

CONSTITUTION

OF

*SHERWOOD FOREST HOSPITALS NHS FOUNDATION
TRUST*

(A Public Benefit Corporation)

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SHERWOOD FOREST HOSPITALS NHS FOUNDATION TRUST (A PUBLIC BENEFIT CORPORATION)

CONSTITUTION

This Constitution represents the constitution of Sherwood Forest Hospitals NHS Foundation Trust as adopted in accordance with the 2006 Act (as defined below) as amended by the 2012 Act (as defined below). This Constitution sets out the powers and functions of the Trust. In exercising its powers and carrying out its functions the Trust shall aim to provide the best possible patient care, based on evidence and in a culture that encourages continuous improvement

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act as amended by the 2012 Act.

References in this Constitution to legislation include all amendments, replacements, or re-enactments made, and include all subordinate legislation made thereunder.

Headings are for ease of reference only and are not to affect interpretation. All annexes referred to in this Constitution form part of it.

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

References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an annex to this Constitution it shall be a reference to a paragraph in that annex unless the contrary is expressly stated, or the context otherwise so requires.

1 Definitions

In this Constitution:

2006 Act - means the National Health Service Act 2006.

2012 Act - means the Health and Social Care Act 2012.

2022 Act – means the Health and Care Act 2022.

Accounting Officer - means the Chief Executive who discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.

Annual Accounts - means those accounts prepared by the Trust (through the Accounting Officer) pursuant to paragraph 25 of Schedule 7 to the 2006 Act.

Annual Members' Meeting – means the annual meeting of the Members as provided for in paragraph 6.8.

Annual Report – means the annual report of the Trust prepared by the Trust as referred to at paragraph 15.1.

Appointed Governor - means a PBP Governor, a Local Authority Governor, a Volunteer Governor or an Other Partnership Governor.

Audit Committee - means the committee of the Board of Directors as established pursuant to paragraph 8.4.

Auditor - means the auditor of the Trust appointed by the Council of Governors pursuant to paragraph 7.15.2.1.

Board of Directors - means the board of directors of the Trust as constituted in accordance with this Constitution;

PBP - means Mid Nottinghamshire Place Based Partnership

PBP Governor - means the Appointed Governor appointed by the PBP pursuant to paragraph 7.5.1.

Code of Conduct for Directors - means the Trust's code of conduct for Directors (as amended from time to time).

Code of Conduct for Governors - means the Trust's code of conduct for Governors (as amended from time to time).

CoG's Nominations Committee - means the committee appointed by the Council of Governors pursuant to paragraph 8.5.1.3.

Council of Governors - means the council of governors of the Trust as constituted in accordance with this Constitution.

Chair - means the Chair of the Trust appointed in accordance with paragraph 7.15.2.1.

Chief Executive - means the Chief Executive of the Trust appointed in accordance with paragraph 8.5.2.

Constituency - means either a Public Constituency or the Staff Constituency and "Constituencies" shall be construed accordingly.

Constitution - means this Constitution together with its annexes.

Designated Trust Sub-contractors - means Central Nottinghamshire Hospitals PLC (CNH) and such other sub-contractors of the Trust as may be designated as such from time to time by the Board of Directors.

Director - means an Executive or Non-Executive Director.

Elected Governor - means a Staff Governor or a Public Governor.

Engagement Policy - means the engagement policy in relation to the interaction of the Board of Directors and Council of Governors as published by the Council of Governors from time to time.

Executive Director - means an Executive Director of the Trust being the Chief Executive, Chief Finance Officer or such other Executive Director as is appointed under paragraph 8.5.

Chief Finance Officer - means the Chief Finance Officer of the Trust appointed in accordance with paragraph 8.5.

Financial Year - each successive period of twelve months beginning with 1st April in any year.

Governor - means a member of the Council of Governors

Health Overview and Scrutiny Committee - means a local authority overview and scrutiny committee established pursuant to Section 21 of the Local Government Act 2000.

Health Service Body - shall have the meaning ascribed to it in section 65(1) of the 2006 Act.

Healthwatch - means a Healthwatch England committee as defined in section 181 of the Health and Social Care Act 2012 or a Local Healthwatch organisation as defined in section 222 of the Local Government and Public Involvement in Health Act 2007.

Hospital means: King's Mill Hospital; Newark Hospital; Mansfield Community Hospital and all associated hospitals, establishments and facilities at which the Trust provides and/or manages the provision of goods and/or services, including accommodation and “**Hospitals**” shall be construed accordingly.

Lead Governor - means the Governor appointed by the Council of Governors as the Trust's lead governor pursuant to paragraph.

Local Authority - means any of: Ashfield District Council; Mansfield District Council; Newark & Sherwood District Council; and Nottinghamshire County Council and “**Local Authorities**” shall be construed accordingly.

Local Authority Governor - means the Appointed Governor appointed pursuant to paragraph 7.7 by a Local Authority.

Member - means a member of the Trust and the term “**Membership**” shall be construed accordingly.

Model Election Rules - means the Model Election Rules as published from time to time by NHS Providers.

NHSE - means NHS England which was originally established as the NHS Commissioning Board under section 1H of the NHTA and renamed NHS England under section 1 of the 2022 Act.

Nolan Principles - means the seven principles of conduct of holders of public office enunciated by the Nolan Committee in its Report on Standards in Public Office.

Non-Executive Director - means the Chair or such other Non-Executive Director of the Trust appointed in accordance with paragraph 8.5.

Other Partnership Governor - means the Appointed Governor appointed by an Other Partnership Organisation pursuant to paragraph 7.8.

Other Partnership Organisation - means West Nottinghamshire College.

Policies - means the Trust's published policies on freedom to speak up, confidentiality, equal opportunities and such other reasonable Trust policies as are notified to the Directors and Governors in writing from time to time.

Public Constituency - means one of the Public Constituencies as set out in Annex 1 and “Public Constituency” shall be construed accordingly.

Public Governor - means a member of the Council of Governors elected by the members of a Public Constituency.

Registered Dentist - means a registered dentist within the meaning of the Dentists Act 1984.

Registered Medical Practitioner - means a medical practitioner who is fully registered within the meaning of the Medical Act 1983 who holds a license to practice under that Act.

Registered Midwife - means a person who is registered to practice as a midwife by the Nursing and Midwifery Council.

Registered Nurse - means a person who is registered to practice as a nurse by the Nursing and Midwifery Council.

Senior Independent Director - means an independent Non-Executive Director appointed by the Board of Directors (in consultation with the Council of Governors) and having the role envisaged by the NHSE’s NHS Foundation Trust Code of Governance.

Sherwood Forest Volunteers - means the volunteers who are engaged by the Trust to provide voluntary services.

Staff Constituency - means the constituency of the Trust as referred to Annex 2.

Staff Governor - means a member of the Council of Governors elected by the members of the Staff Constituency.

Sub-contractor Personnel - means the employees of any of the Trust’s Designated Sub-contractors who, in the course of their employment, exercise functions on behalf of the Trust.

Trust - means the Sherwood Forest Hospitals NHS Foundation Trust.

Trust Secretary - means the secretary of the Trust or any other person or body corporate appointed to perform the duties of the secretary of the Trust, including a joint, assistant or deputy secretary.

Vice Chair - means the Non-Executive Director appointed as the vice chair of the Trust by the Council of Governors in general meeting.

Volunteer Governor - means the Appointed Governor appointed by the Sherwood Forest Volunteers.

2 Name

- 2.1 The name of the foundation trust is “Sherwood Forest Hospitals NHS Foundation Trust”.

3 Principal Purpose

- 3.1 The Trust's principal purpose 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.

4 Other Purposes

- 4.1 In addition to the Trust's principal purpose as set out in paragraph 3, the Trust may:
- 4.1.1 provide goods and services for any purposes related to:
- 4.1.1.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
 - 4.1.1.2 the promotion and protection of public health.
- 4.1.2 carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others; and
- 4.1.3 carry on activities other than those mentioned above for the purpose of making additional income available in order to better carry on the Trust's principal purpose.

5 Powers

- 5.1 The Trust has all the powers of an NHS foundation trust as set out in the 2006 Act.
- 5.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 5.3 Any of the powers of the Trust may be delegated to a committee of Directors or to an Executive Director in accordance with this Constitution and the Standing Orders of the Board of Directors.

6 Members and constituencies

- 6.1 Constituencies
- 6.1.1 The Trust shall have members each of whom shall be a member of one of the following constituencies:
- 6.1.1.1 a Public Constituency; and

6.1.1.2 the Staff Constituency.

6.2 Public Constituency

6.2.1 Subject to paragraph 6.5 an individual is eligible to become a member of a Public Constituency if they:

6.2.1.1 live in the area specified for that Public Constituency in the corresponding entry in column 2 of Annex 1.

6.2.1.2 are not a member of another Public Constituency .

6.2.1.3 are not eligible to become a member of the Staff Constituency; and

6.2.1.4 are at least 16 years old at the time of their application to be a Member.

6.2.2 Those individuals who are eligible to be members of a Public Constituency are referred to collectively as a “Public Constituency”.

6.2.3 An eligible individual shall become a Member upon entry to the membership register pursuant to an application by them.

6.2.4 On receipt of an application for Membership and subject to being satisfied that the applicant is eligible the Trust Secretary shall cause the applicant’s name to be entered in the Trust’s register of Members.

6.2.5 The minimum number of Members of each Public Constituency is set out in column 3 of Annex 1.

6.3 Staff Constituency

6.3.1 Subject to paragraphs 6.3.2 and 6.5 individuals are eligible to become members of the Staff Constituency if they are at least 16 years old and they are employed by the Trust under a contract of employment (other than as a Non-Executive Director);

6.3.2 For the avoidance doubt members of the Staff Constituency cannot be members of a Public Constituency.

6.3.3 An individual is only eligible to become a member of the Staff Constituency under paragraph 6.3.1 above if they satisfy the minimum duration requirements set out in 3(3) of Schedule 7 to the 2006 Act, that is to say:

6.3.2.1 In the case of individuals qualifying under paragraph 6.3.1.1 above, they:

(a) are employed by the Trust under a contract of employment which has no fixed term.

- (b) are employed by the Trust under a contract of employment which has fixed term of at least 12 months; or
- (c) have been continuously employed by the Trust under a contract of employment for at least 12 months.

6.3.2.2

6.3.2.3 For the purposes of paragraphs 6.3.2.1 Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether the individual has been continuously employed by the Trust or has continually exercised functions on behalf of the Trust.

6.3.4 An individual who is:

6.3.3.1 eligible to become a member of the Staff Constituency who qualifies under paragraph 6.3.1.1 and

6.3.3.2 is 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 for Membership being made unless they inform the Trust they do not wish to become a Member.

6.3.5 On receipt of an application for Membership for those qualifying for membership of the Trust and subject to being satisfied that the applicant is eligible, the Trust Secretary shall cause the applicant's name to be entered in the Trust's register of Members.

6.3.6 Those individuals who are eligible for Membership by reason of the provisions set out in this paragraph 6.3 are referred to collectively as the "Staff Constituency".

6.3.7 The minimum number of Members for the Staff Constituency is set out in column 3 of Annex 2.

6.4 Not used

6.5 Disqualification for Membership

6.5.1 An individual may not be or continue as a Member of the Trust if, in respect of:

6.5.1.1 a Public Member they do not meet the relevant eligibility criteria under paragraph 6.2; or

6.5.1.2 a Staff Member they do not meet the relevant eligibility criteria under paragraph 6.3.

6.5.2 It is the responsibility of each Member to ensure their eligibility for membership. If the Trust is on notice that a Member may no longer be

eligible to be a Member, the Trust shall carry out such reasonable enquiries as it considers necessary to establish if this is the case and shall invite the Member concerned to comment on its findings (within 14 days), and following receipt of any comments or expiry of that 14 day period (whichever occurs first) the Trust Secretary shall decide whether such Member should be disqualified.

6.6 Termination of Membership

6.6.1 A Member shall cease to be a Member if they

6.6.1.1 resign by notice in writing to the Trust Secretary; or

6.6.1.2 cease to fulfil the eligibility requirements of paragraphs 6.2 or 6.3 and/or is disqualified under paragraph 6.5.

6.7 Voting at Governor Elections

6.7.1 A Member may not vote in an election for an Elected Governor unless within the specified time period they have made a declaration in the specified form setting out the particulars of their qualification to vote as a member of the Constituency (and where relevant the appropriate class within that Constituency) for which the election is being held. The specified time period and form of declaration are specified in the Model Election Rules.

6.7.2 It is an offence for any Member to knowingly or recklessly make such a declaration as is referred to at paragraph 6.7.1 which is false in a material particular.

6.7.3 An individual who is a member of another foundation trust as well as the Trust may vote in elections for this Trust provided, they are able to comply with the provisions of this paragraph 6.7 (Voting at Governor Elections).

6.8 Annual Members' Meeting

6.8.1 The Trust shall every year hold an Annual Members' Meeting which shall be open to members of the public.

6.8.2 The following documents shall be presented at the Annual Members' Meeting by at least one of the Directors:

6.8.2.1 the Annual Accounts.

6.8.2.2 any report of the Auditor on the Annual Accounts; and

6.8.2.3 the Annual Report.

6.8.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of being presented with the documents in subparagraph 6.8.2 with the Annual Members' Meeting.

6.8.4 In accordance with paragraph 20.3 where an amendment has been made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of

Governors has as a part of the Trust), Members shall be given an opportunity to vote at the Annual Members' Meeting on whether they approve the amendment which shall be presented to that meeting by at least one Governor.

- 6.8.5 Where an amendment has been presented to the Annual Member's Meeting in accordance with paragraph 6.8.4, and it is not approved by more than half of the Members voting such amendment shall cease to have effect and the Trust shall take such steps as are necessary as a result.

7 Council of Governors

7.1 Composition

7.1.1 The Trust shall have a Council of Governors which shall consist of Elected Governors and Appointed Governors (as set out in paragraph 7.1.2).

7.1.2 The composition of the Council of Governors shall be:

7.1.2.1 fourteen (14) Public Governors representing the Public Constituencies as set out in Annex 1;

7.1.2.2 Three (3) Staff Governors representing the Staff Constituency as set out in Annex 2;

7.1.2.3 one (1) PBP Governor;

7.1.2.4 one (1) Volunteer Governor.

7.1.2.5 four (4) Local Authority Governors; and

7.1.2.6 one (1) Other Partnership Governor.

7.1.3 The Council of Governors shall nominate a Governor to be the Trust's Lead Governor.

7.2 Governor Elections

7.2.1 Elected Governors 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 as set out in Annexes 1 and 2.

7.2.2 Elections for Elected Governors shall be conducted in accordance with the Model Election Rules First Past the Post system.

7.2.3 The Model Election Rules, 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 uncontested, are set out in Annex 3.

7.2.4 A subsequent variation to the Model Election Rules to reflect a change by NHS Providers shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 20.1.

7.2.5 The Model Election Rules provide for arrangements to be made to assist those persons requiring assistance to vote.

7.2.6 Members:

7.2.4.1 standing for; and/or

7.2.4.2 voting in.

Governor elections must comply with the terms of the Model Election Rules.

7.2.7 Where an election is contested, the election shall be by secret ballot.

7.3 Public Governors

7.3.1 Each Public Constituency shall elect the number of Governors set against it in column 4 of Annex 1.

7.3.2 Members of each Public Constituency may elect any of their number who is eligible to be a Public Governor.

7.3.3 An individual may not stand for election to the Council of Governors as a Public Governor unless:

7.3.3.1 within the period specified in paragraph 12 of the Model Election Rules (Annex 3), they have made a declaration in the form specified in that part of that annex of their qualification to vote as a Member of the Public Constituency Class for which the election is being held; and

7.3.3.2 they are not prevented from being a member of the Council of Governors by paragraph 7.12 (Suspension and disqualification).

7.3.4 It is an offence for any Member to knowingly or recklessly make such a declaration as is referred to in paragraph 7.3.3.1 which is false in a material particular.

7.4 Staff Governors

7.4.1 Members of the Staff Constituency may elect the number of Governors for that Staff Class as set out in Annex 2.

7.4.2 Members of the Staff Constituency may elect any individual who is eligible to be a Staff Governor in respect of the relevant Staff Constituency.

7.5 PBP Governors

- 7.5.1 The PBP may appoint 1 PBP Governor (such person must be eligible to be, and not disqualified from being, a Governor under this Constitution) pursuant to a process agreed between the PBP and the Trust.
- 7.6 Volunteer Governor
- 7.6.1 The Sherwood Forest Volunteers will appoint 1 Governor (such person must be eligible to be, and not disqualified from being, a Governor under this Constitution) pursuant to a process agreed between the Sherwood Forest Volunteers and the Trust.
- 7.7 Local Authority Governors
- 7.7.1 Each of the Local Authorities may appoint one Local Authority Governor (such person must be eligible to be, and not disqualified from being, a Governor under this Constitution) by notice in writing signed by:
- 7.7.1.1 the leader of the relevant council.
- 7.7.1.2 or a member of the relevant council's executive and delivered to the Trust Secretary.
- 7.8 Other Partnership Governors
- 7.8.1 The Other Partnership Organisation may appoint one Other Partnership Governor (such person being eligible to be, and not disqualified from being, a Governor under this Constitution) as set out. West Nottinghamshire College may appoint its Other Partnership Governor by notice in writing signed by the principal of West Nottinghamshire College and delivered to the Trust Secretary.
- 7.9 Transition arrangements
- 7.9.1 Where an Elected Governor ceases to be eligible to hold the office to which they were elected by virtue of paragraphs 6.2 or 6.3 that Elected Governor shall immediately notify the Trust Secretary of the circumstances giving rise to their ineligibility.
- 7.9.2 Where the Trust Secretary receives notice from an Elected Governor, pursuant to paragraph 7.8.1, that they believe they are no longer eligible to hold office (or the Trust Secretary otherwise becomes aware that the Elected Governor is no longer eligible to hold office) the Trust Secretary shall notify the Elected Governor that their position is suspended with immediate effect and shall ask the Governor if they:
- 7.9.2.1 wish to stand down as a Governor: and
- 7.9.3 Where the Elected Governor confirms in writing they:
- 7.9.3.1 will stand down as a Governor, such resignation shall take effect immediately.
- 7.10 Terms of Office

7.10.1 Elected Governors:

7.10.1.1 shall be elected for a period of 3 years.

7.10.1.2 are, subject to paragraphs 7.10.1.3 and 7.10.1.4 eligible for re-election at the end of the period referred to in paragraph 7.10.1.1.

7.10.1.3 may hold office for a maximum of 9 years but in exceptional circumstances (as determined by the Council of Governors) may serve longer than 9 years, but any extension beyond 9 years will be subject to annual re-election and, in any event, they shall not serve for a total term longer than 12 years.; and

7.10.2 Appointed Governors:

7.10.2.1 shall be appointed for a period of 3 years.

7.10.2.2 are, subject to paragraphs 7.10.2.3 and 7.10.2.4 eligible for reappointment at the end of the period referred to in paragraph 7.10.2.1.

7.10.2.3 may hold office for a maximum of 9 years but in exceptional circumstances (as determined by the Council of Governors) may serve longer than 9 years, but any extension beyond 9 years will be subject to annual re-appointment and, in any event, they shall not serve for a total term longer than 12 years; and

7.10.2.4 shall cease to hold office if their appointing organisation withdraws its appointment of them or in any other situation specified in this Constitution.

7.10.2.5 Governors must comply with the Trust's:

7.10.2.5.1 Constitution.

7.10.2.5.2 Standing Orders for the Council of Governors.

7.10.2.5.3 Code of Conduct for Governors; and

7.10.2.5.4 Policies.

7.11 Termination of Tenure

7.11.1 A Governor may resign from office at any time during the term of office by giving notice in writing to the Trust Secretary or the Chair.

7.11.2 A Governor's tenure:

7.11.2.1 shall be terminated immediately if a Governor fails to attend two consecutive meetings of the Council of Governors, unless a majority of the other Governors are satisfied that:

- (a) the absence was due to a reasonable cause; and
- (b) they will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.

7.11.2.2 shall be terminated immediately if the Council of Governors decide (by a majority of the other Governors) that a Governor has:

- (a) failed to comply with paragraph 7.12.3; (except where the Council of Governors decide that termination of tenure would not be appropriate in the circumstances);
- (b) conducted themselves in an inappropriate manner which would adversely affect public confidence in the Trust or the Council of Governors; or
- (c) conducted themselves in such a manner as is likely to bring the Trust into disrepute including, but without prejudice to the generality of the foregoing, a failure to declare a material or pecuniary interest which would or would be likely to result in a conflict of interest.

The Council of Governors may request that the CoG's Nominations Committee investigates any matter which would give rise to them exercising their powers in paragraph 7.11.2 and to receive the representations of the relevant Governor and any representative appointed by them for that purpose except to the extent that the Code of Conduct for Governors provides a procedure for the same in which case such procedure must be followed.

Any engagement of the CoG's Nominations Committee pursuant to paragraph 7.11.2 shall make such report and recommendations to the Council of Governors as it deems fit and shall, as far as practicable, submit any report and recommendations to the Council of Governors within 4 months of commencing their investigation.

7.12 Suspension and disqualification from office

7.12.1 Where a Staff Governor has been:

- 7.12.1.1 made the subject of a written warning or a period of suspension in excess of 28 days: or
- 7.12.1.2 absent from their post as an employee of the Trust for a continuous period of not less than four months and no reasonable cause (in the opinion of the Council of Governors acting by simple majority) has been given for absence.

their term of office as Governor may be suspended by the Council of Governors for such period of time as the Council of Governors 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 as to why they should still be eligible to continue as a Staff Governor and the Council of Governors shall decide whether to terminate the Governor's term of office and such determination of the Council of Governors shall be final.

7.12.2 An individual is immediately disqualified from becoming or continuing to hold office as a Governor if they:

7.12.2.1 have been adjudged bankrupt or their estate has been sequestrated and in either case he has not been discharged.

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

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

7.12.2.4 have 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 them.

7.12.2.5 have within the preceding three years been dismissed (including, but not limited to, by reason of redundancy) by the Trust.

7.12.2.6 are under 16 years of age.

7.12.2.7 are an individual whose tenure of office as the Chair or as a member or director of a Health Service Body has been terminated on the grounds that their appointment is not in the interest of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;

7.12.2.8 are an Executive or Non-Executive Director, Governor, , Chair, Chief Executive Officer of another NHS foundation trust.

7.12.2.9 has had their name removed from any list prepared pursuant to paragraph 14 of the National Health Service (Performers List) Regulations 2013 or section 151 of the 2006 Act (or similar provision elsewhere) and has not subsequently had their name included in such a list.

7.12.2.10 are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs.

7.12.2.11 are registered as a sex offender pursuant to Part 1 of the Sex Offenders Act 1997.

- 7.12.2.12 has been identified and given notice in writing by the Chief Executive to the effect that they are a vexatious complainant in respect of the Trust;
 - 7.12.2.13 is a member of Healthwatch; or
 - 7.12.2.14 has contravened any other provision of this Constitution.
- 7.12.3 An individual is disqualified from becoming or continuing to hold office as a Public Governor if:
- 7.12.3.1 they cease to be a Member of a Public Constituency; or
 - 7.12.3.2 they are eligible to be a Member of the Staff Constituency.
- 7.12.4 An individual is disqualified from becoming or continuing to hold office as a Staff Governor if:
- 7.12.4.1 they cease to be a Member of the Staff Constituency; or
 - 7.12.4.2 they are employed by the Trust on a temporary contract which contract is or was identified on the face of it as a temporary contract.
- 7.12.5 An individual is disqualified from becoming or continuing to hold office as an Appointed Governor if the relevant appointing organisation withdraws its appointment of him.
- 7.12.6 If an Elected or Appointed Governor ceases to be eligible to hold such office because grounds for disqualification exist pursuant to paragraph 7.12 (other than under paragraph 7.12.1 and paragraph 7.11.2), they shall immediately notify the Trust Secretary in writing of the circumstances.
- 7.12.7 If the Trust is on notice that a Governor may no longer be eligible to be a Governor, the Trust shall carry out such reasonable enquiries as it considers necessary to establish if this is the case and shall invite the Governor concerned to comment on its findings (within 14 days) and following receipt of any comments or expiry of that 14 day period (whichever occurs first) the Council of Governors shall decide whether such Governor's term of office should be terminated.
- 7.13 Consequences of termination of tenure
- 7.13.1 Where a Governor:
- 7.13.1.1 has given notice of resignation in accordance with paragraph 7.11.1.
 - 7.13.1.2 has had their term of office terminated pursuant to the terms of this Constitution in any manner whatsoever; or
 - 7.13.1.3 is otherwise disqualified from holding office pursuant to the Constitution or the 2006 Act,

that Governor shall thereupon cease to be a Governor and their name shall be forthwith removed from the Register of Governors.

7.13.2 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 their resignation or termination of office.

7.14 Vacancies

7.14.1 Where a Governor's tenure of office ceases for one or more of the reasons set out in paragraph 7.11 or 7.12, in the case of:

7.14.1.1 Public Governors and Staff Governors, such vacancy shall, subject to provisions of paragraphs 7.14.2, be filled by elections held in accordance with the Model Election Rules set out in Annex 3: and

7.14.1.2 the PBP Governor, the Local Authority Governor, , the Partnership Governor and the Volunteer Governor shall be replaced in accordance with the processes set out in paragraphs 7.5 - 7.8.

7.14.2 Where a vacancy arises amongst the Elected Governors for any reason (including, for the avoidance of doubt, an increase in the number of Elected Governors effected by an amendment to the Constitution in accordance with paragraph 20.1 below) other than the expiry of the term of office, the Council of Governors shall decide either:

7.14.2.1 to call an election within three months to fill the vacancy, unless an election is due within nine months in which case the seat shall stand vacant until the following scheduled election.

7.14.2.2 to invite the next highest polling candidate in the relevant constituency at the most recent election who is willing to take office, to fill the vacancy, provided that the candidate achieved at least 5% of the vote in the last held election for the relevant constituency and, where appropriate, class (the "Reserved Governor"). If the vacancy is filled in this way, the Reserved Governor shall be eligible for re-election for a further two full three-year terms; or

7.14.2.3 to leave the seat vacant until the next scheduled elections are held.

except that if the aggregate number of Public Governors does not exceed half the total membership of the Council of Governors an election will be held in accordance with the Model Election Rules as soon as reasonably practicable.

7.15 Roles and Responsibilities of Governors

7.15.1 The general duties of the Council of Governors are:

7.15.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and

7.15.1.2 to represent the interests of the Members of the Trust as a whole and the interests of the public.

The Trust must take steps to secure that its Governors are equipped with the skills and knowledge they require to carry out their role as a Governor.

7.15.2 The roles and responsibilities of the Governors (in addition to any roles and responsibilities set out elsewhere in this Constitution) are:

7.15.2.1 at a General Meeting:

(a) to appoint or remove the Chair and the other Non-Executive Directors as further set out in the Standing Orders for the Council of Governors. The removal of the Chair or a Non-Executive Director requires the approval of three-quarters of the members of the Council of Governors.

(b) to approve the appointment (by the Non-Executive Directors) of the Chief Executive as further set out in the Standing Orders for the Council of Governors.

(c) to decide the remuneration and allowances, and other terms and conditions of office of the Non-Executive Directors.

(d) to appoint or remove the Trust's Auditor; and

(e) to be presented with the Annual Accounts, any report of the Auditor on them and the Annual Report.

7.15.2.2 to give the views of the Council of Governors to the Board of Directors for the purposes of the preparation by the Board of Directors of the document containing the information to be given to the NHSE as to the Trust's forward planning in respect of each Financial Year.

7.15.2.3 to consider the Annual Accounts, any report of the Auditor on them and the Annual Report.

7.15.2.4 to respond as appropriate when consulted by the Directors in accordance with this Constitution; and

7.15.2.5 to represent the interests of Members and the Other Partnership Organisations in the governance of the Trust, regularly feeding back information about the Trust, its vision and its performance to the Constituency or Other Partnership Organisation they represent. and

7.15.2.6 to hold the Non-executives accountable for the monitoring of the activities of Executive Directors who have wider

roles across the local health system, to ensure focus on the strategic objectives of the Trust and alignment with the strategic objectives of the local health system.

7.16 Council of Governors - Further Provisions

7.16.1 Expenses

7.16.1.1 Governors are entitled to receive re-imbursement for travelling and other expenses incurred and evidenced by receipts in accordance with the Trust's expenses policy at such rates as the Trust decides from time to time.

7.16.1.2 The Trust shall publish the rates referred to in paragraph 7.16.1.1 in the Annual Report.

7.16.2 Remuneration

Governors are not entitled to receive remuneration for their role.

7.16.3 Meetings

Meetings of the Council of Governors shall be conducted in accordance with the provisions of the Standing Orders for the Council of Governors as set out in Annex 5.

Meetings of the Council of Governors shall be chaired by the Chair or in their absence the Vice Chair. If the Vice Chair is also unavailable the meeting shall be chaired by such person as is chosen in accordance with the Standing Orders for the Council of Governors.

The Council of Governors is to meet at least four times per year, including an annual meeting no later than 30 September in each year where the Council of Governors shall receive and consider the annual accounts, any report of the auditor on them and the annual report.

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.

Meetings of the Council of Governors shall be open to members of the public, but members of the public may be excluded from a meeting for special reasons.

No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.

7.16.4 Committees and Sub-Committees

The Council of Governors may appoint committees and sub-committees in accordance with the provisions of the Standing Orders for the Council of Governors.

The Council of Governors cannot delegate its powers to any committee or sub-committee.

7.16.5 Conflicts of Interests of Governors

If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as they become aware of it.

The Standing Orders of 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 and Governors shall comply with the provisions of the Standing Orders for the Council of Governors.

7.16.6 Referral to the Panel

A Governor may refer a question as to whether the Trust has failed or is failing.

7.16.6.1 to act in accordance with the Constitution; or

7.16.6.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.

to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

In this paragraph, the Panel means a panel of persons appointed by NHSE to which a Governor of the Trust may refer a question

7.16.7 Engagement Policy

The Governors and Directors shall observe the terms of the Engagement Policy in relation to their engagement with each other on matters concerning the Trust.

8 Board of Directors

8.1 The Trust shall have a Board of Directors which shall consist of Executive and Non-Executive Directors.

8.2 The Board of Directors shall comprise the following:

8.2.1 the Chair (a Non-Executive Director);

8.2.2 at least 5 other Non-Executive Directors;

- 8.2.3 the Chief Executive (an Executive Director);
 - 8.2.4 the Chief Finance Officer (an Executive Director); and
 - 8.2.5 at least 2 other Executive Directors but subject to the provisions of paragraph 8.4
- 8.3 One of the Executive Directors is to be:
- 8.3.1 a Registered Medical Practitioner or Registered Dentist; and
 - 8.3.2 a Registered Nurse or Registered Midwife.
- 8.4 At all times the composition of the Board of Directors shall be such that the number of Voting Executive Directors is less than the number of Non-Executive Directors.
- 8.5 Appointment and removal of Non-Executive Directors and Executive Directors.
- 8.5.1 Appointment and removal of Non-Executive Directors.
 - 8.5.1.1 The Council of Governors, at a general meeting of the Council of Governors, shall appoint and remove the Chair and other Non-Executive Directors;
 - 8.5.1.2 The Council of Governors, at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as Vice Chair;
 - 8.5.1.3 The Council of Governors shall establish the CoG's Nominations Committee (comprising the Chair, four Public Governors, one Staff Governor and one Appointed Governor) to consider candidates for appointment as Non-Executive Directors against an agreed job specification.
 - 8.5.1.4 The CoG's 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 to the Council of Governors as to who should be appointed as a Non-Executive Director.
 - 8.5.1.5 The Council of Governors shall consider the recommendation of the CoG's Nominations Committee and make a decision as to the appointment of the Non-Executive Directors in general meeting.
 - 8.5.1.6 An individual shall not be appointed as a Non-Executive Director unless they are a member of the Public Constituency.
 - 8.5.1.7 The removal of a Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.
 - 8.5.2 Appointment and removal of Executive Directors

- 8.5.2.1 It is for the Chair and the other Non-Executive Directors to appoint (subject to the approval of the Council of Governors) or remove the Chief Executive.
- 8.5.2.2 It is for a committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors to appoint or remove the Executive Directors (other than the Chief Executive).

8.6 Terms of Office

- 8.6.1 Subject to paragraph 8.6.3, the Chair and the other Non-Executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office (including as to remunerations and allowances, which shall be published in the Annual Report) decided by the Council of Governors in general meeting.
- 8.6.2 The Executive Directors shall hold offices for a period in accordance with the terms and conditions of office (including as to remunerations and allowances) decided by the relevant committee of Non-Executive Directors.
- 8.6.3 Non-Executive Directors:
 - 8.6.3.1 shall be appointed for a period of up to 3 years;
 - 8.6.3.2 are, subject to paragraphs 8.6.3.3 and 8.6.3.4 eligible for re-election at the end of the period referred to in paragraph 8.6.3.1.
 - 8.6.3.3 shall not, except in exceptional circumstances, hold office for a period in excess of 6 years; and
 - 8.6.3.4 where appointed for more than 6 years shall, at the discretion of the Council of Governors, be so appointed either on the basis of:
 - a) annual re-appointment; or
 - b) a competitive process up to a maximum 9 years.
- 8.6.4 The Directors shall comply with the Trust's:
 - 8.6.4.1 Constitution.
 - 8.6.4.2 Standing Orders for the Board of Directors;
 - 8.6.4.3 Code of Conduct for Directors; and
 - 8.6.4.4 Policies.

8.7 Disqualification

- 8.7.1 An individual may not become or continue as a Director of the Trust if:
- 8.7.1.1 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged.
 - 8.7.1.2 they are a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
 - 8.7.1.3 they have made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it.
 - 8.7.1.4 they have 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 them.
 - 8.7.1.5 they are a person whose tenure of office as a Chair or as a member or director of a Health Service Body has been terminated on the grounds that their appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
 - 8.7.1.6 has had their name removed from any list prepared pursuant to paragraph 14 of the National Health Service (Performers List) Regulations 2013 or section 151 of the 2006 Act (or similar provision elsewhere) and has not subsequently had their name included in such a list.
 - 8.7.1.7 they have within the preceding three years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body.
 - 8.7.1.8 NHSE has exercised its powers under the 2006 Act to:
 - (a) remove that individual as a director of the Trust or any other NHS foundation trust within its jurisdiction.
 - (b) suspend them from office; or
 - (c) disqualify them from holding office as a director of the Trust or of any other NHS foundation trustfor a specified period.
 - 8.7.1.9 they are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs.
 - 8.7.1.10 they are registered as a sex offender pursuant to Part I of the Sex Offenders Act 1997.

- 8.7.1.11 they have been identified as a vexatious complainant in respect of the Trust and has been notified to that effect by notice in writing given by the Chief Executive; or
- 8.7.1.12 they have been unable to dedicate adequate time to the role and responsibilities of a Director of the Trust.
- 8.7.1.13 An individual may not be a Non-Executive Director if they cease to be a member of the Public Constituency.
- 8.7.1.14 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 8.7.1 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.

8.8 Duties, Roles and Responsibilities

- 8.8.1 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 Trust as a whole and for the public.
- 8.8.2 The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each Financial Year to be given to the NHSE.
- 8.8.3 The Directors are to present to the Council of Governors at a general meeting the Annual Accounts, any report of the Auditor on them and the Annual Report.
- 8.8.4 The Board of Directors shall appoint an audit committee of Non-Executive Directors to monitor, review and carry out such other functions in relation to audit as are appropriate.
- 8.8.5 The functions of the Trust under paragraph 14 are delegated to the Chief Executive as accounting officer.

9 Meetings of Directors

- 9.1 Meetings of the Board of Directors shall be conducted in accordance with the provisions of the Standing Orders for the Board of Directors which are set out in Annex 4.
- 9.2 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.
- 9.3 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors.
- 9.4 As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the Board of Directors meeting to the Council of Governors.

10 Conflicts of Interest of Directors

- 10.1 The duties that a Director has by virtue of being a Director include in particular:
- 10.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust; and
 - 10.1.2 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.
- 10.2 The duty referred to in sub-paragraph 10.1.1 is not infringed if:
- 10.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 10.2.2 the matter has been authorised in accordance with the Constitution.
- 10.3 The duty referred to in sub-paragraph 10.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 10.4 In sub-paragraph 10.1.2, “third party” means a person other than:
- 10.4.1 the Trust; or
 - 10.4.2 a person acting on its behalf.
- 10.5 If a Director 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. If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 10.6 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 10.7 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.
- 10.8 A Director need not declare an interest:
- 10.8.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest.
 - 10.8.2 if, or to the extent that, the Directors are already aware of it.
 - 10.8.3 if, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered:
 - 10.8.3.1 by a meeting of the Board of Directors, or
 - 10.8.3.2 by a committee of the Directors appointed for the purpose under the Constitution.

- 10.9 Directors shall comply with the provisions of the Standing Orders for the Board of Directors in relation to the declaration and management of conflicts of interests.

11 Registers

- 11.1 The Trust is to have:

11.1.1 a register of Members showing, in respect of each Member, the Constituency and where there are classes within it, the class to which they belong.

11.1.2 a register of members of the Council of Governors.

11.1.3 a register of interests of the members of the Council of Governors.

11.1.4 a register of Directors; and

11.1.5 a register of interests of the Directors.

- 11.2 The Trust Secretary shall admit to the:

11.2.1 Register of Members the name, Constituency and class of Constituency of a Member upon receipt of a signed declaration from the Member confirming their eligibility as a Member.

11.2.2 Register of Governors the name and Constituency (and where relevant class within the Constituency) of those Members who have been elected or appointed as a Governor of the Trust.

- 11.3 The Trust Secretary shall remove from the:

- 11.3.1 Register of Members any Member:

11.3.1.1 who is not, or who is no longer, eligible to be a Member.

11.3.1.2 indicates in writing that they no longer wish to be a Member; or

11.3.1.3 has died, upon receipt of a notice to that effect from the Member's next of kin or personal representative.

- 11.3.2 Register of Governors those Governors:

11.3.2.1 who have not been re-elected.

11.3.2.2 who have had their appointment withdrawn.

11.3.2.3 whose tenure of office as Governors has been terminated; or

11.3.2.4 who are otherwise disqualified from office.

- 11.4 The Trust Secretary shall maintain the respective Registers of Interests of the Directors and Governors and undertake a review of the same at least once in every year by notice to that effect to all Directors and Governors.

12 Public Documents

12.1 The following documents of the Trust are to be available for inspection by members of the public free of charge at all reasonable times:

12.1.1 a copy of the current Constitution.

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

12.1.3 a copy of the latest Annual Report.

12.2 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:

12.2.1 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 (trust to be dissolved) of the 2006 Act.

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

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

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

12.2.5 a copy of any statement provided under Section 65F (administrators draft report) of 2006 Act.

12.2.6 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 (Regulator's decision), 65KB (Secretary of State's response to Regulator'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.

12.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006.

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

12.2.9 a copy of any final report published under section 65I (administrators final report) of the 2006 Act.

12.2.10 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.

- 12.2.11 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 12.3 Any person who requests it shall be provided with a copy or extract from any of the above documents.
- 12.4 The registers mentioned in paragraph 11.1 above are also to be made available for inspection by members of the public, except in circumstances prescribed by regulations made under the 2006 Act, and so far as those registers are required to be available:
 - 12.4.1 they are to be available free of charge at all reasonable times; and
 - 12.4.2 a person who requests shall be provided with a copy of or extract from them.
- 12.5 The Trust shall not make any part of its register available for inspection by members of the public which show details of any Member of the Trust if the Member so requests.
- 12.6 If the person requesting a copy or extract of a register or a document referred to in this paragraph 12 above is not a Member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.

13 Auditor

- 13.1 The Trust is to have an Auditor and is to provide the Auditor with every facility and all information which they may reasonably require for the purposes of their functions under Chapter 5 of Part 2 to the 2006 Act.
- 13.2 An individual may only be appointed Auditor if they (or in the case of a firm each of its members) is a member of one or more of the bodies referred to in paragraph 23 (4) of Schedule 7 to the 2006 Act.
- 13.3 Appointment of the Auditor by the Council of Governors is covered in paragraph 7.15.
- 13.4 The Auditor is to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by the NHSE on standards, procedures and techniques to be adopted.

14 Accounts

- 14.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 14.2 The NHSE may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 14.3 The accounts are to be audited by the Trust's Auditor.
- 14.4 The following documents will be made available to the Comptroller and Auditor General for examination at their request:
 - 14.4.1 the accounts.

- 14.4.2 the records relating to them; and
- 14.4.3 any report of the Auditor on them.
- 14.5 If trustees are appointed under section 51 of the 2006 Act, the Comptroller and the Auditor General may also examine:
 - 14.5.1 the accounts kept by the Trustees.
 - 14.5.2 any records relating to them; and
 - 14.5.3 any report of an auditor on them.
- 14.6 The Trust shall prepare in respect of each Financial Year, Annual Accounts in such form as the NHSE may with the approval of the Secretary of State direct.
- 14.7 The function of the Trust with respect to the preparation of the Annual Accounts shall be delegated to the Accounting Officer.
- 14.8 In preparing its Annual Accounts, the Trust is to comply with any directions given by the NHSE with the approval of the Secretary of State as to:
 - 14.8.1 the period or periods in respect of which the Trust shall prepare accounts; and
 - 14.8.2 the audit requirements of any such accounts.
- 14.9 the Trust must:
 - 14.9.1 lay a copy of the Annual Accounts, and any report of the Auditor on them, before Parliament; and
 - 14.9.2 once it has done so, send copies of those documents to the NHSE within such a period as the NHSE may direct.
- 14.10 The Trust must send to the NHSE within such period as the NHSE may direct:
 - 14.10.1 a copy of any accounts prepared by the Trust by virtue of paragraph 25(1A)(a) of the 2006 Act; and
 - 14.10.2 a copy of any report of an auditor on them prepared by virtue of 25(1A) (b).

15 Annual Reports, Forward Plans and Non-NHS Work

- 15.1 The Trust shall prepare an Annual Report and send it to the NHSE.
- 15.2 The Annual Report shall contain:
 - 15.2.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of any public constituency is representative of those eligible for such membership.
 - 15.2.2 information on any occasions in the period to which the report relates on which the Council of Governors exercised its power under paragraph 7.15.

- 15.2.3 information on the Trust's policy on pay and on the work of the Remunerations and Nominations committee and such other procedures as the Trust has on pay.
- 15.2.4 the remuneration of the Directors and the expenses of the Governors and the Directors; and
- 15.2.5 any other information the NHSE requires.
- 15.3 The Trust is to comply with any decision the NHSE makes as to:
 - 15.3.1 the form of the Annual Reports.
 - 15.3.2 when the Annual Reports are to be sent to it.
 - 15.3.3 the periods to which the Annual Reports are to relate
- 15.4 The Trust shall give information as to its forward planning in respect of each Financial Year to the NHSE. This information is to be prepared by the Directors, who must have regard to the views of the Council of Governors.
- 15.5 Each forward plan must include information about -
 - 15.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
 - 15.5.2 the income it expects to receive from doing so.
- 15.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 15.5.1 the Council of Governors must:
 - 15.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and
 - 15.6.2 notify the Directors of the Trust of its determination.
- 15.7 If the Trust proposes to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the Principal Purpose referred to in paragraph 3 it may implement the proposal only if more than half of the members of the Council of Governors voting approve its implementation.

16 Mergers, Significant Transactions and other transaction requirements

- 16.1 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.
- 16.2 The Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.
- 16.3 “Significant Transaction” means:

- 16.3.1 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.
 - 16.3.2 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
 - 16.3.3 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.
- 16.4 For the purpose of this paragraph 16:
- 16.4.1 "Gross assets" means the total of fixed assets and current assets;
 - 16.4.2 in assessing the value of any contingent liability for the purposes of sub paragraph 16.3.3 the Directors:
 - 16.4.2.1 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
 - 16.4.2.2 may rely on estimates of the contingent liability that are reasonable in the circumstances; and
 - 16.4.2.3 may take account of the likelihood of the contingency occurring.
- 16.5 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 16.3 is the aggregate value of each of those transactions.
- 16.6 The Trust shall inform, as soon as is reasonably practicable, the Council of Governors of any transaction which it has approved which in its opinion is likely to have a negative effect on the Trust's reputation.

17 Indemnity

- 17.1 Members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 17.2 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, Governors or Directors to meet all or any liabilities which are properly the liability of the Trust under paragraph 17.1.

18 Instruments and acts of the Trust etc.

- 18.1 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.
- 18.2 The Trust is to have a seal, but this is not to be affixed except in accordance with the provisions of the Standing Orders for the Board of Directors.
- 18.3 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

19 Engagement

- 19.1 The Trust has adopted an Engagement Policy for matters relating to interaction between the Council of Governors and the Board of Directors.

20 Amendment of the Constitution

- 20.1 This Constitution may only be amended with the approval of:
 - 20.1.1 more than half of the members of the Board of Directors voting; and
 - 20.1.2 more than half of the members of the Council of Governors voting.
- 20.2 Amendments made under paragraph 20.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of amendment, not accord with Schedule 7 of the 2006 Act.
- 20.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
 - 20.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
 - 20.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 20.4 If more than half of the Members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 20.5 The Trust shall inform the NHSE of any amendments to the Constitution.

Annex 1: PUBLIC CONSTITUENCIES OF THE TRUST

NAME OF CONSTITUENCY	AREA	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
Rest of East Midlands	<p>All Wards of Ashfield District Council, plus the Wards of: Newstead Abbey Ward from Gedling District Council All wards of Mansfield District Council, plus the Ward of Welbeck, from Bassetlaw District Council Any area within an electoral constituency of the East Midlands region not covered above. In geographical terms ,this covers the local authority districts across the rest of Nottinghamshire, Derbyshire Rutland, Lincolnshire, Leicestershire, Northamptonshire</p>	50	10

Newark Hospital Constituency	All Wards of Newark & Sherwood District Council, plus the Wards of: Tuxford and Trent, from Bassetlaw District Council; and the Wards of: Loveden Heath from South Kesteven District Council; and the	50	4
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Totals	Population		
	Minimum Membership	680	
	Public Governors		14

*Source: National Statistics (Nomis: www.nomisweb.co.uk)

Annex 2: Staff Constituency

1. The minimum number of Members required for the Staff Constituency shall be: 950.
2. The Staff Constituency shall be entitled to elect three Governors:

Annex 3 – Model Election Rules

Annex 4 – Board of Directors Standing Orders

Annex 5 – Council of Governors Standing Orders