4.3 – 7.4.5 of the Constitution has been followed:

- R8 1.1. Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Trust.
- R8 1.2. If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
 - a) Dismiss the complaint and take no further action; or
 - b) Arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.
- R8 1.3. If a resolution to expel a member is to be considered at a meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- R8 1.4. At the meeting, the Council of Governors will consider oral and written evidence produced in support of the complaint, and any oral and written evidence submitted for or on behalf of the member about whom complaint has been made.
- R8 1.5. If the member complained of fails to attend the meeting without due cause, the meeting may proceed in their absence. A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting that the resolution to expel them is carried.
- R8 1.6. No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors.

R8 2 Voting at Elections for Governors by the Public Constituency

- R8 2.1. A person may not vote at an election for an elected governor in the Public Constituency unless he has made a declaration in the specified form that he is a member of the Public Constituency.
- R8 2.2. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.
- R8 2.3. A person who becomes a member on or before the closing date for the receipt of nominations by the candidates for an election, is eligible to vote in that election.

R8 2.4. A person entitled to vote for a Staff Governor shall make a similar declaration to that at R 8.2.1. above save that paragraph R 8.2.2 will not apply in such a case.

R8 3 Governors and Directors: Communication and Conflict

R8 3.1. Summary

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

R8 3.2. Informal Communications

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

R8 3.2.1. The Chair of the Council of Governors and the Board of Directors will encourage informal methods of communication including:

- Participation of the Board of Directors in the induction, orientation and training of Governors;
- Development of special interest links between Non-Executive Directors and Governors;
- Discussions between Governors and the Chair, the Chief Executive or a Director, through the office of the Chief Executive or any other person appointed to perform the duties of the Chief Executive to the Board; and
- Involvement in membership recruitment and briefings at public events organised by the Foundation Trust.

R8 3.3 Formal Communication

R8 3.3.1 Some aspects of communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively. Communications initiated by the Council of Governors, and intended for the Board of Directors, will be conducted as follows:

- Specific requests by the Council of Governors will be made through the Chair, to the Board of Directors;
- Any Governor has the right to raise specific issues at a duly constituted meeting of the Council of Governors through the Chair. In the event of disagreement, two thirds of the Governors present must approve the request. The Chair will raise the matter with the Board of Directors and provide the response to the Council of Governors; and
- Joint meetings will take place between the Council of Governors and the Board of Directors as and when necessary.

R8 3.3.2. The Board of Directors will request the Chairman to seek the views of the Council of Governors on:

- the Board of Directors' proposal for the strategic direction, and the Forward Plan ;
- the Board of Directors' proposals for developments;
- Trust performance;
- their involvement in service reviews and evaluation; and
- proposed changes, plans and developments for the Trust

R8 3.3.3 The Board of Directors will also present the Annual Accounts, Annual Report and any report of the Auditor on the Accounts to the Council of Governors and members at a general meeting

- R8 3.3.4. The following formal methods of communication will also be used:
- Attendance by the Board of Directors at a meeting of the Council of Governors;
 - Provision of formal reports or presentations by Executive Directors to a meeting of the Council of Governors;
 - Inclusion of appropriate minutes for information on the Agenda of a meeting of the Council of Governors; and
 - Reporting the views of the Council of Governors to the Board of Directors through the Chair or Deputy Chair,
- R8 3.3.5. The Board of Directors will keep under review, those agreements between it and the Council of Governors; recognising the evolving role of the Council of Governors over time,

R8 3.4. Resolving Conflict

- R8 3.4.1. The Council of Governors and the Board of Directors must be committed to develop and maintain a constructive and positive relationship. The aim at all times is to resolve any potential or actual differences of opinion quickly, through discussion and negotiation,
- R8 3.4.2. If, through informal efforts, the Chair cannot achieve resolution of a disagreement or conflict, the Chair will follow the **dispute resolution procedure** described below. The aim is to resolve the matter at the first available opportunity and only to follow this procedure if initial action fails to achieve resolution,

R8 3.5. Dispute Resolution Procedure

- R8 3.5.1. The Chair, or the Senior Independent Director (if the dispute involves the Chair) of the Board or the Council of Governors as appropriate, shall first endeavour through discussion with members of the Council of Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them to resolve the matter to the reasonable satisfaction of both parties;
- R8 3.5.2. Failing resolution under 3.5.1 above then the Board, or the Council of Governors, as appropriate, shall, at its next formal meeting, to be held in private session, approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute;
- R8 3.5.3. The Chair, or Senior Independent Director (if the dispute involves the Chair) of the Board or the Council of Governors as appropriate, shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an Agenda Item and Agenda Paper at the next formal meeting of the Board or Council of Governors (in private session to be held in accordance with 8.10.1 - 8.10.3 as appropriate). That meeting shall agree the precise wording of a Response to Disputes Statement;
- R8 3.5.4. The Chair, or Senior Independent Director (if the dispute involves the Chair) of the Board or the Council of Governors as appropriate, shall immediately or as soon as is practicable, communicate the outcome to the other party and deliver the Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 3.5.2 above shall be repeated;
- R8 3.5.5. If, in the opinion of the Chair, or Senior Independent Director (if the dispute involves the Chair) of the Board or the Council of Governors as appropriate, and following the further discussion prescribed in 3.5.4 there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council of Governors and the Board accordingly;
- R8 3.5.6. On the satisfactory completion of this disputes process the Board shall implement agreed changes; and
- R8 3.5.7. On the unsatisfactory completion of this disputes process the view of the Board shall prevail,

R8 3.5.8. Where the dispute relates to a proposal to remove a Governor from the Council of Governors and as to whether this is justified, an independent assessor agreeable to both parties should be requested to consider the evidence and conclude whether the proposed removal is reasonable or otherwise,

R8 3.5.9. Nothing in this procedure shall prevent the Council of Governors, if it so desires, through its nominated Lead Governor, from informing the Independent Regulator of NHS Foundation Trusts that, in the Council of Governors' opinion, the Board has not responded constructively to concerns of the Council of Governors that the Trust is not meeting the terms of the Licence issued by Monitor.

R8 4 Role of the Trust Secretary

R8 4.1. The NHS Foundation Trust Secretary has a significant role to play in the administration of corporate governance. In particular, the Trust Secretary shall:

- ensure good information flows within the Board and its committees and between senior management, Non-Executive Directors and Governors;
- ensure that Board procedures of both the Board of Directors and the Council of Governors are established and complied with;
- ensure that the Trust complies with relevant legislation and the terms of the Licence issued by Monitor;
- advise the Board of Directors and the Council of Governors (through the Chair) on all governance matters;
- be available to give advice and support to individual Directors, particularly in relation to the induction of new Directors and assistance with professional development; and
- ensure that meetings of both the Board of Directors and Council of Governors; and committees and sub-committees thereof, run effectively and efficiently and that they are properly recorded and that Directors and Governors receive appropriate support and guidance.

ANNEX 9 – ANNUAL MEMBERS’ MEETING

(Paragraph 7.6)

Contents:

- A9.1. Attendance
- A9.2. Agenda

R9 1 Attendance

- R9.1.1. The Annual Members’ Meeting shall be open to all members of the public and the Foundation Trust will publicise details of its date, time and venue to its Members and stakeholders.
- R9.1.2. Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors at least one member of the Council of Governors must attend the Annual Members’ meeting to present the amendment.

R9 2 Agenda

- R9.2.1. The Foundation Trust members shall formally receive the Annual Report and Annual Accounts and any report of the Auditor which will be presented by a Director of the Foundation Trust.
- R9.2.2. Any amendment proposed to the Constitution that relate to the powers of duties of Governors will require approval by Members at this meeting and Members will be given an opportunity to vote on whether they approve the amendment(s).