

Constitution of

The Rotherham NHS Foundation Trust

Approved by Council of Governors October 2018

**The Rotherham NHS Foundation Trust
Constitution**

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1. Interpretation and definitions

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

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

“2006 Act” means the NHS Act 2006;

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

“Accounting Officer” means the person who from time to time discharges the functions specified in paragraph 25 of Schedule 7 to the 2006 Act;

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

“Chairman” means the Chairman of the Trust;

“Co-optee” means an individual nominated in accordance with the provisions of paragraph 9.0 of Annex 6 of this Constitution and formally appointed by resolution of the Council of Governors to advise the Council of Governors at meetings of the Council of Governors in an advisory and non-voting capacity;

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

“Chief Executive” means the Chief Executive and Accounting Officer of the Trust;

“Director” means a director on the Board of Directors;

“Executive Director” means an Executive Director of the Trust appointed in accordance with paragraph 23 of the Constitution;

“Financial Year” means the annual twelve-month period beginning on 1st April and ending on 31st March.

“Governor” means a member of the Council of Governors;

“Local Authority Governors” means a Member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of an area specified in Annex 1 as an area for a Public Constituency;

“Member” means a Member of the Trust;

“Monitor” means the body corporate known as Monitor referred to in section 61 of the 2012 Act;

“Nolan Principles” means the seven principles of conduct for holders of public office enunciated by the Nolan Committee in its Report on Standards in Public Office;

“Other Partnership Governors” means a member of the Council of Governors appointed by a Governor partnership organisation other than a university providing a medical or dental school to the Trust and as specified in Annex 3, paragraph 5.1;

“Principal Purpose” means the provision of goods and services for the purposes of the health service in England;

“Public Governor” means a member of the Council of Governors elected by the Members of a Public Constituency;

“Public Constituency” means the constituency of the Trust constituted in accordance with paragraph 7 of this Constitution;

“Registered Dentist” means a dentist within the meaning of the Dentists Act 1984;

“Registered Medical Practitioner” means a medical practitioner within the meaning of the Medical Act 1983 who holds a licence to practice under that Act;

“Rotherham Ethnic Minority Alliance” means the organisation established to promote positive change for Rotherham's diverse minority ethnic communities;

“Rotherham Partnership” means the organisation which is from time to time established as the local accredited partnership for the Rotherham area and which brings together public, private, voluntary and community sector organisations for the benefit of the population of Rotherham;

“Secretary” means the secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust, including a joint, assistant or deputy secretary;

“Staff Governor” means a member of the Council of Governors elected by the Members of a Staff Class;

“Staff Class” means those classes of staff as classified by the relevant staff grouping described in paragraph 8;

“Staff Constituency” means the constituency of the Trust constituted in accordance with paragraph 8 of this Constitution;

“Trust” means The Rotherham NHS Foundation Trust;

“Vice Chairman” means the Vice Chairman of the Trust appointed pursuant to paragraph 17.1 of this Constitution;

“Voluntary Action Rotherham” means the body established for supporting, developing and promoting the voluntary and community sector in the Borough of Rotherham;

“Zero Tolerance Policy” means the Trust's policy from time to time directed towards discouraging violence towards its staff.

- 1.1 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the 2006 Act.
- 1.2 References in this Constitution to legislation include all amendments, replacements, or re-enactments made.
- 1.3 References to legislation include all regulations, statutory guidance or directions.
- 1.4 Headings are for ease of reference only and are not to affect interpretation.
- 1.5 Words importing the masculine gender only shall include the feminine gender.
- 1.6 Words importing the singular shall include the plural and vice-versa.
- 1.7 All Annexes referred to in this Constitution form part of it.

2. Name

- 2.1 The name of the foundation trust is The Rotherham NHS Foundation 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:
 - (a) the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
 - (b) the promotion and protection of public health.
- 3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

4. Powers

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

5. Membership and constituencies

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

- (i) a public constituency
- (ii) a staff constituency.

5.2 An individual who is a member of a constituency, or of a class within a constituency, may not, while membership of that constituency or class continues, be a member of any other constituency or class.

6. Application for membership

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

7. Public Constituency

7.1 Members of the Trust who are members of a public constituency, are to be individuals:

- (i) who live in an area specified in the column marked "Area (Wards)" of Table 1 Annex 1 and who have attained the age of 16 years of age at, or before, the time of their application for membership; and
- (ii) who are not eligible to become a member of the Staff Constituency; and
- (iii) who have each made application for membership to the Trust.

7.2 The minimum number of members in each Public Constituency, as specified in Table 1 in Annex 1, is 10 per each Public Constituency.

7.2 For the avoidance of doubt, those individuals who live in an area specified in the Constitution as an area for any Public Constituency, are referred to collectively as a Public Constituency in accordance with paragraph 4(2) of Schedule 7 of the 2006 Act.

8. Staff Constituency

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

- (i) he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- (ii) he has been continuously employed by the Trust under a contract of employment for at least 12 months.

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.

8.3 At least three members of the Council must be elected by the Staff Constituency, or where there are classes within it, at least one member of the Council must be elected by each class, and at least three members must be elected altogether.

8.4 The Staff Constituency shall be divided into 1 class of individuals who are eligible for membership of the Staff Constituency. The description of

individuals making up each of the one class is specified within Annex 2 and are referred to as members of a class within the Staff Constituency.

- 8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

9. Automatic membership by default - staff

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

10. Restriction on membership

- 10.1 An individual who is a member of a constituency, or of a class within a constituency, may not, while membership of that constituency or class continues, be a member of any other constituency or class.
- 10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become, or continue as a member of any constituency other than the Staff Constituency.
- 10.3 An individual must be at least 16 years old to become a member of the Trust.
- 10.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 9 – Further Provisions.

11. Annual Members' Meeting

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

12. Council of Governors – composition

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

13. Council of Governors – election of governors

- 13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules 2014. A copy of the Model Election Rules is attached at Annex 5.
- 13.2 The Model Election Rules as published from time to time by the Department of Health form part of this Constitution.
- 13.3 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 purposes of paragraph 44 of the Constitution (amendment of the

Constitution).

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

14. Council of Governors - tenure

14.1 An elected governor may hold office for a period of up to 3 years

14.2 An elected governor shall be eligible for re-election at the end that term.

14.3 An elected governor may, in exceptional circumstances¹, serve longer than 9 years, but will be subject to annual re-election up to a total of 12 years maximum – and if contested, such election shall be held by secret ballot.

14.4 An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.

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

14.6 An appointed governor shall be eligible for re-appointment at the end of his term, subject to limitations described in paragraphs 4.2 or 5.3 of Annex 3.

15. Council of Governors – disqualification and removal

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

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

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

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

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

15.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 6.

16. Council of Governors – duties of governors

16.1 The general duties of the Council of Governors are

16.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and to represent the interests of the members of the Trust as a whole and the interests of the public.

16.1.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

17. Council of Governors – meetings of governors

17.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 23.2.1 below) or, in his absence, the Trust Vice Chair, shall preside at meetings of the Council of Governors.

¹ “Exceptional circumstances” shall be determined by the Council of Governors in a general meeting.

- 17.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 17.3 For the purposes of obtaining information about the Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.
- 17.4 A meeting of the Council of Governors shall be quorate if not less than half of the elected Governors (public and staff) are present.

18. Council of Governors – standing orders

- 18.1 The standing orders for the practice and procedure of the Council of Governors are attached at Annex 7.

19. Council of Governors – referral to the Panel for advising NHS foundation trust Governors

- 19.1 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation trust may refer a question as to whether the Trust has failed or is failing—
 - 19.1.1 to act in accordance with its Constitution, or
 - 19.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 19.2 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.

20. Council of Governors - conflicts of interest of governors

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

21. Council of Governors – travel expenses

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

22. Council of Governors – additional provisions

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

23. Board of Directors – composition

- 23.1 The Trust is to have a Board of Directors, which shall comprise both executive and Non-Executive Directors.
- 23.2 The Board of Directors is to comprise
 - 23.2.1 a Non-Executive Chairman
 - 23.2.2 at least five other Non-Executive Directors; and
 - 23.2.3 at least five executive directors.

- 23.3 One of the executive directors shall be the Chief Executive.
- 23.4 The Chief Executive shall be the Accounting Officer
- 23.5 One of the executive directors shall be the finance director
- 23.6 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 23.7 One of the executive directors is to be a registered nurse or a registered midwife.
- 23.8 Notwithstanding the details provided in section 23.2, at least half of the board of directors, excluding the Chairman, shall be Non-Executive Directors.

24. Board of Directors – general duty

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

25. Board of Directors – qualification for appointment as a Non-Executive Director

- 25.1 A person may be appointed as a Non-Executive Director only if –
 - (i) he is a member of a Public Constituency, and
 - (ii) he is not disqualified by virtue of paragraph 30 below.

26. Board of Directors – appointment of Chairman and other Non-Executive Directors

- 26.1 The Council of Governors shall establish a Nominations Committee whose membership shall comprise the Trust Chairman, two Public Governors, two Staff Governors and two Governors who shall not be from a Public Constituency or a Staff Constituency, to consider candidates for appointment as Non-Executive Directors against an agreed person specification.
- 26.2 The said Nominations Committee shall shortlist from those candidates meeting the specified criteria, those candidates whom it wishes to interview and shall conduct interviews with the said candidates and thereafter make its recommendation as to who should be appointed. This recommendation shall be submitted to a meeting of the Council of Governors for its consideration and decision.
- 26.3 The validity of any act of the Trust shall not be affected by any vacancy among the Directors or by any defect in the appointment of any Director

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

- 27.1 Removal of the Chairman or another Non-Executive Director shall require the approval of three-quarters of the total number of members of the Council of Governors.

28. Board of Directors – appointment of deputy Chairman

The Council of Governors at a general meeting of the Council of Governors may appoint one of the Non-Executive Directors as a deputy Chairman (of the Council of Governors).

29. Board of Directors - appointment and removal of the Chief Executive and other executive directors

- 29.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 29.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 29.3 A committee consisting of the Chairman, the Chief Executive and other Non-Executive Directors shall appoint or remove the other executive directors.

30. Board of Directors – disqualification

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

- (i) a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- (ii) a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
- (iii) a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- (iv) in the case of a Non-Executive Director, he no longer satisfies the requirements of paragraph 25.1;
- (v) he is a person whose tenure of office as a Chairman or as a Member or Director of a health service body has been terminated on the grounds that his appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- (vi) he has had his name removed from any list prepared pursuant to paragraph 10 of the National Health Service (Performers List), Regulations 2004 or Section 151 of the 2006 Act (or similar provision elsewhere) and has not subsequently had his name included on such a list;
- (vii) he has been dismissed otherwise than by reason of redundancy from any paid employment with a health service body;
- (viii) Monitor has exercised its powers under the 2006 Act to remove that person as a Director of the Trust or any other NHS foundation trust within his jurisdiction or has suspended him from office or has disqualified him from holding office as a Director of the Trust or of any other NHS foundation trust for a specified period.
- (ix) he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
- (x) he is registered as a sex offender pursuant to Part I of the Sex Offenders Act 1997;
- (xi) he has been identified as a vexatious complainant and has been notified to the effect by notice in writing given by the Chief Executive;
- (xii) he is a member of the Rotherham Metropolitan Borough Council Health Overview and Scrutiny Committee;
- (xiii) he has been unable to dedicate adequate time to the role and responsibilities of a Director of the Trust; or
- (xiv) he has been identified as a person who has failed to comply with or otherwise contravened the Trust's Zero-Tolerance Policy (as

amended from time to time) and has been given notice to that effect by the Chief Executive.

- 30.2 The Board of Directors may in their discretion appoint a Committee of the Board of Directors to enquire into any such matter as may be raised in connection with paragraph 30.1 above in accordance with terms of reference as determined by the Board of Directors and to make recommendations to the Board of Directors in respect thereof.

31. Board of Directors – meetings

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

32. Board of Directors – standing orders

- 32.1 The standing orders for the practice and procedure of the Board of Directors, as may be amended from time to time, are attached at Annex 8.

33. Board of Directors - conflicts of interest of directors

- 33.1 The duties that a director of the Trust has by virtue of being a director include in particular –
- 33.1.1 A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
- 33.1.2 A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 33.2 The duty referred to in sub-paragraph 33.1.1 is not infringed if –
- 33.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 33.2.2 The matter has been authorized in accordance with the Constitution.
- 33.3 The duty referred to in sub-paragraph 33.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 33.4 In sub-paragraph 33.1.2, “third party” means a person other than –
- 33.4.1 The Trust, or
- 33.4.2 A person acting on its behalf.
- 33.5 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.
- 33.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 33.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 33.8 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.
- 33.9 A director need not declare an interest –

- 33.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest
- 33.9.2 If, or to the extent that, the other directors are already aware of it;
- 33.9.3 If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –
 - 33.9.3.1 By a meeting of the Board of Directors, or
 - 33.9.3.2 By a committee of the directors appointed for the purpose under the Constitution.

34. Board of Directors – remuneration and terms of office

- 34.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other Non-Executive Directors.
- 34.2 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

35. Registers

- 35.1 The Trust shall have:
 - 35.1.1 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;
 - 35.1.2 a register of members of the Council of Governors;
 - 35.1.3 a register of interests of governors;
 - 35.1.4 a register of directors; and
 - 35.1.5 a register of interests of the directors.
 - 35.1.6 a register of interests for all staff

36. Registers – inspection and copies

- 36.1 The Trust shall make the registers specified in paragraph 35 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 36.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if he so requests
- 36.3 So far as the registers are required to be made available:
 - 36.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 36.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

37. Documents available for public inspection

- 37.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
 - 37.1.1 a copy of the current Constitution,
 - 37.1.2 a copy of the latest annual accounts and of any report of the auditor on them
 - 37.1.3 a copy of the latest annual report

- 37.1.4 a copy of the latest information as to its forward planning; and
- 37.1.5 a copy of any notice given under section 52 of the 2006 Act.
- 37.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
 - 37.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
 - 37.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 37.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 37.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
 - 37.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
 - 37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act
 - 37.2.8 a copy of any final report published under section 65I (administrator's final report),
 - 37.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act
 - 37.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 37.3 Any person who requests a copy of, or extract from, any of the above documents is to be provided with a copy.
- 37.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

38. Auditor

- 38.1 The Trust shall have an auditor.
- 38.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

39. Audit committee

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

40. Accounts

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

accounts.

- 40.2 In preparing its annual accounts, the corporation must comply with any directions given by the regulator with the approval of the Treasury as to—
 - (a) the methods and principles according to which the accounts must be prepared,
 - (b) the information to be given in the accounts.
- 40.3 The accounts are to be audited by the Trust's auditor.
- 40.4 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

41. Annual report, forward plans and non-NHS work

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

42. Presentation of the annual accounts and reports to the governors and members

- 42.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
 - 42.1.1 the annual accounts
 - 42.1.2 any report of the auditor on them
 - 42.1.3 the annual report.
- 42.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of

Directors in attendance.

- 42.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 42.1 with the Annual Members' Meeting.

43. Instruments

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

44. Amendment of the Constitution

- 44.1 The Trust may make amendments of its Constitution only if –
44.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments, and
44.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.

- 44.2 Amendments made under paragraph 44.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

- 44.3 Where an amendment is made to the Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –
44.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
44.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.

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

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

45. Mergers etc. and significant transactions

- 45.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the council of governors.
45.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting, approve entering into the transaction.
45.3 "Significant transaction" means:

- 45.3.1 the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 20% of the value of the Trust's gross assets before the acquisition; or
 - 45.3.2 the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 20% of the value of the Trust's gross assets before the disposition; or
 - 45.3.3 a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 20% of the value of the Trust's gross assets before the transaction.
- 45.4 For the purpose of this paragraph 45:
- 45.4.1 "gross assets" means the total of fixed assets and current assets;
 - 45.4.2 in assessing the value of any contingent liability for the purposes of subparagraph 45.3.3, the Directors:
 - 45.4.2.1 must have regard to all circumstances that the Directors know, or ought to know, affect, or may affect, the value of the contingent liability; and
 - 45.4.2.2 may rely on estimates of the contingent liability that are reasonable in the circumstances; and
 - 45.4.2.3 may take account of the likelihood of the contingency occurring.
- 45.5 Where the Trust has a single requirement for goods, services or works, and a number of transactions are to be entered into to fulfil that requirement, the value of the transaction for the purpose of paragraph 45.3 is the aggregate of the value of each of those transactions

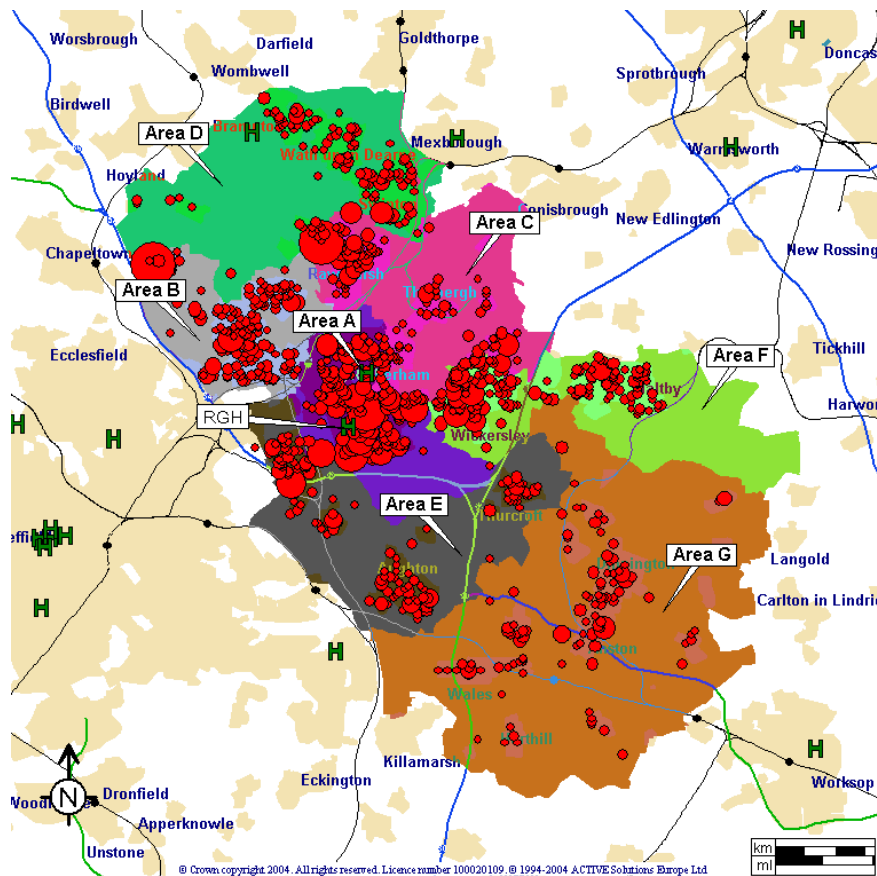
ANNEX 1 - THE PUBLIC CONSTITUENCIES

(Section 7)

Table 1

Name of Constituency	Area (Wards)	Minimum Number of Members	Number of Governors
Rotherham South Area A	Boston Castle, Rotherham East, Sitwell	10	2
Rotherham North Area B	Keppel, Rotherham West, Wingfield	10	2
Wentworth South Area C	Rawmarsh, Silverwood, Valley	10	2
Wentworth North Area D	Hoober, Swinton, Wath	10	2
Rother Valley West Area E	Brinsworth & Catcliffe, Holderness, Rother Vale	10	2
Wentworth Valley Area F	Hellaby, Maltby, Wickersley	10	2
Rother Valley South Area G	Anston & Woodsetts, Dinnington, Wales	10	2
All England Area H	The rest of England excluding areas A-G	10	2

Table 2



The Public Constituencies of the Trust are therefore constituted in accordance with Table 1 above.

ANNEX 2 - THE STAFF CONSTITUENCY

(Paragraph 8.0)

- 1.0 The staff constituency shall consist of one class of individuals as follows:
 - (a) the “Staff” Class
- 1.1 Members of the Trust who are Members of the Staff Constituency are to be individuals who are employed under a contract of employment by the Trust; and
 - (a) who are employed by the Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months; or
 - (b) have been continuously employed by the Trust for at least 12 months;
 - (c) who are qualified for membership under paragraph 8
- 1.2 The minimum number of members required for each Staff Class of the Staff Constituency shall be five.
- 1.3 An individual who is eligible to be a Member of a Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency and may not become or continue as a Member of more than one Staff Class.
- 1.4 For the avoidance of doubt, those individuals who are eligible to be Members of the Staff Constituency are referred to collectively as “the Staff Constituency” in accordance with paragraph 4(3) of Schedule 7 of the 2003 Act.
- 1.5 An individual who is:
 - (a) eligible to become a member of the Staff Constituency; and
 - (b) invited by the Trust to become a member of the appropriate Staff Class of the Staff Constituencyshall become a member of the Trust as a member of the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.

ANNEX 3 - COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraph 12)

1.0 Composition of the Council of Governors

- 1.1 The Trust shall have a Council of Governors which shall consist of Public Governors, Staff Governors, a Local Authority Governor, and other Partnership Governors.
- 1.2 More than half the members of the Council of Governors shall be elected by Members of the Public Constituency.
- 1.3 The Council of Governors of the Trust shall comprise:
 - 1.3.1 16 Public Governors elected in accordance with paragraph 2 below;
 - 1.3.2 5 Staff Governors elected in accordance with paragraph 3 below;
 - 1.3.3 1 Local Authority Governor appointed in accordance with paragraph 4 below; and
 - 1.3.4 6 Partnership Governors appointed in accordance with paragraph 5 below.

2.0 Public Governors

- 2.1 The Public Constituencies of the Trust are as set out in Annex 1 and each such Public Constituency may elect two Governors.
- 2.2 Members of a Public Constituency may elect any of their number to be a Public Governor.
- 2.3 If contested the election must be by secret ballot.
- 2.4 The Election Scheme (including the specified forms of and periods for declarations to be made by candidates standing for office and members as a condition of voting and the process if the election is contested) is set out in Annex 5.
- 2.5 A person may not stand for election to the Council of Governors as a Public Governor unless, within the period specified in Annex 2, he has made a declaration in the form specified in Part 4 of that Annex of his qualification to vote as a Member of its Public Constituency for which the election is being held and is not prevented from being a member of the Council of Governors by paragraph 8 to Schedule 7 of the 2006 Act or paragraph 15 of the Constitution ("Disqualification"). It is an offence to knowingly or recklessly make a declaration under section 60 of the 2006 Act which is false in a material particular.
- 2.6 Public Governors:
 - (a) shall hold office for a period of three years;
 - (b) are eligible for re-election at the end of that period;
 - (c) may in exceptional circumstances serve longer than 9 years, but will be subject to annual re-election up to a total of 12 years; and
 - (d) shall cease to hold office if they cease to be a Member of the Public Constituency by which they were elected as a Public Governor.

3.0 Staff Governors

- 3.1 The Staff Class may elect five of their number to be a Staff Governor for that Staff Class.
- 3.2 If contested, the election must be by secret ballot.
- 3.3 The Election Scheme (including the specified forms of and periods for declarations to be made by candidates standing for office and by members as a condition of voting and the process if the election is uncontested) is set out in Annex 5.
- 3.4 Staff Governors
 - (a) shall hold office for a period of three years.
 - (b) are eligible for re-election at the end of that period;
 - (c) may in exceptional circumstances serve longer than 9 years, but will be subject to annual re-election up to a total of 12 years; and
 - (d) shall cease to hold office if they cease to be a Member of the Staff Constituency or cease to be a Member of the relevant Staff Class by which they were elected as a Staff Governor.

4.0 Local Authority Governor

- 4.1 The Rotherham Metropolitan Borough Council is authorised to appoint a Local Authority Governor pursuant to a process agreed between the said local authority and the Trust.
- 4.2 The Local Authority Governor:
 - (a) shall hold office for a period of three years;
 - (b) is eligible for reappointment at the end of that period;
 - (c) may in exceptional circumstances serve longer than 9 years, but will be subject to annual re-appointment up to a total of 12 years; and
 - (d) shall cease to hold office if the local authority which appointed him withdraws its appointment of him.

5.0 Partnership Governors

- 5.1 The organisations specified as Partnership Organisations that may each appoint a member to the Council of Governors are:
 - (a) Rotherham Partnership
 - (b) Voluntary Action Rotherham (VAR)
 - (c) Sheffield University
 - (d) Sheffield Hallam University
 - (e) Barnsley and Rotherham Chamber of Commerce
 - (f) Rotherham Ethnic Minority Alliance (REMA).
- 5.2 The Partnership Governors are to be appointed by the organisations listed in paragraph 5.1 above pursuant to a process agreed by the said Partnership Organisation with the Trust.
- 5.3 The Partnership Governors:
 - (a) shall hold office for a period of three years;
 - (b) are eligible for reappointment at the end of that period;
 - (c) may in exceptional circumstances serve longer than 9 years, but will be subject to annual re-appointment up to a total of 12 years; and
 - (d) shall cease to hold office if the Partnership Organisation which appointed him withdraws its appointment of them.

ANNEX 5 - THE MODEL ELECTION RULES 2014

(Paragraph 13.0)

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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
7. Duty of co-operation

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination forms
15. Publication of statement of nominated candidates
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17. Withdrawal of candidates
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PART 5: CONTESTED ELECTIONS

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

Action to be taken before the poll

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

27. Eligibility to vote
28. Voting by persons who require assistance
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32. ID declaration form for replacement ballot papers (public and patient constituencies)
33. Procedure for remote voting by internet
34. Procedure for remote voting by telephone

35. Procedure for remote voting by text message

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

36. Receipt of voting documents
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38. Declaration of identity but no ballot (public and patient constituency)
39. De-duplication of votes
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PART 6: COUNTING THE VOTES

- STV41. Interpretation of Part 6
42. Arrangements for counting of the votes
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STV44. Rejected ballot papers and rejected text voting records
FPP44. Rejected ballot papers and rejected text voting records
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STV49. Exclusion of candidates
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- FPP52. Declaration of result for contested elections
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54. Sealing up of documents relating to the poll
55. Delivery of documents
56. Forwarding of documents received after close of the poll
57. Retention and public inspection of documents
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- FPP59. Countermand or abandonment of poll on death of candidate
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PART 10: ELECTION EXPENSES AND PUBLICITY

Expenses

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

Publicity

63. Publicity about election by the corporation

- 64. Information about candidates for inclusion with voting information
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PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES

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PART 12: MISCELLANEOUS

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

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Timetable

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

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

3. Computation of time

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

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

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

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

4. Returning Officer

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

5. Staff

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

6. Expenditure

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

7. Duty of co-operation

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

8.1 The returning officer is to publish a notice of the election stating:

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination forms may be obtained;
- (e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

- (a) full name,
- (b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication), and

- (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

11.1 The nomination form must state:

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

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

12. Declaration of eligibility

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

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

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

- (a) decides that the candidate is not eligible to stand,
- (b) decides that the nomination form is invalid,
- (c) receives satisfactory proof that the candidate has died, or

- (d) receives a written request by the candidate of their withdrawal from candidacy.

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

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

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

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

16. forms Inspection of statement of nominated candidates and nomination

- 16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.
- 16.2 If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

- 18.1 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the council of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- 18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- 18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:
- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
 - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

19. Poll to be taken by ballot

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

20. The ballot paper

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

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

- (a) that the voter is the person:
 - (i) to whom the ballot paper was addressed, and/or
 - (ii) to whom the voter ID number contained within the e-voting information was allocated,
 - (b) that he or she has not marked or returned any other voting information in the election, and
 - (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,
- ("declaration of identity")

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

21.2 The voter must be required to return his or her declaration of identity with his or her ballot.

- 21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

- 22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 22.2 The list is to include, for each member:
- (a) a postal address; and,
 - (b) the member's e-mail address, if this has been provided
- to which his or her voting information may, subject to rule 22.3, be sent.
- 22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

23. Notice of poll

- 23.1 The returning officer is to publish a notice of the poll stating:
- (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
 - (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
 - (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
 - (g) the address for return of the ballot papers,
 - (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
 - (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,

- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

24. Issue of voting information by returning officer

24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:

- (a) a ballot paper and ballot paper envelope,
- (b) the ID declaration form (if required),
- (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
- (d) a covering envelope;

("postal voting information").

24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling:

- (a) instructions on how to vote and how to make a declaration of identity (if required),
- (b) the voter's voter ID number,
- (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate, (d) contact details of the returning officer,

("e-voting information").

24.3 The corporation may determine that any member of the corporation shall:

- (a) only be sent postal voting information; or
- (b) only be sent e-voting information; or
- (c) be sent both postal voting information and e-voting information;

for the purposes of the poll.

24.4 If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.

24.5 The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

25.2 The covering envelope is to have:

- (a) the address for return of the ballot paper printed on it, and
- (b) pre-paid postage for return to that address.

25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –

- (a) the completed ID declaration form if required, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

26. E-voting systems

26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").

26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").

26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").

26.4 The returning officer shall ensure that the polling website and internet voting system provided will:

- (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;

in order to be able to cast his or her vote;

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

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

- (a) require a voter to
 - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,

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

26.6

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

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

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

The poll

27. Eligibility to vote

- 27.1 An individual who becomes a member of the corporation on or before the closing date for the receipt of nominations by candidates for the election, is eligible to vote in that election.
- 28. Voting by persons who require assistance**
- 28.1 The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 28.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.
- 29. Spoilt ballot papers and spoilt text message votes**
- 29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
- (a) is satisfied as to the voter’s identity; and
 - (b) has ensured that the completed ID declaration form, if required, has not been returned.
- 29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):
- (a) the name of the voter, and
 - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
 - (c) the details of the unique identifier of the replacement ballot paper.
- 29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.
- 29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.
- 29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.

29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list ("the list of spoilt text message votes"):

- (a) the name of the voter, and
- (b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
- (c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

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

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

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

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

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

31. Issue of replacement voting information

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

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

- (a) the name of the voter,

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

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

34. Voting procedure for remote voting by telephone

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

35. Voting procedure for remote voting by text message

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

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

36. Receipt of voting documents

- 36.1 Where the returning officer receives:
- (a) a covering envelope, or
 - (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,
- before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.
- 36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:
- (a) the candidate for whom a voter has voted, or
 - (b) the unique identifier on a ballot paper.
- 36.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

37. Validity of votes

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) put the ID declaration form if required in a separate packet, and
 - (b) put the ballot paper aside for counting after the close of the poll.

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

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

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

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

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

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

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

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

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

39. De-duplication of votes

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

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

40. Sealing of packets

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

- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

“non-transferable vote” means a ballot document:

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

or

(b) which is excluded by the returning officer under rule STV49,

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

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

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

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

“quota” means the number calculated in accordance with rule STV46,

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

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

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

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

“*transfer value*” means the value of a transferred vote calculated in accordance with rules STV47.4 or STV47.7.

42. Arrangements for counting of the votes

- 42.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:
 - (a) the board of directors and the council of governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes in the relevant election, and
 - (ii) a policy governing the use of such software, and
 - (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

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

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

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

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

STV44.2 The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

STV44.3 Any text voting record:

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

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

STV44.4 The returning officer is to endorse the word “rejected” on any text voting record which under this rule is not to be counted.

STV44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule STV44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule STV44.3.

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which votes are given for more candidates than the voter is entitled to vote,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

shall, subject to rules FPP44.2 and FPP44.3, be rejected and not counted.

FPP44.2 Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

FPP44.3 A ballot paper on which a vote is marked:

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

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

FPP44.4 The returning officer is to:

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

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

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

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

- FPP44.6 Any text voting record:
- (a) on which votes are given for more candidates than the voter is entitled to vote,
 - (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
 - (c) which is unmarked or rejected because of uncertainty,
- shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.
- FPP44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.
- FPP44.8 A text voting record on which a vote is marked:
- (a) otherwise than by means of a clear mark,
 - (b) by more than one mark,
- is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the text voting record is marked does not itself identify the voter and it is not shown that he or she can be identified by it.
- FPP44.9 The returning officer is to:
- (a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and
 - (b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.
- FPP44.10 The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:
- (a) voting for more candidates than the voter is entitled to,
 - (b) writing or mark by which voter could be identified, and
 - (c) unmarked or rejected because of uncertainty,
- and, where applicable, each heading must record the number of text voting records rejected in part.
- STV45. First stage**
- STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.

STV45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.

STV45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

STV46. The quota

STV46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.

STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).

STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.

STV47. Transfer of votes

STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:

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

STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.

STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value (“the transfer value”) which:

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

- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:
- (a) a transfer value calculated as set out in rule STV47.4(b), or
 - (b) at the value at which that vote was received by the candidate from whom it is now being transferred,
- whichever is the less.
- STV47.8 Each transfer of a surplus constitutes a stage in the count.
- STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
 - (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.
- STV47.11 This rule does not apply at an election where there is only one vacancy.

STV48. Supplementary provisions on transfer

- STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
 - (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.
- STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:
 - (a) record the total value of the votes transferred to each candidate,
 - (b) add that value to the previous total of votes recorded for each candidate and record the new total,
 - (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
 - (d) compare:
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- STV48.3 All ballot documents transferred under rule STV47 or STV49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.
- STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.
- STV49. Exclusion of candidates**
- STV49.1 If:
 - (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
 - (b) subject to rule STV50, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).

- STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:
- (a) ballot documents on which a next available preference is given, and
 - (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).
- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
 - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and

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

STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.

STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.

STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:

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

STV50. Filling of last vacancies

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

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

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

STV51. Order of election of candidates

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

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

- STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

FPP51. Equality of votes

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

FPP52. Declaration of result for contested elections

- FPP52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
 - (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed Constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the Chairman of the NHS Trust, or
 - (ii) in any other case, to the Chairman of the corporation; and
 - (c) give public notice of the name of each candidate whom he or she has declared elected.
- FPP52.2 The returning officer is to make:
- (a) the total number of votes given for each candidate (whether elected or not), and
 - (b) the number of rejected ballot papers under each of the headings in rule FPP44.5,
 - (c) the number of rejected text voting records under each of the headings in rule FPP44.10,
- available on request.

STV52. Declaration of result for contested elections

- STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
 - (b) give notice of the name of each candidate who he or she has declared elected –
 - (i) where the election is held under a proposed Constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the Chairman of the NHS Trust, or
 - (ii) in any other case, to the Chairman of the corporation, and

- (c) give public notice of the name of each candidate who he or she has declared elected.
- STV52.2 The returning officer is to make:
- (a) the number of first preference votes for each candidate whether elected or not,
 - (b) any transfer of votes,
 - (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
 - (d) the order in which the successful candidates were elected, and
 - (e) the number of rejected ballot papers under each of the headings in rule STV44.1,
 - (f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

53. Declaration of result for uncontested elections

- 53.1 In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:
- (a) declare the candidate or candidates remaining validly nominated to be elected,
 - (b) give notice of the name of each candidate who he or she has declared elected to the Chairman of the corporation, and
 - (c) give public notice of the name of each candidate who he or she has declared elected.

54. Sealing up of documents relating to the poll

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

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

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

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

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

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

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

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1

Where:

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

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

57.

Retention and public inspection of documents

57.1

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

57.2

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

57.3

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

58. election

Application for inspection of certain documents relating to an

58.1

The corporation may not allow:

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

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

- 58.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- 58.3 The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –
- (a) persons,
 - (b) time,
 - (c) place and mode of inspection,
 - (d) production or opening,
- and the corporation must only make the documents available for inspection in accordance with those terms and conditions.
- 58.4 On an application to inspect any of the documents listed in rule 58.1 the board of directors of the corporation must:
- (a) in giving its consent, and
 - (b) in making the documents available for inspection
- ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –
- (i) that his or her vote was given, and
 - (ii) that Monitor has declared that the vote was invalid.

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

- FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
 - (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.
- FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- FPP59.5 The returning officer is to:
- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
 - (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and
- ensure that complete electronic copies of the internet voting records telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- FPP59.6 The returning officer is to endorse on each packet a description of:
- (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and

- (d) the constituency, or class within a constituency, to which the election relates.

FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the Chairman of the corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

- 61.1 A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:
- (a) personal expenses,
 - (b) travelling expenses, and expenses incurred while living away from home, and
 - (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

62. Election expenses incurred by other persons

- 62.1 No person may:
- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
 - (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.
- 62.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

Publicity

63. Publicity about election by the corporation

- 63.1 The corporation may:
- (a) compile and distribute such information about the candidates, and
 - (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

- 63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:
- (a) objective, balanced and fair,
 - (b) equivalent in size and content for all candidates,
 - (c) compiled and distributed in consultation with all of the candidates standing for election, and
 - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

64. Information about candidates for inclusion with voting information

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

- 64.2 The information must consist of:

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

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

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

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

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

67. Secrecy

67.1 The following persons:

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

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

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

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

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

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

ANNEX 6 - COUNCIL OF GOVERNORS - ADDITIONAL PROVISIONS

(Paragraph 22)

RELATIONSHIP BETWEEN THE COUNCIL OF GOVERNORS AND THE BOARD OF DIRECTORS

1. Communication and Conflict

1.1 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.

1.2 Informal Communications

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

1.2.2 The Chairman shall use his reasonable endeavours to encourage effective informal methods of communication including:

- (a) participation of the Board of Directors in the induction, orientation and training of Governors;
- (b) development of special interest relationships between Non-Executive Directors and Governors;
- (c) discussions/meetings between Governors and the Chairman and/or the Chief Executive and/or Directors facilitated through the office of the Company Secretary. The Governors shall be able to request to meet individually with any member of the Board through the office of the Company Secretary;
- (d) involvement in Membership recruitment and briefing at public events organised by the Trust.

1.3 Formal Communication

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

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

- (a) specific requests by the Council of Governors will be made through the Chairman to the Board of Directors;
- (b) any Governor has the right to raise specific issues to be put to the Board of Directors at a duly constituted meeting of the Council of Governors through the Chairman. In the event of disagreement, two thirds of the Governors present must approve the request. The Chairman will raise the matter with the Board of Directors and provide the response to the Council of Governors;
- (c) joint meetings will take place as and when appropriate between the Council of Governors and the Board of Directors.

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

1.3.4 Communications initiated by the Board of Directors and intended for the Council of Governors will be conducted as follows:

- (a) request the Chairman to seek the view of the Council of Governors on the Board of Directors' proposals for the Strategic Direction/Forward Plans;
- (b) presentation and approval of annual accounts, annual report and auditor's report;
- (c) request the Chairman to seek the view of the Council of Governors on the Board of Directors' proposals for developments;
- (d) request the Chairman to seek the view of the Council of Governors on Trust Performance i.e. finance and quality metrics;
- (e) request the Chairman to seek the view of the Council of Governors for involvement in service reviews and evaluation;
- (f) request the Council of Governors to seek views of the Membership on proposed changes, plans and developments.

1.3.5 Formal communications will normally be conducted as follows:

- (a) attendance by the Board of Directors at a meeting of the Council of Governors;
- (b) formal reports or presentation by Executive Directors to a meeting of the Council of Governors;
- (c) inclusion of minutes for information on the Agenda of a meeting of the Council of Governors;
- (d) reporting the views of the Council of Governors to the Board of Directors through the Chairman, Lead Governor, Vice-Chairman or Senior Independent Director;
- (e) Governors attend meetings in public of the Board of Directors as observers.

1.3.6 Wherever possible and practical, written communications will be conducted by e-mail.

1.4 Resolving Conflict

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

1.4.2 If as the first step, the informal efforts the Chairman do not achieve resolution of a disagreement or a conflict, the Chairman will follow the process described in paragraphs below. The aim is to resolve the matter at the first available opportunity, and only to escalate to the next step if the step taken fails to achieve resolution.

1.4.3 In the event of a conflict between the Council of Governors and Board of Directors, the following action will be taken, in the sequence shown:

- (a) the Chairman will call a Resolution Meeting of the members of the Council of Governors and Board of Directors, to take place as soon as possible, but no later than twenty working days following the date of the request. The meeting must comprise of two thirds of the Membership of

the Council of Governors and two thirds of the membership of the Board of Directors, otherwise the meeting shall not be quorate and shall not proceed further. The meeting will be held in private. The Agenda and any papers for the meeting shall be issued in accordance with the Standing Orders of the Council of Governors. The aim of the meeting will be to achieve resolution of the conflict. The Chairman, in discussion with the Lead Governor, will have the right to appoint an independent facilitator to assist the process. Every effort must be made to reach agreement;

- (b) if a Resolution Meeting of the members of the Council of Governors and Board of Directors fails to resolve a conflict, the matter may be referred to mediation by either party;
- (c) if the Council of Governors consider that the Trust is failing or has failed to act in accordance with its Constitution or to act in accordance with the provisions made by or under Chapter 5 of the 2006 Act, then subject to paragraph 19.0 of this Constitution, they may refer the matter to the panel referred to in paragraph 19.0 of this Constitution.

1.4.4 The right to call a Resolution Meeting rests with the following, in the sequence of escalation shown:

- (a) the Chairman;
- (b) the Chief Executive;
- (c) two thirds of the members of the Council of Governors;
- (d) two thirds of the members of the Board of Directors.

DISQUALIFICATION AND REMOVAL OF GOVERNORS (Paragraph 15)

2. Disqualification and removal

Details are provided below as to the disqualification and removal of Governors.

A person may not become or continue as a member of the Council of Governors of the Trust if:

- (a) in the case of a Staff Governor or a Public Governor, he ceases to be a Member of the constituency or class by which he was elected;
- (b) subject to the provisions of paragraph 3.0 below, in the case of a Staff Governor he has been made the subject of a written disciplinary warning or has been suspended from duty for a period of suspension in excess of 28 days or where he has been absent from his post for a continuous period of not less than four months and no reasonable cause has been given for his absence.
- (c) in the case of a Local Authority Governor, or Partnership Governor, the relevant appointing Authority or Partnership Organisation withdraws its appointment of him;
- (d) he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
- (e) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;

- (f) he 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;
- (g) he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- (h) he has within the preceding five years been dismissed by reason of redundancy from the Trust;
- (i) he is a person whose tenure of office as the Chairman or as a Member or Director of a health service body has been terminated on the grounds that his appointment is not in the interests of the health service, for non attendance at meetings or for non-disclosure of a pecuniary interest;
- (j) he is an Executive or Non-Executive Director of the Trust, or a Governor, Non-Executive Director, Chairman, Chief Executive Officer of another NHS foundation trust;
- (k) he has had his name removed from any list prepared pursuant to paragraph 10 of the National Health Service (Performers List) Regulations 2004 or section 151 of the 2006 Act (or similar provision elsewhere) and has not subsequently had his name included in such a list;
- (l) he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
- (m) he is registered as a sex offender pursuant to Part 1 of the Sex Offenders Act 1997;
- (n) he has been identified and given notice in writing to that effect by the Chief Executive as a vexatious complainant;
- (o) he has been identified as a person who has failed to comply with or otherwise contravened the Trust's Zero-Tolerance Policy (as amended from time to time) and has been given notice to that effect by the Chief Executive;
- (p) in the case of a Staff Governor, he is employed by the Trust on a temporary contract which contract is or was identified on the face of it as a temporary contract;
- (q) he is a member of the Rotherham Metropolitan Borough Council Health Overview and Scrutiny Committee.

3.0 Where a Staff Governor has been made the subject of a written warning or a period of suspension in excess of 28 days or where he has been absent from his post as an employee of the Trust for a continuous period of not less than four months and no reasonable cause has been given for his absence, his term of office as Governor may be suspended by the Council of Governors (or by a Committee of the Council of Governors or by the Secretary as the Council of Governors may duly authorise) for such period of time as the Council of Governors, Committee or Secretary (as the case may be) deems fit and so as to enable, if necessary, an investigation to be carried out to determine whether or not the tenure of that Staff Governor should then be terminated. The Staff Governor in question may submit reasons to the Council of Governors, Committee or Secretary (as the case may be) as to why he

should still be eligible to continue as a Staff Governor but the determination of the Council of Governors, Committee or Secretary as to whether to terminate the Governor's term of office shall be final.

4.0 Where a Governor:

- (a) has given notice of resignation in accordance with paragraph 7.0 below or has had his term of office terminated pursuant to the terms of this Constitution in any manner whatsoever; or
- (b) is otherwise disqualified from holding office pursuant to the Constitution or the 2006 Act, that Governor shall thereupon cease to be a Governor and his name shall be forthwith removed from the Register of Governors.

5.0 Where a person has been elected or appointed to be a Governor and he becomes disqualified for appointment under paragraph 2.0, he shall notify the Chairman in writing of such disqualification as soon as possible.

6.0 If it comes to the notice of the Chairman that a Governor is so disqualified, whether at the time of his appointment or later, he shall immediately declare that the person in question is disqualified and notify him in writing to that effect.

7.0 A Governor who resigns or whose tenure of office is terminated shall not be eligible to stand for re-election for a period of three years from the date of his resignation or termination of office.

VACANCIES ON COUNCIL OF GOVERNORS

8. Vacancies

8.1 Where a Governor's membership of the Council of Governors ceases for one or more of the reasons set out in paragraph 2.0, Public Governors and Staff Governors shall, either be replaced by elections or in accordance with the relevant Electoral Scheme(s) set out in Annex 5, and the Local Authority Governor and the Partnership Governors are to be replaced in accordance with the processes agreed.

8.2 Where an elected Governor ceases to hold office during his term of office the Trust shall offer the candidate who secured the second highest number of votes in the last election for the constituency (or Staff Class, as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office for the unexpired balance of the retired Governor's term of office. If that candidate does not accept to fill the vacancy, it shall then be offered to that candidate who secured the next higher of votes until the vacancy is filled.

8.3 If no candidate is available or is willing to fill a vacancy arising pursuant to paragraphs 8.1 and 8.2 above, the provisions of paragraph 9.0 Cooptee(s) shall apply.

8.4 To avoid doubt where a vacancy remains unfilled notwithstanding the application of the provisions of paragraph 9.0 (Cooptees) such office shall stand vacant until the next scheduled election (unless by so doing this causes the aggregate number of Governors who are Public Governors to be less than half the total membership of the Council of Governors (excluding Cooptees). In that event, an election will be held in accordance with the Election Scheme as soon as reasonably practicable).

COOOPTES TO COUNCIL OF GOVERNORS

9. Coooptees

- 9.1 Where any vacancy remains unfilled notwithstanding compliance with the procedures described in paragraph 8.0, the Lead Governor shall put forward to the Council of Governors individuals to be Cooptees in accordance with the process agreed by the Secretary. Each such individual shall be a Member of the constituency to which the vacancy relates.
- 9.2 The Council of Governors shall select up to 3 Cooptees from those put forward and recommend them to the Council of Governors for appointment.
- 9.3 The Council of Governors shall make the final decision whether to appoint those recommended.
- 9.4 For the avoidance of doubt, Cooptees shall have no voting rights and shall act in an advisory capacity only

**ANNEX 7 - STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE
COUNCIL OF GOVERNORS
(Paragraph 18)**

Standing Orders for the Practice and Procedure of

The Council of Governors

Author: Director of Corporate Affairs /Company Secretary

Approved: Version 1 16 January, 2008, Council of Governors

Version 2 9 September 2009, Council of Governors

Version 3 10 July 2013, Council of Governors

Version 4 10 October 2018, Council of Governors

Review: In conjunction with the Constitution, but as a minimum every three years

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1.0 INTRODUCTION

1.1. The Rotherham NHS Foundation Trust (the Trust) is a Public Benefit Corporation established on 1st June 2005 by the granting of Authorisation by the Independent Regulator of NHS Foundation Trusts pursuant to the 2006 Act.

1.2. The Trust is governed by:

1.2.1 the 2003 Act (as defined below);

1.2.2 the 2006 Act (as defined below);

1.2.3 the 2012 Act (as defined below);

1.2.4 Independent Regulators Provider Licence (as defined below); and

1.2.5 Any directions or guidance issued by the Independent Regulator

1.3 The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework and the Constitution requires the Council of Governors to adopt standing orders for the regulation of its proceedings and business. This document contains those standing orders.

1.4 Members of the Council of Governors are also required to adhere at all times to their separate Code of Conduct.

1.5 Role of the Council of Governors

The Council of Governors will function as representatives of the members of the Trust. The general duties of the Council of Governors are to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors and to represent the interest of the members of the Trust as a whole and the interests of the public. Further detail is provided in the Constitution.

1.6 Delegation of Powers

The Council of Governors cannot delegate its powers but can appoint advisory committees

2.0 **INTERPRETATION**

In these Standing Orders, the provisions relating to interpretation in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning in these Standing Orders. For ease of reference certain words and expressions defined in the Constitution appear below with their definitions:

“The 2003 Act” means the Health and Social Care (Community Health Standards) Act 2003.

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

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

“Authorisation” means the Authorisation of the Trust issued by the Independent Regulator including the Trust's Constitution with any amendments for the time being in force;

“Annual Members Meeting” means the annual members meeting of the Trust as defined in the Constitution;

“Appointed Governors” means the Partner Governors

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

“Business Day” means any Monday to Friday of any week but excluding Bank Holidays;

“CoG Standing Orders” means Council of Governors Standing Orders for the time being in force;

“Chairman” means the person appointed by the Council of Governors (in accordance with the Constitution to be Chairman of the Trust;

“Chief Executive” means the Chief Executive and Accounting Officer of the Trust appointed in accordance with the Constitution;

“Constitution” means the Constitution for the time being of the Trust incorporated within and part of the Authorisation and "Constitution" shall be construed accordingly;

“Council of Governors” means the Council of Governors as constituted in accordance with the Trust's Constitution;

“Director” means a person appointed as a director of the Trust in accordance with the Constitution;

“Executive Director” means a Director who holds an executive office of the Trust and is a member of the Board of Directors;

“Governor” means a person elected or appointed as a governor of the Trust in accordance with the Constitution;

“Independent Regulator” means the independent regulator of NHS Foundation Trusts known as “NHS Improvement”;

“Independent Regulator’s Provider Licence” means the tool by which NHS Improvement regulates providers of NHS services. The Licence sets out a range of conditions that providers must meet so that NHS foundation trusts play their part in continually improving the effectiveness and efficiency of NHS health care services. NHS foundation trusts authorised before 1 April 2013 were automatically issued with a licence which replaces its previous Terms of Authorisation;

“Member” means a member of the Trust;

“Motion” means a formal proposal to be discussed and voted on during the course of a meeting;

“NHS Improvement (NHSI)” means the umbrella sector regulator for health care in England;

“Non-Executive Director” means a Director who does not hold an executive office of the Trust;

“Officer” means an employee of the Trust;

“Partner Governor” means a member of the Council of Governors appointed by one of the organisations specified in the Constitution;

“Public Governor” means a member of the Council of Governors elected by the Members of the public constituency as set out in the Trust Constitution;

“Register of Interests” means the Register maintained by the Trust Secretary of Governors interests declared from time to time;

“Staff Governor” means a member of the Council of Governors elected by Members of the Staff Constituency as set out in the Trust Constitution;

“The Trust” means The Rotherham NHS Foundation Trust;

“Company Secretary” means the Secretary of the Trust or any other person appointed to perform the duties of the Company Secretary including a joint, assistant or deputy secretary appointed in accordance with the Constitution;

“Vice Chairman” means Non-Executive Director appointed as the Vice Chairman of the Trust.

3.0 THE COUNCIL OF GOVERNORS

3.1 Composition of the Council of Governors

The composition of the Council of Governors shall be as set out in Paragraph 12 of the Constitution, however, there may, from time-to time, be vacant seats on the Council of Governors.

The aggregate number of Public Governors is to be more than half the total membership of the Council of Governors.

The Council of Governors shall have a Chair. This shall be the Chair of the Trust.

The Chair of the Trust shall be responsible for the leadership of the Council of Governors.

The Company Secretary shall be present at all Council of Governors meetings.

3.2 Roles and Responsibilities

The principal roles and responsibilities of the Council of Governors are set out in paragraph 16.1 of the constitution, but in summary are:

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.

3.3 Terms of Office of the Governors and Termination of Tenure

The provisions governing the terms of office and termination of tenure of the Governors are contained in Paragraph 14. of the Constitution.

3.4 Disqualification of Governors and dealing with vacancies

The provisions governing the disqualification of Governors and dealing with vacancies are contained in Paragraph 15 of the Constitution.

3.5 Appointment and Terms of Office of the Chairman and Non-Executive Directors

The Chairman and Non-Executive Directors shall be appointed by the Council of Governors at a General Meeting of the Council of Governors in accordance with Paragraph 26 of the Constitution.

The Chair and Non-executive Directors of the Board of Directors may be reappointed by the Council of Governors for a further term following successful appraisal.

3.6 Role of the Chair

The Chair, as a member of the Board of Directors, will lead the Board and ensure it successfully discharges its overall responsibility for the Trust as a whole.

They shall have responsibility for the leadership of the Council of Governors, and unless otherwise stated in the Standing Orders shall chair the meetings of the Council of Governors

The expression “the Chair of the Trust” shall be deemed to include the Vice Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable and the vice Chair takes their place.

3.7 Appointment of Vice-Chairman of the Council of Governors and his role

The provisions concerning the appointment of the Vice Chairman of the Council of Governors are contained in Paragraph 17.1 of the Constitution.

3.8 Role of the Lead Governor

To act as a conduit between the Governors and NHS Improvement (NHSI) when individual Governors have concerns they wish to raise with the regulator where it may not be appropriate through other normal communication channels.

To act as a conduit between the Governors and NHSI where there is a real risk that the Trust is in significant breach of one or more of the conditions of its licence and where NHSI has concerns about leadership of the Trust.

To contact NHSI when there is concern that the process of appointment of the Chair or other members of the Board, or elections for Governors, or other material decisions may not have complied with the Trust’s Constitution, or alternatively, whilst complying with the Constitution may be inappropriate.

To facilitate communications and a good working relationship between the Governors and the Board of Directors including acting as the principle independent channel for communications between the Governors and Board of Directors through the Chairman, Chief Executive or Senior Independent Director.

To chair meetings of the Council of Governors in circumstances where it may not be appropriate for the Chair or another Non-Executive Director to do so, for example when discussing the appointment, or removal of the Chair, or the outcome of their appraisal.

3.9 Selection of Lead Governor

The Lead Governor role is open to all Public Governors who have been in office for at least one year.

The Company Secretary will establish a process for the appointment of the Lead Governor, which, subject to the number of nominations received may include a confidential ballot. The process will outline the term of office.

The appointment of the Lead Governor will be subject to approval of the Council of Governors.

3.10 Appointment of Senior Independent Director

The Board of Directors shall appoint one of the independent Non-Executive Directors to be the Senior Independent Director in consultation with the Council of Governor.

The Senior Independent Director should be available to Directors and Governors if they have concerns which through normal contact with the Chair and Chief Executive has failed to be resolved, or for which such contact would be inappropriate.

The Senior Independent Director will lead the Non-Executive Directors in the appraisal of the Chair in conjunction with the Lead Governor on behalf of the Council of Governors.

3.11 Relationship between Board of Directors and Council of Governors

It is the role and responsibility of the Board of Directors to manage the business of the Trust in accordance with the Constitution.

The powers of the Council of Governors are documented in the Constitution.

4.0 MEETINGS OF THE COUNCIL OF GOVERNORS

All business at meetings of the Council of Governors shall be conducted in the name of the Trust.

4.1 Frequency of Meetings

The Secretary shall ensure that within the meeting cycle of the Council of Governors, general meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.

Meetings of the Council of Governors shall be held not less than four (4) times per year.

In addition, the Trust will publicise and hold an annual members meeting.

At the annual members meeting, the Council of Governors shall receive and consider the annual accounts, any report of the auditor on them and the annual report.

4.2 Calling of Meetings

Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published on the Foundation Trust's website, and in the Members' newsletter.

Lack of service of the notice on any Governor shall not affect the validity of the meeting.

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

The Council of Governors may require one or more of the Directors to attend a meeting 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), Unless otherwise agreed, at least five working days' notice of the meeting must be provided.

4.3 Agenda and Supporting Papers

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

A Governor desiring a matter to be included on an agenda for a meeting of the Council of Governors shall specify the question or issue to be included in writing to the Chairman or Secretary at least three clear Business Days before Notice of the meeting is given. Requests made less than three Business Days before the Notice is given may be included on the agenda at the discretion of the Chairman. In order to facilitate the appropriate and timely receipt of any such question or issue the Chairman of each meeting of the Council of Governors shall at each meeting advise those present and include in the minutes of such meeting details of the date of issue of the notice of the subsequent meeting.

An agenda for the meeting specifying the business proposed to be transacted will be delivered to every Governor electronically, unless the Governor does not have access to electronic communications when it shall be posted to the usual place of residence of such persons, at least five (5) clear working days before the meeting.

4.4 Administration of meetings

The Chairman of the Trust or in his absence the Vice Chairman shall preside over meetings of the Council of Governors. The Governors shall at their first meeting in each year approve the appointment of the Vice Chairman as recommended by the

Board of Directors. Only those persons who are Non-Executive Directors shall be eligible to be considered for the office of Vice Chairman.

If the Chair and Vice Chair are absent such Non-Executive Director as members of the Council of Governors present shall choose shall preside.

The Chairman or in his absence the Vice Chairman shall be entitled to exercise a casting vote where the number of votes for or against a motion is equal.

If any matter for consideration at a meeting of the Council of Governors relates to the conduct or interest of the Chairman or to the conduct or interest of the Vice Chairman or Non-Executive Directors as a class, neither the Chairman, Vice Chairman nor any of the Non-Executive Directors shall preside over that period of the meeting during which the matter is under discussion and the Council of Governors shall elect one of their numbers to preside during that period and that person shall exercise all the rights and obligations of the Chairman including the right to exercise a casting vote where the number of votes for and against a motion is equal.

All decisions taken in good faith at a meeting of the Council of Governors or of any committee, shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.

4.5 Quorum

A meeting of the Council of Governors shall be quorate if not less than half of the elected Governors (public and staff) are present as required by Paragraph 17.4 of the Constitution.

If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest, he shall no longer count towards the quorum.

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

4.6 Admission of the Public and Press

Meetings of the Council of Governors shall be open to members of the public or representatives of the press unless, in accordance with paragraph 13(1) of Schedule 7 of the 2006 Act, they resolve to exclude the public for special reasons.

The Council of Governors shall resolve:

“That representative 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 or other special reasons.”

The Chair may exclude any member of the public from the meeting of the Council of Governors if they are interfering with, or preventing, the proper or reasonable conduct of the meeting.

Where the Council of Governors resolves that the meeting be adjourned in the interest of public order and to allow them to conclude the business in private, the resolution shall specify the period of any adjournment.

The Resolution shall state as follows:

“That in the interests of public order the meeting adjourn for (period to be specified) to enable the Council of Governors to complete its business without the presence of the public.”

At the discretion of the Chairman, members of the public may request that they address a question to the Council of Governors. Questions put forward shall only relate to matters on the agenda of the Council of Governors at which the question is to be raised.

Members of the Council of Governors, members of the public or representatives of the press are not permitted to record proceedings in any manner unless with the express prior agreement of the Chairman. Where permission has been granted, the Chairman retains the right to give directions to halt recording of proceedings at any point during the meeting. For the avoidance of doubt, “recording” refers to any audio or visual recording, including still photography.

4.7 Voting

Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chairman so determines or if a Governor requests, a question at a meeting shall be determined by a majority of the votes of the Governors present.

Where any matter is to be put to a vote each Governor shall be entitled to exercise one vote.

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

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 Members of the Council present so request.

A Governor elected to the Council of Governors shall not vote at a meeting of the Council of Governors unless the Secretary is satisfied that each duly elected Governor is eligible to vote at any meeting where a vote, either on a poll or a show of hands, is proposed, by seeking from each duly elected Governor a declaration to the effect that he is eligible to vote or not, as the case may be.

The form referred to in Paragraph 3.11 shall be such declaration of eligibility as the Trust may from time to time specify in accordance with the requirement of Section 60 of the 2006 Act.

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

If a member of the Council of Governors so requests, his/her vote shall be recorded by name upon any vote (other than paper ballot).

In the case of an equality of votes the person presiding at or chairing the meeting shall have the casting vote.

The Chairman may not preside in respect of votes of the Council of Governors concerning Non-Executive Directors. The Council of Governors should provide for the Lead Governor, to preside and have a casting vote in respect of votes of the Council of Governors concerning Non-Executive Directors.

4.8 Notices of Motion

Any Governor desiring to move or amend a motion shall send a written notice thereof, at least ten (10) clear working days before the meeting to the Chairman or Secretary, in sufficient time to enable its inclusion in the agenda for the next meeting of the Council of Governors, and the Chairman or Secretary shall insert in the agenda for the meeting all notices so received. This Paragraph shall not prevent any motion being moved during the meeting, without Notice on any business mentioned on the agenda, subject to the Chairman's discretion.

4.9 Emergency Motion

Subject to the agreement of the Chair, a Governor may give written notice of an emergency Motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the next meeting. This notice shall state the grounds for the urgency. If in order it shall be declared to the Council of Governors at the commencement of the business of the meetings as an additional item included on the agenda. Emergency is defined as a matter, which will adversely affect the Trust in the next seven days. The Chair's decision to include the item shall be final.

4.10 Withdrawal of Motions or Amendments

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

4.11 Motion to Rescind a Resolution

Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six (6) calendar months shall be in writing, and shall bear the signature of the Governor who gives it and also the signature of four other Governors. When any such motion has been disposed of by the Council of Governors, it shall not be competent for any Governor other than the Chairman to propose a motion to the same effect within six (6) months. However, the Chairman may do so if he considers it appropriate.

4.12 Motions

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

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

- An amendment to the motion.
- The adjournment of the discussion or the meeting.
- The appointment of an ad hoc committee to deal with specific items of business
- That the meeting proceed to the next business*.
- 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 Governor who has previously not taken part in the debate and who is eligible to vote.

If a Motion to 'proceed to next business' or 'that the question now be put' is carried, the Chair should give the mover of the substantive Motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

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

4.13 Chairman's Ruling

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

Save as permitted by law, at any meeting the person presiding shall be the final authority on the interpretation of Council of Governors' Standing Orders (on which she or he shall be advised by the Chief Executive).

4.14 Minutes

The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where, once agreed, and if appropriate as amended, they shall be signed by the person presiding at it as a true record.

No discussion shall take place upon the subject matter of the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded.

Minutes of meetings will be taken and circulated in accordance with wishes of the Council of Governors'. Where providing a record of a public meeting the minutes shall be made available to the public through the Trust's website or upon request.

4.15 Record of Attendance

The names of the Governors present at the meeting and those who gave apologies for each meeting shall be recorded in the minutes.

Governors must make every effort to attend meetings of the Council of Governors where appropriate and practicable.

Where it is not possible for a Governor to attend apologies should be sent to the Company Secretary no later than three (3) working days prior to the meeting.

4.16 Suspension of Council of Governors' Standing Orders

Except where this would contravene any law or Regulation to which the Trust or the Council of Governors' is subject, the Authorisation or the Constitution, any one or more of the Council of Governors' Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council of Governors' are present, including one Public Governor and one Staff Governor, and that a majority of those present vote in favour of suspension.

A decision to suspend Council of Governors' Standing Orders and the reason for such decision shall be recorded in the minutes of the meeting.

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

No formal business may be transacted while Council of Governors' Standing Orders are suspended.

The Audit Committee shall review every decision to suspend Standing Orders.

4.17 Variation and Amendment of Standing Orders

These Council of Governors' Standing Orders shall be varied or amended only:

- If the variation or amendment proposed does not contravene the law or Regulation to which the Trust or the Council of Governors' is subject, the Authorisation or the Constitution; and
- if presented by the Chairman or the Chief Executive, notice of motion has been given; and
- If at least two-thirds of the Governors are present, including one Public Governor and one Staff Governor; and provided that
- No fewer than half the elected Governors present and entitled to vote, vote in favour of the variation or amendment.

4.18 Confidentiality

Governors, Directors, Officers or any employee or representative of the Trust in attendance at a private meeting or private part of any meeting, including following exclusion of members of the public, shall be confidential to the Council of Governors. They shall not disclose or reveal the content of papers, discussions or

minutes of the items taken in private, outside the Council of Governors meeting without the express permission of the Council of Governors. Any such occurrence will be treated as a potential breach of the relevant Governor/Director Code of Conduct.

5.0 COMMITTEES

The Council of Governors may appoint committees consisting of its members to assist it in carrying out its functions in accordance with Paragraph 26 of the Constitution. A committee appointed under Paragraph 26 of the Constitution may appoint a Sub-Committee.

The Standing Orders of the Council of Governors, as far as is applicable, shall apply with appropriate alteration, to meetings of any committees so established by the Council of Governors.

Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Council of Governors), as the Council of Governors shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.

Committees may not delegate any of their powers or functions unless expressly authorised by the Council of Governors.

There is no requirement to hold meetings of committees established by the Council of Governors in public.

Such committees or sub-committees may call upon outside advisers to help them in their tasks.

6.0 DUTIES AND OBLIGATIONS OF GOVERNORS UNDER THESE STANDING ORDERS

6.1 Declaration of interests and conflicts of interest

All existing Governors shall declare interests which are pecuniary (which includes monetary), personal or family interest, whether direct or indirect, that they have and which are relevant to the Trust. Any Governor elected or appointed subsequently should do so on appointment. A nil return should be submitted as such.

For the purpose of these Council of Governors' Standing Orders "relevant and material" interests include but are not limited to the following:

- Directorships, including Non-Executive directorships held in private companies or Public Limited Companies (with the exception of those of dormant companies).
- Ownership, part-ownership or directorship of private companies, business or consultancies likely or possibly seeking to do business with the NHS.
- Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.

- A position of Authority in a charity or voluntary organisation in the field of health and social care.
- Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
- Any substantial or influential connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the NHS Foundation Trust, including but not limited to, lenders or banks.
- Any other commercial interest in the decision before the meeting.
- Any situations where a close relative works or performs services for, or has a material financial interest in, any competitor, supplier, customer or other business with which the Trust has significant business dealings.

Any travelling or other expenses or allowances payable to a Governor in accordance with this Constitution shall not be treated as a pecuniary or relevant and material interest.

For the avoidance of doubt, any Governor who comes to know that the Trust has entered into or proposes to enter into a contract or proposed contract or other matter in which the Governor or any person connected with the Governor has any pecuniary interest direct or indirect, the Governor shall declare their interest by giving written notice in writing of such fact to the Trust as soon as practicable.

A Governor must also declare to the Secretary any other interests which are relevant and material to matters under consideration by the Council of Governors.

Such a disclosure shall be made by completing and signing a form, as prescribed by the Secretary from time to time, setting out any interests required to be disclosed in accordance with the Constitution or these Council of Governors' Standing Orders and delivering it to the Secretary within twenty Business Days of a Governor's election or appointment or otherwise within five Business Days of becoming aware of the existence of a relevant or material interest. The Secretary shall amend the Register of Interests upon receipt of notification within three Business Days of such receipt.

If a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and on or before such consideration disclose that to the Council of Governors as soon as he is aware of it and shall retire from the meeting or that part of it where that matter is under consideration. He shall not vote on any question with respect to the matter and, if he has declared a pecuniary interest or other relevant and material interest, he shall not take part in the consideration or discussion of the matter.

6.2 Exclusion of the Chair of the Council of Governors or a Governor in Proceedings on Account of a Pecuniary Interest

Definition of Terms Used in Interpreting ‘Pecuniary Interest’: For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order:

“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;

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

“Pecuniary Interest” subject to the exceptions set out in the Standing Order, a Governor shall be treated as having an indirect pecuniary interest in a contract if:

- the Governor, or a nominee of theirs, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the matter under consideration; or
- He is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the matter under consideration.

and in the case of family or close personal relationships the interest of one party, shall if known to the other, be deemed for the purpose of this Standing Order to also be an interest of the other.

6.3 Exception to Pecuniary Interests

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

- Neither that person nor any person connected with them has any beneficial interest in any securities of that company or other body which they or such person appear as a member, or any interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that interest or related contract or matter.

Where a Governor:

- Has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
- The total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the lesser, and

- if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.
- Any remuneration, compensation or allowance payable to the Chair or a Governor shall not be treated as a pecuniary interest for the purpose of this Standing order

These principles apply to a committee of the Council of Governors as it applies to the Council of Governors and applies to any member of any such committee (whether or not he is also a Governor of the Trust).

If a Governor is in any doubt about whether an interest should be disclosed, this should be discussed with the Chairman and subject to the views of the Chairman should be disclosed.

6.4 Register of Interests

The Company Secretary will ensure that a Register of Interest is established to record formally declarations of interest of Governors. The register will include details of all interests (as defined in these Standing orders) which have been declared. Any interest declared at a meeting shall also be recorded in the minutes of the meeting.

Any interest declared by the Chair of the Trust will be recorded in the Board of Directors Register of Interest.

Details of the Register will be kept up to date by the Company Secretary who will ensure that all declarations made are incorporated as they arise or are notified in writing to the Company Secretary by Governors by completion of a declaration form.

It is the obligation of a Governor to inform the Company Secretary in writing within seven (7) days of becoming aware of the existence of a relevant or material interest. The Company Secretary will amend the Register upon receipt of such notification.

Subject to contrary regulations being passed, the Register will be available for inspection by members of the public free of charge at all reasonable times. A person who requests it is to be provided with a copy or extract from the register. If the person requesting a copy or extract is not a member of the Trust then a reasonable charge may be made for doing so.

The register will be published on the Trust's website and details of how to obtain copies will be documented in the Annual Report & Accounts.

7.0 STANDARDS OF BUSINESS CONDUCT

7.1 Policy

Governors must comply with the Trust's Standards of Business Conduct and Conflicts of Interest Policy and act in accordance with the Nolan Principles Governing Conduct of Public Office Holders at all times.

7.2 Canvassing of and Recommendations by Governors in Relation to Appointments

Canvassing of any Governor, directly or indirectly, for any appointment under the Trust shall disqualify the candidate for 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.

A Governor shall not solicit for any person any appointment under 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.

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

7.3 Relatives of Governors

Governors shall disclose to the Company Secretary any relationships with a candidate of whose candidature that Governor is aware. It shall be the duty of the Company Secretary to report to the Council of Governors any such disclosure made.

On appointment, Governors should disclose to the Trust whether they are related to any other Governor, Director or holder of any office in the Trust.

No formal definition of relationship is made. In considering whether a disclosure is required the influence rather than immediacy of relationship is more important. In cases of doubt disclosure should be made.

8.0 REMUNERATION AND PAYMENT OF EXPENSES

8.1 Remuneration

Governors are not to receive remuneration.

8.2 Payment of Expenses

The Trust may pay travelling and other expenses to Governors for attendance at General Meetings of the Governors, or any other business authorised by the Secretary as being under the auspices of the Council of Governors.

Mileage claims will be reimbursed at the prevalent Inland Revenue Allowable Mileage Rate. Car parking and standard public transport fares will be reimbursed at the cost incurred subject to Trust policies.

Any other expenses relating to business may be reimbursed but will require the prior authorisation of the Secretary.

Expenses will be authorised and reimbursed through the Company Secretary's office at such rates as the Trust decides on receipt of a completed and signed expenses form provided by the Secretary, evidenced by receipts.

A summary of expenses paid to Governors shall be published in the Annual Report.

9.0 RELATIONSHIPS BETWEEN THE COUNCIL OF GOVERNORS AND BOARD OF DIRECTORS

9.1 Communication and Conflict

Annex 6 of the Constitution 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.

10.0 MISCELLANEOUS

10.1 Standing Orders to be given to Governors

It is the duty of the Chairman to ensure that existing Governors and all new Governors are notified of and understand their responsibilities within these Standing Orders. Updated copies shall be issued to Governors designated by the Chairman. New Governors will receive a copy as part of their induction.

10.2 Review of Standing Orders

These Standing Orders shall be reviewed regularly, by the Council of Governors. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

10.3 Conflict of Terms

For the avoidance of doubt in the event of any conflict between the terms or with regard to the interpretation of these Council of Governors' Standing Orders and the

terms of the Trust's Authorisation (including the Trust's Constitution) the latter shall prevail.

10.4 Contact Details for the Governors

It shall be the responsibility of each Governor to ensure that the Secretary has accurate and up to date details of his or her full address, telephone and if appropriate mobile and facsimile telephone numbers. Notices or other communications sent to such addresses or numbers pursuant to these Council of Governors' Standing Orders shall be deemed to have been validly given.

10.6 Timely consideration of matters

The Council of Governors shall always give due and proper and timely consideration to matters referred to the Council of Governors by the Trust or the Board of Directors whether regarding the business or forward planning of the Trust or otherwise.

10.7 Collective and individual responsibility of the Governors

In conducting the business and affairs of the Council of Governors the Governors for the time being both individually and collectively undertake to observe these and all future Council of Governors' Standing Orders, the Authorisation and the Trust Constitution.

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

(Paragraph 32)

Standing Orders

**For the regulation of proceedings and business of the
Board of Directors**

Approved by the Board of Directors at its meeting on 18 December 2018

Foreword

Within the Terms of Authorisation issued by NHS Improvement, the Independent Regulator, NHS Foundation Trusts are required to demonstrate appropriate arrangements to provide comprehensive governance arrangements in accordance with the Health and Social Care (Community Health and Standards) Act 2003.

Standing Orders (SOs) regulate the proceedings and business of the Trust and are part of its corporate governance arrangements. These documents, together with Standing Financial Instructions, Standards of Business Conduct, Scheme of Delegation, the Fraud and Corruption Policy, and the Trust's Constitution provide a regulatory framework for the business conduct of the Trust. They fulfil the dual role of protecting the Trust's interests and protecting staff from possible accusation that they have acted less than properly.

The Standing Orders, Standing Financial Instructions, Standards of Business Conduct, Scheme of Delegation and provide a comprehensive business framework that is to be applied to all activities, including those of the Charitable Foundation. Members of the Board of Directors and all members of staff should be aware of the existence of and work to these documents.

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Introduction

Statutory Framework

The Rotherham NHS Foundation Trust (the Trust) is a statutory body, which came into existence on 1 June 2005 pursuant to authorisation of Monitor under pursuant to Section 6 of the Health and Social Care (Community Health Standards) Act 2003, and was formerly the Rotherham General Hospitals NHS Trust.

The principal place of business of the Trust is:
Rotherham General Hospital
Moorgate Road
Rotherham S60 2UD

For administrative purposes, Rotherham Hospital is the Trust Headquarters.

NHS Foundation Trusts are governed by the National Health Service Act 1977 (NHS Act 1977), the National Health Service and Community Care Act 1990 (NHS & CC Act 1990) as amended by the Health Authorities Act 1995, the Health Act 1999, the Health and Social Care Act 2001 and 2003 and the Health and Social Care Act 2012.

The functions of the Trust are conferred by this legislation and the authorisation.

As a statutory body, the Trust has specified powers to contract in its own name.

The Trust also has statutory powers under Section 28A of the NHS Act 1977, as amended by the Health Act 2006, to fund projects jointly planned with local authorities, voluntary organisations and other bodies.

The Trust must adopt Standing Orders for the regulation of its proceedings and business. The Trust must also adopt Standing Financial Instructions (SFIs) setting out the responsibilities of individuals.

NHS Governance Framework

The Code of Governance requires that, inter alia, Boards of Directors draw up a schedule of decisions reserved to that Board, and ensure that management arrangements are in place to enable responsibility to be clearly delegated appropriately.

The Code also requires the establishment of an Audit Committee and a Remuneration Committee, with formally agreed terms of reference.

The Code of Practice on Openness in the NHS' set out the requirements of public access to information on the NHS, subject to, for example, the Freedom of Information Act 2012.

Delegation of Powers

The Trust has powers to delegate and make arrangements for delegation. These Standing Orders set out the detail of these arrangements.

Under the Standing Order relating to the Arrangements for the Exercise of Functions (SO5), the Trust is given powers to "make arrangements for the exercise, on behalf of the Trust of any of their functions by a Trust committee, sub-committee or joint committee appointed by virtue of Standing Order 6 or by an officer of the Trust, in each case subject to such

restrictions and conditions as the Trust thinks fit or in accordance with the Constitution and the terms of the authorisation.

Collaboration with others

Foundation Trust Boards of Directors are encouraged to move away from silo governance and develop internal integrated governance that will support authorised decision making which is informed by intelligent information covering the full range of corporate, financial, clinical, information and research governance.

However, this is being furthered with the introduction of new systems of health and social care, with many different types of organisations becoming a part of a single system.

A number of organisations in South Yorkshire and Bassetlaw ('SY&B'), have come together and established an Integrated Care System ('ICS'). These organisations include clinical commissioning groups, local authorities, voluntary organisations, regulatory authorities and others, including:

The Rotherham NHS Foundation Trust
Barnsley Hospital NHS Foundation Trust
Doncaster & Bassetlaw Teaching Hospitals NHS Foundation Trust
Sheffield Children's Hospital NHS Foundation Trust
Sheffield Teaching Hospitals NHS Foundation Trust

In parallel, Accountable Care Partnerships have been established across SY&B 'Place' localities, including those in Rotherham, Bassetlaw, Barnsley, Doncaster and Sheffield.

Collectively, the new structures will share obligations, set out in Memoranda of Understanding. National legislation is not yet in place to support collaborative governance and decision making arrangements, therefore the Trust retains legal and regulatory obligations as a stand-alone entity, at the time of writing. Appropriate amendments and updates will be made to these Standing Orders to reflect the progress made re the legal structures.

1.0 Interpretation

Save as otherwise permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Company Secretary).

Any expression to which a meaning is given in the National Health Service Act 1977, National Health Service and Community Care Act 1990, the Health and Social Care (Community Health and Standards) Act 2003 and other Acts relating to the National Health Service or in the Financial or other Regulations made under the Acts or in the Authorisation or Constitution shall have the same meaning in this interpretation and in addition:

"Accounting Officer" means the Officer responsible and accountable for funds entrusted to the Trust. They shall be responsible for ensuring the proper stewardship of public funds and assets. In accordance with the Act, this shall be the Chief Executive.

"Authorisation" means the authorisation of the Trust by Monitor, now under the umbrella organisation, NHS Improvement, the Independent Regulator of NHS Foundation Trusts

"Board of Directors" means the Chair, Non-Executive Directors and the Executive Directors appointed in accordance with the Trust's Constitution.

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

"Budget Holder" means the director or employee with delegated authority to manage finances for a specific area of the organisation.

"Chair" is the person appointed in accordance with the Constitution to lead the Board of Directors and the Council of Governors. The expression "the Chair" shall be deemed to include the Vice Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable.

"Chief Executive" means the chief officer of the Trust.

"Commissioning" means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources.

"Committee" means a committee appointed by the Board of Directors.

"Committee in Common" means the collective group or representation from NHS organisations established to perform a particular function or duty.

"Committee members" mean persons formally appointed by the Board of Directors to sit on or to chair specific committees.

"Constitution" means the Constitution of the Trust as approved from time to time by NHS Improvement, the Independent Regulator of NHS Foundation Trusts.

"Contracting and procuring" means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.

"Council of Governors" means the persons, elected and appointed, to fulfil the functions as

laid out in the Constitution.

"Finance Director" means the Director of Finance who is the chief finance officer of the Trust.

"Executive Director" means a director who is an officer of the Trust appointed in accordance with the Constitution. For the purposes of this document, "director" shall not include an employee whose job title incorporates the word director but who has not been appointed in this manner.

"Funds held on Trust" shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Sch 2 Part II para 16.1c NHS & Community Care Act 1990. Such funds may or may not be charitable.

"ICS" means Integrated Care System

"Independent Regulator" means the Regulator for the purpose of Part 1 of the 2003 Act.

"Memorandum of Understanding" (MoU) means a bilateral or multilateral agreement between two or more parties expressing an intended will and/or common line of action between the parties.

"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 who is not an officer of the Trust and who has been appointed in accordance with the Constitution or under the previous appointment system. This includes the Chair of the Trust.

"Officer" means an employee of the Trust or any other person who exercises functions for the purposes of the Trust other than solely as a Staff Governor or Non-Executive Director of the Trust.

"Secretary" means the Company Secretary unless otherwise defined

"SFI's" means Standing Financial Instructions.

"SO's" mean Standing Orders.

"SY&B" means South Yorkshire and Bassetlaw, where a collaboration between the South Yorkshire and Bassetlaw NHS providers, and others, is established to deliver the objectives of the South Yorkshire and Bassetlaw ICS.

"Trust" means The Rotherham NHS Foundation Trust.

"Vice Chair" means the Non-Executive Director appointed by the Council of Governors to take on the duties of Chair if the Chair is absent for any reason.

2.0 The Trust

- a. All business shall be conducted in the name of the Trust.
- b. The responsibilities of the Board of Directors are set out in the Constitution.
- c. The powers of the Trust established under statute shall be exercised by the Board of Directors except as otherwise provided for in SO5.
- d. Directors acting on behalf of the Trust as Corporate Trustee of The Rotherham Hospital and Community Charity Charitable Funds are accountable for charitable funds held on trust to the Charity Commission.
- e. The Board of Directors has resolved that certain powers and decisions may only be exercised or made by that Board in formal session. These powers and decisions are set out in the Matters Reserved.

2.1 Composition of the Board of Directors

- a. In accordance with the Trust's Constitution, the composition of the Board of Directors shall comprise both Executive and Non-Executive Directors.
- b. The Board of Directors shall comprise:
 - 1) A Non-Executive Chair
 - 2) No fewer than five other Non-Executive Directors
 - 3) No fewer than five Executive Directors including:
 - Chief Executive (and Accounting Officer)
 - Director of Finance
 - Registered Medical Practitioner or Registered Dentist (within the meaning of the Dentists Act 1984)
 - Registered Nurse or a Registered Midwife
- c. The Non-Executive Directors and Chair together shall be greater than the total number of Executive Directors.

2.2 Appointment and removal of the Chair and Non-Executive Directors

- a. The Chair and Non-Executive directors are appointed and may be removed by the Council of Governors in accordance with the procedure set out in the Constitution.
- b. Non-Executive Directors (including the Chair) are to be appointed by the Council of Governors using the procedure set out in the Constitution.

2.3 Terms of Office of the Chair and Non-Executive Directors

- a. The Chair and the Non-Executive Directors are to be appointed for a period of office in accordance with the Constitution. The terms and conditions of the office are decided by the Council of Governors at a General Meeting.

2.4 Appointment of Vice Chair of the Board of Directors

- a. For the purpose of enabling the proceedings of Governors of the Trust to be conducted in the absence of the Chair, the Council of Governors will appoint a Non-Executive Director to be Vice Chair for such a period, not exceeding the remainder of their term as Non-Executive Director of the Trust, as they may specify. Provision 3.6

of these Standing Orders sets out the provision if the Chair and Vice Chair are absent.

- b. Any Non-Executive Director so elected may at any time resign from the office of Vice Chair by giving notice in writing to the Chair. The Council of Governors may thereupon appoint another Non-Executive Director as Vice Chair in accordance with the Constitution.

2.5 Powers of the Vice Chair

- a. Where the Chair of the Trust has ceased to hold office, or has been unable to perform duties as Chair owing to illness, absence or any other cause, references to the Chair shall, so long as there is no Chair able to perform those duties, be taken to include reference to the Vice Chair.

2.6 Appointment of Senior Independent Director

- a. The Board of Directors shall, following consultation with the Council of Governors, appoint one of the Non-Executive Directors to be their Senior Independent Director, using the procedure set out in the Constitution.

2.7 Role of Board of Directors

- a. The Board will function as a corporate decision-making body. Executive and Non-Executive Directors will be full and equal members. Their role as members of the Board of Directors will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions.

2.8 Corporate role of the Board

- a. All business conducted by the Trust shall be conducted in the name of the Trust unless otherwise resolved by the Directors.
- b. All funds received in trust shall be held in the name of the Trust as corporate trustee.
- c. The powers of the Trust established under statute shall be exercised by the Board in session except as directed by a resolution of the Board.

2.9 Lead Roles for Board Members

- a. The Chair will ensure that the designation of Lead roles or appointments of Board members as required or as set out in any statutory or other guidance, will be made in accordance with the guidance or statutory requirement.
- b. Additional 'champion' roles may also be allocated to Non-Executive Directors.

2.10 Statement of Matters Reserved

- a. The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in the statement of Matters Reserved to the Board and shall have effect as if incorporated into these Standing Orders.

3. Meetings of the Board of Directors

3.1 Admission of the Public and Press

- a. The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Board of Directors but shall be required to withdraw upon the Board resolving as follows:
- b. 'That representatives of the press and other members of the public be excluded from the remainder of the meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest' (Section 1 (2) Public Bodies (Admission to Meetings) Act 1960).'
- c. The Chair shall give such direction as seen fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on the grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board resolving as follows:
- d. 'That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete business without the presence of the public' (Section 1(8) Public Bodies (Admission to Meetings) Act 1960).
- e. Matters to be dealt with by the Board following the exclusion of representatives of the press, and other members of the public, as provided above, shall be confidential to the members of the Board.
- f. Members and Officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked 'in confidence' or minutes and papers headed 'private' outside of the Trust, without the express permission of the Trust. This prohibition shall apply equally to the content of any discussion during the Board meeting which may take place on such reports or papers.
- g. Nothing in these Standing Orders shall require the Board 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.

3.2 Observers at Board Meetings

- a. 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 Trust's Board meetings, and will change, alter or vary these terms and conditions as it deems fit.

3.3 Calling Meetings

- a. Ordinary meetings of the Board of Directors shall be held at such times and places as that Board may determine.
- b. Meetings of the Board of Directors may be called by the Secretary, or by the Chair.
- c. Meetings of the Board of Directors may be called by at least one-third of directors who give written notice to the Secretary specifying the business to be carried out.

- d. The Secretary should send a written notice to all directors within seven days after receipt of such a request. If the Chair, or Secretary, refuses to call a meeting following a requisition, such one-third or more Directors may forthwith call a meeting.

3.4 Notice of Meetings

- a. Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, shall be delivered to every director, or sent electronically or by post to the agreed address of such director, so as to be available at least three clear days before the meeting.
- b. A notice shall be presumed to have been served one day after posting. Lack of service of the notice on any director shall not affect the validity of a meeting.
- c. In the case of a meeting called by directors in default of the Chair, those directors shall sign the notice and no business shall be transacted at the meeting other than that specified in the notice.
- d. Agendas will be sent to directors no less than three clear days before the meeting and supporting papers shall accompany the agenda, save in emergency.

3.5 Setting the Agenda

- a. The Board of Directors may determine that certain matters shall appear on every agenda for a meeting. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders.)
- b. A director who requires an item to be included on the agenda should advise the Secretary of the Board prior to the agenda being agreed with the Chair and no less than 7 working days before a meeting.
- c. When a petition has been received by the Trust, the Chair shall include the petition as an item for the agenda of the next Board of Directors meeting.

3.6 Chair of Meeting

- a. At any meeting of the Board of Directors the Chair, if present, shall preside. If the Chair is absent from the meeting the Vice Chair shall preside. If the Chair and Vice Chair are absent, such Non-Executive Director as the directors present shall choose, shall preside.
- b. If the Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Vice Chair, if present, shall preside. If the Chair and Vice Chair are absent, or are disqualified from participating, such Non-Executive Director as the directors present shall choose shall preside.

3.7 Annual Members' Meeting

- a. The Trust will publicise and hold an annual members meeting, in accordance with the terms of the Constitution.

3.8 Notices of Motion

- a. A director wishing to move or amend a motion should advise the Secretary prior to the agenda being agreed with the Chair and no less than 7 clear days before a meeting. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda.

3.9 Emergency Motion

- a. Subject to the agreement of the Chair, and subject to the provision of SO 3.8, a director of the Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda up to one hour before the time fixed for the meeting.
- b. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision is final.

3.10 Withdrawal of Motion or Amendments

- a. 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 Motion to Rescind a Resolution

- a. Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the director who gives it and also the signature of 4 other directors.
- b. 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 6 months. However, the Chair may do so if he/she considers it appropriate.

3.12 Motions

- a. The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- b. When a motion is under discussion or immediately prior to discussion it shall be open to a director to move:
 - An amendment to the motion.
 - The adjournment of the discussion or the meeting.
 - That the meeting proceeds to the next business.
 - The appointment of an ad hoc committee to deal with a specific item of business.
 - That the motion be now put.
 - A motion under Section 1 (2) of the Public Bodies (Admission to Meetings) Act 1960 resolving to exclude the public (including the press).
 - 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.

3.13 Chair's Ruling

- a. Statements of directors made at meetings of the Board of Directors shall be relevant

to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity, and any other matters, shall be observed at the meeting.

3.14 Voting

- a. Every question put to a vote at a meeting shall be determined by a majority of the votes of the Chair of the meeting and directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.
- b. 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.
- c. If at least four 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.
- d. If a director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- e. Under no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.
- f. In exceptional circumstances (to be defined by the Chairman), with prior agreement of the Chairman and Chief Executive, any Director (with the exception of the Chair) may participate in a Board of Directors meeting by telephone, video or computer link. If prior agreement has been given, participation, and voting, shall be allowed, in accordance with SO 3.19.f.
- g. 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.
- h. An officer attending 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.
- i. The Directors of Clinical Services attending Board of Directors' meetings, will have no formal voting rights on a decision nor the personal accountabilities associated with Board membership.
- j. No resolution shall be passed if it is opposed by all the Non-Executive Directors present, or by all of the Executive Directors present.

3.15 Minutes

- a. 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.

- b. 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.
- c. Where providing a record of the meeting, a set of minutes from the meeting shall be made available to the public (required by Code of Practice on Openness in the NHS and the Freedom of Information Act) and circulated to the Council of Governors. A record of items discussed in private will be maintained and approved by the Board of Directors.

3.16 Suspension of Standing Orders

- a. Except where this would contravene any statutory provision or any provision of the authorisation or of the Constitution, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board of Directors are present, including two Executive Directors and two Non-Executive Directors, and that a majority of those present vote in favour of suspension.
- b. A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- c. A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the directors.
- d. No formal business may be transacted while Standing Orders are suspended.
- e. The Audit Committee shall review every decision to suspend Standing Orders.

3.17 Variation and Amendment of Standing Orders

- a. These Standing Orders shall be amended only if:
 - a notice of motion under Standing Order 3.8 has been given; and
 - no fewer than half of the Trust's total Non-Executive Directors in post vote in favour of amendment;
 - at least two-thirds of the Directors are present; and
 - the variation proposed does not contravene a statutory provision or provision of the authorisation or of the Constitution.

3.18 Record of Attendance

- a. The names of the Chair and directors present at the meeting shall be recorded in the minutes.
- b. The Secretary shall keep and maintain a record of the number of meetings of the Board of Directors and the attendance of individual directors. The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link as per SO 3.14.e. Participation where agreed shall be deemed to constitute presence in person at the meeting.

3.19 Quorum

- a. No business shall be transacted at a meeting of the Board of Directors unless at least one-third members of the whole number of the Directors are present (including at

least one Executive Director and one Non-Executive Director).

- b. An officer in attendance for an Executive Director but without formal acting up status, may not count towards the quorum.
- c. If the Chair or director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 7) they shall no longer count towards the quorum.
- d. 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.
- e. The meeting must then proceed to the next business. The above requirement for one Executive Director to form part of the quorum, shall not apply where the Executive Director is excluded from a meeting.
- f. In exceptional circumstances, any Director may participate in Board of Directors' meetings by telephone, video or computer link in accordance with SO 3.14.e. With prior agreement of the Chairman, which shall be noted in the minutes, the Director may form part of the quorum. However, a majority of quorum members (not including the Chair) must be present in person.

3.20 Frequency

- a. The Trust shall hold meetings of the Board of Directors on a generally monthly basis, and at least ten times in each calendar year.
- b. The Board of Directors shall determine the dates of the board meetings in advance.

4.0 Meetings of the Council of Governors

4.1 Admission of the Public and Press

- a. The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors but shall be required to withdraw upon the Governors resolving as follows:
- b. 'That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest' (Section 1(2) Public Bodies (Admission to Meetings) Act 1960.'
- c. The Chair (or Vice Chair) shall give such directions as he/she thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Council of Governors' 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 Council of Governors resolving as follows:

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

4.2 Calling Meetings

- a. General Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine.

4.3 Notice of Meetings

- a. Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted by it, shall be delivered to every Governor, or sent by post to the usual residence of such Governor, so as to be available to him/her at least three clear days before the meeting.
- b. Lack of service of the notice on any Governor shall not affect the validity of the meeting.
- c. Meetings of the Council of Governors may be called by seven Governors (including at least one elected Governor and one appointed Governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send out a written notice to all Governors as soon as possible after receipt of such a request.
- d. Agendas will be sent to Governors three clear days before the meeting, and supporting papers, whenever possible, shall accompany the agenda. Papers may be sent by electronic means.
- e. A notice shall be presumed to have been served one day after posting.

4.4 Chair of Meeting

- a. At any meeting of the Council of Governors, the Chair, if present, shall preside. If the Chair is absent from the meeting, the Vice Chair, if present, shall preside. If the Chair and Vice Chair are absent, one of the other Non-Executive Directors will be nominated by the Council of Governors to preside.
- b. If the person presiding at the meeting of the Council of Governors has a conflict of interest in relation to the business being discussed, the Vice Chair (or nominated Chair) will chair that part of the meeting.

4.5 Notices of Motion

- a. A Governor desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Secretary, who shall insert in the agenda for the meeting, all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned in the agenda.

4.6 Withdrawal of Motion or Amendments

- a. 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.

4.7 Motions

- a. The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment of the Chair.
- b. When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
 - An amendment to the motion
 - The adjournment of the discussion
 - That the meeting proceeds to the next business
 - The appointment of an ad hoc committee to deal with a specific item of business
 - A motion under section 1 of the Public Bodies (Admissions to Meetings) Act 1960 resolving to exclude the public (including the press)
- c. 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.

4.8 Chair's Ruling

- a. Statements of Governors made at meetings of the Trust 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, relevance, regularity and any other matter shall be observed at the meeting.

4.9 Voting

- a. Every question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the person presiding at or chairing the meeting shall have a casting vote.

- b. 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.
- c. If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- d. If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- e. Under no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

4.10 Minutes

- a. The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting.
- b. 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.
- c. Where providing a record of a public meeting the Council of Governors' minutes shall be made available to the public as required by the Code of Practice on Openness in the NHS.

4.11 Record of Attendance

- a. The names of the Governors present at the meeting shall be recorded in the minutes, and shall be reported in the Trust's annual report.

4.12 Quorum

- a. For Council of Governors meetings, the quorum is as set out in the Constitution.
- b. If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO7) he shall not count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

4.13 Frequency of Council of Governor meetings

- a. The Council of Governors shall hold meetings at least four times a year in each calendar year.

5.0 Arrangements for the exercise of functions by delegation

- a. Subject to a provision in the authorisation or the Constitution, the Board of Directors may make arrangements for the exercise, on its behalf of any of its functions by
 - a committee or sub-committee of the Board;
 - appointed by virtue of SO5.c below; or
 - by an Executive Director.
- b. The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by a Committee, which it has formally constituted. The constitution and terms of reference of these Committees and their specific executive powers, shall be approved by the Board
- c. Each case will be subject to such restrictions and conditions as the Board of Directors thinks fit.
- d. Standard exceptions to this requirement are:
 - a) Approval of single tenders: Where, in the best interests of the Trust, single tendering arrangements need to be completed before the next Audit Committee meeting, the request may be considered by the Chief Executive and the Director of Finance acting jointly. Where the request is approved, the decision of the Chief Executive and Director of Finance will be reported in writing to the next Audit Committee meeting for formal acknowledgement and, if appropriate, approval.
 - b) Use of the Trust's seal: Where, in the best interests of the Trust, the sealing of documents needs to be completed before the next Board meeting, the sealing may be undertaken by any two of the following acting jointly: Chairman, Chief Executive and / or Director of Finance.

5.1 Emergency Powers

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

5.2 Delegation to Committees

- a. The Board of Directors shall agree, as and when it deems appropriate, to the delegation of executive powers to be exercised by committees or sub-committees, which it has formally constituted.
- b. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board of Directors.

5.3 Delegation to Officers

- a. Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to an executive committee or sub-committee shall be exercised on its behalf by the Chief Executive. The Chief Executive shall determine which functions shall be delegated to officers to undertake.
- b. The Chief Executive shall prepare a Scheme of Delegation (which is set out in the Standing Financial Instructions) identifying proposals which shall be considered and

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

- c. Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors or the Director of Finance or other executive director. Outside these statutory requirements the roles of the Director of Finance shall be accountable to the Chief Executive for operational matters.
- d. The arrangements made by the Board of Directors as set out in the Scheme of Delegation shall have effect as if incorporated in these Standing Orders.

5.4 Overriding Standing Orders

- a. 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 Audit Committee.
- b. All members of the Board of Directors, Council of Governors and colleagues have a duty to disclose any non-compliance with these Standing Orders to the Chairman as soon as possible.

6.0 Committees

6.1 Appointment of Committees

- a. Subject to the authorisation and the Constitution, the Board of Directors may appoint committees of the Trust, consisting wholly or partly of the Chair and Executive or Non-Executive Directors of the Trust, or wholly of persons who are not Executive or Non-Executive Directors of the Trust.
- b. A committee or joint committee appointed under this regulation may, subject to such directions as may be given by the Independent Regulator of the Trust, and in accordance with the Constitution, appoint sub-committees consisting wholly or partly of directors of the committee or joint committee (whether or not they are directors of the Trust); or wholly of persons who are not directors of the Trust or the committee of the Trust.
- c. The Scheme of Delegation does not discharge accountability to Non-Executive Directors to provide information and advise the Board of Directors in accordance with any statutory requirements.
- d. The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Trust. In which case the term “Chair” is to be read as a reference to the Chair of the committee as the context permits, and the term “director” is to be read as a reference to a member of the committee also as the context permits. (There is no requirement to hold any meetings of committees established by the Trust, in public.)
- e. Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide and shall be in accordance with any legislation and regulation.
- f. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- g. Where Trust committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board of Directors.
- h. Committees, sub committees, or other groups, will not use the designation ‘Board’ in its name.
- i. The Board of Directors shall approve the appointments to each of the committees, which it has formally constituted. Where the Board of Directors determines, and regulations permit, those persons, who are neither directors nor officers, shall be appointed to a committee the terms of such appointment shall be within the powers of the Board of Directors as defined by the authorisation and the Constitution.
- j. The committees and sub-committees established by the Trust are:
 - Audit Committee
 - Remuneration Committee
 - Nomination Committee (made up of majority Non-Executive Directors and relating to the appointment / removal of Executive Directors);
 - Finance and Performance Committee
 - Quality Assurance Committee
 - Strategic Workforce Committee

- Strategy and Transformation Committee
 - The Rotherham NHS Foundation Trust Committee in Common
- k. Membership of the Trust's Committee in Common is defined by its Terms of Reference, as agreed by all the parties. The Board of Directors, together with other SYB ICS partners, has agreed not to delegate any of its statutory functions to the Committee in Common.
- l. Such other committees may be established, as required, to discharge the Board's responsibilities.
- m. The committee established by the Council of Governors is the Nomination Committee, made up of Governors, save for the Committee Chair, being the Trust Chairman. Travelling and other allowances for Non-Executive Directors shall be determined by the Committee.
- n. A Charitable Funds Committee has been established by the Corporate Trustee of The Rotherham Hospital and Community Charity.

6.2 Confidentiality

- a. A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.
- b. A Director of the Trust, a member of a committee or attendee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if that committee shall resolve that it is confidential.
- c. The Board of Directors may facilitate the attendance of up to two Governors at certain Board Committee meetings. The purpose of Governors attending the Committees is to allow them to observe the Non-Executive Directors. This provides Governors the opportunity of fulfilling their duty of holding Non-Executive Directors to account for the performance of the Board, and to participate in Non-Executive annual appraisals. To ensure the integrity of Board Committee governance, Governors will not participate in the meetings, unless directly invited to so by the committee Chairman. No actions shall arise as a result of Governors' invited participation. Attending Governors shall acknowledge their duty of confidentiality of matters discussed, by providing a signed declaration to this effect.

7.0 Declarations of Interests

7.1 Members of the Board of Directors

- a. Pursuant to Section 20 of the Schedule 7 of the National Health Service Act 2006, a register of Director's interests must be kept by each NHS Foundation Trust.
- b. All Directors (including for the purposes of the standing order, Non-Executive Directors) should declare relevant and material interests to the NHS Board of which they are a member. This should take place on appointment.
- c. Interests may be financial or non-financial (i.e. political or belief-based). Interests which should be regarded as 'relevant and material' and which, for the avoidance of doubt, should be included in the register are:
 - (a) Any directorship of a company;
 - (b) Any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding does not exceed 5% of the total issued share capital, or the value of such shareholding does not exceed £25,000) or position in any firm or company or business, which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust;
 - (c) Any interest in an organisation providing health and social care services to the National Health Service; or
 - (d) Position of authority in a charity or voluntary organisation in the field of health and social care;
 - (e) Any affiliation to a special interest group campaigning on health or social care issues (this includes political parties).
 - (f) To the extent not covered above, any connection with an organisation, entity or company considering entering in to, or having entered into financial arrangement with The Rotherham NHS Foundation Trust, including but not limited to, lenders or banks.
- d. Reference should also be made to the Monitor *NHS Foundation Trust Code of Governance* and the Trust's Constitution in determining whether other circumstances or relationships are likely to affect, or could appear to affect, the director's judgement.
- e. Each Board agenda will contain at the beginning, an agenda item relating to declaration of interests. During the course of a Board of Directors meeting, if a conflict of interest is established, the director concerned should withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt, this includes voting on such an issue where a conflict is established. If there is a dispute as to whether a conflict of interest does exist, a majority vote will resolve the issue with the Chair having the casting vote.
- f. At the time that interests are declared, they should be recorded in the Board of Director's minutes. Any changes in interests that should arise between Board meetings, should be advised to the Secretary in writing within seven days of becoming aware of the existence of a relevant or material interest.
- g. It is the responsibility of the director to inform the Secretary of changes in their interests, within the appropriate timelines.
- h. A register of directors' interests shall be maintained and held by the Secretary and presented bi-annually to the Board of Directors. This will be formally recorded in the

minutes. Any changes in interests should be officially declared to the Secretary where an appropriate amendment is required.

- I There is no requirement for the interests of directors' spouses or partners to be declared; however, in accordance with the Nolan Principles of integrity, accountability and openness, good practice suggests that such declarations are strongly advisable (as are declaring the interests of other immediate family members and co-business partners).
- j. If directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair or Secretary.
- k. For the avoidance of doubt, any remuneration, compensation or allowances payable to the Chair or a Non-Executive Director in accordance with the Constitution shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- l. The Register of Directors' Interests will be available for inspection by the public free of charge. Copies or extracts of the Registers must 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.

8.0 Standards of Business Conduct

8.1 Policy

- a. The Trust's Standards of Business Conduct provides guidance for all colleagues in the Trust who may or may not be Members of the Board of Directors, and who may have conflicts of interest that should be declared.
- b. There is an obligation on the Trust, through its incorporation with the NHS Standard Contract pursuant to General Condition 27, that 'Managing Conflicts of Interest in the NHS' statutory guidance (publications gateway reference 06419) and superseding the Standards of Business Conduct for NHS staff (HSG(93)5), is complied with by all colleagues.
- c. All Trust colleagues should familiarise themselves with the contents of the Standards of Business Conduct policy, and should seek advice if in doubt as to whether a potential interest should be declared.

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

- a. Canvassing of Directors of the Trust, or members of any Committee of the Trust directly or indirectly for any appointment under the Trust, shall disqualify the candidate for such appointment.
- b. A Director shall not solicit for any person any appointment under the Trust, or recommend any person for such appointment, but this paragraph of this Standing order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- c. Informal discussions outside appointment panels or committees, whether solicited or unsolicited, will be declared to the panel or committee.

9.0 Compliance with Fit and Proper Persons Regulations

- a. The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 requires all NHS Trusts to ensure that all Executive and Non-Executive Director posts (or anyone performing similar or equivalent functions) are filled by people that meet the requirements of the Fit and Proper Persons Regulations ('FPPR'). The definition of directors includes those in permanent, interim or associate roles, irrespective of their voting rights at Board meetings.
- b. The regulations stipulate that Trusts must not appoint or have in place an Executive Director or a Non-Executive Director unless they meet the standards set out in the Regulations.
- c. Guidance issued by the CQC in January 2018 places ultimate responsibility on the Trust Chair to discharge the requirements of the FPPR.
- d. The Chair must assure themselves that new applicants and existing post holders meet the fitness checks and do not meet any of the unfit criteria. Responsibility also falls on the Chair to decide whether an investigation is necessary and, at the end of the investigation, to consider whether the director in question remains fit and proper.
- e. The Chair will be notified by the CQC of any non-compliance with the FPPR, and holds responsibility for making any decisions regarding action that needs to be taken.

10.0 Custody of Seal and Sealing of Documents

10.1 Custody of Seal

- a. The Trust's Seal shall be kept by the Chief Executive, or officer appointed by them, in a secure place.

10.2 Sealing of Documents

- a. The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board or where the Board of Directors has delegated its powers.
- b. The affixing of the Seal shall be attested and signed by the Chief Executive Director (or officer nominated by them) together with one other Executive Director.
- c. Before any building, engineering, property or capital document is sealed, it must be approved and signed by the Director of Finance (or an officer nominated by them) and authorised and countersigned by the Chief Executive (or an officer nominated by them).
- d. For contracts, other than building and engineering, contract management teams and Departmental Heads are required to consider the enforceability of rights which may accrue by virtue of breaches of such contracts.
- e. Where the contract management team or Departmental Head believes that the contract should be entered into under seal, that contract should be submitted to the Director of Finance for review. If the Director of Finance agrees that the contract should be completed under Seal then appropriate processes set out in the **SFI**'s for building and engineering contracts, should be followed.

10.3 Register of Sealing

An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealings shall be made to the Board of Directors at least bi-annually. (The report shall contain details of the seal number, the description of the document and date of sealing). The book will be held by the Secretary.

11. Signature of documents

- a. Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.
- b. For the purpose of defence documents in legal proceedings, the Secretary or in their absence, any Executive Director, shall be authorised to sign the necessary documentation on behalf of the Trust.
- c. The Chief Executive or nominated officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Directors or committee or sub-committee to which that Board has delegated appropriate authority.
- d. Where electronic documents have been 'signed' with electronic signatures, details pertaining to the document, shall be maintained in a register and presented to the Board of Directors, for ratification where necessary, on a bi-annual basis.

12. Freedom to Speak Up

- a. In accordance with the Public Interest Disclosure Act 1998, the Board of Directors is required to prepare and update, as necessary, procedures for receiving and investigating disclosures, internally or externally, as well as illegal acts or omissions at work.
- b. The Board of Directors is responsible for ensuring that all senior leaders, are knowledgeable about Freedom to Speak Up (FTSU), and can readily articulate the Trust's FTSU requirements and policy.
- c. The Chief Executive is responsible for appointing the FTSU Guardian and ultimately, for ensuring that FTSU arrangements meet the needs of colleagues.
- d. The Chief Executive and Chair are responsible for ensuring the annual report contains information about FTSU and that the Trust is engaged with both the regional Guardian network and the National Guardian's Office

13. Miscellaneous

13.1 Standing Orders to be given to Directors and Officers

- a. It is the duty of the Chief Executive to ensure that existing directors and officers are notified of and understand their responsibilities within Standing Orders and **SFIs**.
- b. Updated copies shall be issued to staff in e-mail format through the Trust's Colleague Bulletin.
- c. New designated officers shall be informed in writing and shall receive e-copies where appropriate of Standing Orders.

13.2 Documents having the standing of Standing Orders

- a. Standing Financial Instructions and the Scheme of Delegation shall have effect as if incorporated into Standing Orders.

13.3 Review of Standing Orders

- a. Standing Orders, and all documents having effect as if incorporated in Standing Orders, shall be reviewed bi-annually by the Audit Committee on behalf of the Board of Directors.

ANNEX 9 - FURTHER PROVISIONS – BOARD OF DIRECTORS

(Paragraph 10.4)

[ANNEX 10 - ANNUAL MEMBERS MEETING]

(Paragraph 11)