

AUTHORISATION

of

EAST KENT HOSPITALS UNIVERSITY NHS FOUNDATION TRUST

(pursuant to section 35 of the National Health Service Act 2006)



Signature: William H. King

1 March 2009

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PART 1 Authorisation

1. Monitor (“Monitor”), the Independent Regulator of NHS Foundation Trusts, in exercise of the powers conferred by section 35 of the National Health Service 2006 (“**the Act**”) and all other powers exercisable by Monitor, hereby authorises East Kent Hospitals University NHS Trust to become an NHS Foundation Trust (“**the Trust**”), subject to the Conditions set out in Part 3 hereof.
2. This Authorisation shall come into force on 1 March 2009.
3. Subject to the provisions of sections 54 and 55 of the Act, this Authorisation shall be of unlimited duration.
4. This Authorisation is not assignable.
5. Monitor may vary the Conditions of this Authorisation.

PART 2 Interpretation and construction

1. Words and expressions used in the Authorisation shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them.
2. Any reference to an enactment shall include any re-enactment thereof or amendment thereto.
3. Words and expressions defined in the Act shall have the same meaning when used in this Authorisation.
4. Unless otherwise specified, any reference to a numbered Condition (with or without a suffix letter) or Schedule is a reference to the Condition or Schedule bearing that number in this Authorisation.
5. In construing the provisions of this Authorisation, the heading or title of any Part, Condition or Schedule shall be disregarded.
6. Where any obligation of the Trust is required to be performed by a specified date or within a specified period, and where the Trust has failed so to perform, such obligation shall continue to be binding and enforceable after the specified date or after the expiry of the specified period.

7. In this Authorisation:

“ancillary services” means services which support the provision of the mandatory goods and services listed in Schedule 2.

“property” is land and buildings owned or leased by the Trust.

“the Board of Directors” means the Board of Directors of the Trust.

“the provision of goods and services for purposes related to the provision of health care” includes the provision of social care services.

“high security psychiatric services” has the same meaning as in section 4 of the Act.

PART 3 Conditions

1. Principal Purpose

The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England. This does not preclude the provision of cross-border services to other parts of the United Kingdom.

2. General duty

The Trust shall exercise its functions effectively, efficiently and economically.

3. Constitution

(1) The Trust may make amendments to its constitution with the approval of Monitor.

(2) The constitution, incorporating any amendments which may be made thereto, is annexed at Schedule 1.

4. Compliance and enforcement

(1) The Trust shall comply with:

any requirements imposed on it under the Act or any other enactment;

the Conditions of this Authorisation;

the terms of its constitution;

if applicable, directions issued by the Secretary of State with respect to safety and security in connection with the provision of high security psychiatric services; and

the terms of its contracts with bodies which commission the Trust to provide goods and services (including education and training, accommodation and other facilities) for the purposes of the health service in England.

(2) The Trust shall comply with any guidance issued by Monitor, unless Monitor has agreed with the Trust that, in the particular circumstances, the Trust is not required to comply.

(3) A failure to comply may result in Monitor taking enforcement action under sections 52, 53 or 54 of the Act.

5. Governance

(1) The Trust shall ensure the existence of appropriate arrangements to provide representative and comprehensive governance in accordance with the Act and to maintain the organisational capacity necessary to deliver the mandatory

goods and services referred to in Condition 7(1) and listed in Schedule 2 and the mandatory education and training referred to in Condition 7(2) and listed in Schedule 3.

- (2) The Trust shall comply with the principles of best practice applicable to corporate governance in the NHS/health sector, with any relevant code of practice and with any guidance which may be issued by Monitor.

6. Health care and other standards

- (1) The Trust shall put and keep in place and comply with arrangements for the purpose of monitoring and improving the quality of health care provided by and for the Trust.
- (2) The Trust shall comply with statements of standards in relation to the provision of health care published by the Secretary of State under section 46 of the Health and Social Care (Community Health and Standards) Act 2003, as currently set out in the Department of Health publication Health and Social Care Standards and Planning Framework (July 2004) as may be amended from time to time.
- (3) If applicable, the Trust shall comply with any statements of standards with respect to social care services which the Secretary of State may issue from time to time.
- (4) If applicable, the Trust shall comply with any statements of standards with respect to security and risk management which the Secretary of State may issue from time to time.

7. Mandatory Services

- (1) The Trust is required to provide for the purposes of the health service in England the goods and services listed in Schedule 2 in the volumes or amounts specified therein ("**mandatory goods and services**") which goods and services in the volumes or amounts specified are to be provided pursuant to a legally binding contract or contracts between the Trust and one or more of the commissioning bodies, or on the understanding that the Trust and the relevant commissioning body or bodies will conclude a legally binding contract or contracts for the provision of said goods and services in the volumes or amounts specified within 12 months of the date on which this authorisation comes into force. This requirement includes an obligation to provide any ancillary services, accommodation and other facilities related to said goods and services and which are generally accepted to be required for the effective, efficient and economic provision of said goods and services in the volumes or amounts specified.
- (2) The Trust is required to provide education and training to third parties for the purposes of the health service in England listed in Schedule 3 in the volumes or amounts specified therein ("**mandatory education and training**"), which are to be provided pursuant to a legally binding contract or contracts between the Trust and one or more of the commissioning bodies, or on the understanding that the Trust and the relevant commissioning body or bodies will conclude a legally binding contract or contracts for the provision of said education and training in the volumes or amounts specified within 12 months of the date on which this authorisation comes into force.

- (3) Monitor reserves the right to vary the goods and services and the volumes or amounts thereof which the Trust is required to provide in terms of Condition 7(1) and the education and training to third parties and the volumes or amounts thereof which the Trust is required to provide in terms of Condition 7(2), in particular in order to ensure the continuity of local service provision and the fulfilment of local health needs as they may vary from time to time.
- (4) The Board of Directors of the Trust shall regularly review and shall at all times maintain and ensure the capacity and capability of the Trust to provide the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.

8. Authorised Services

- (1) The Trust is authorised to provide goods and services (including education and training, accommodation and other facilities) for purposes related to the provision of health care, subject to written confirmation to Monitor by the Board of Directors that the Board of Directors is satisfied that the Trust has the capacity and the capability to provide said goods and services and that the provision of said goods and services will not inhibit the provision by the Trust of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.
- (2) Monitor reserves the right to refuse to authorise specific goods and services in circumstances where Monitor is not satisfied that the Board of Directors has a proper basis for the written confirmation referred to in Condition 8(1).
- (3) The Trust shall establish and maintain an up to date register of the goods and services referred to in Condition 8(1). With respect to education and training, only education and training provided to third parties shall be included in the register. Accommodation and other facilities do not require to be included in the register of goods and services.
- (4) The Trust shall make the register of goods and services available for public inspection on payment of such reasonable fee, if any, as the Trust may determine.
- (5) The Trust is authorised to carry out research in connection with the provision of health care, subject to written confirmation to Monitor by the Board of Directors that the Board of Directors is satisfied that the Trust has the capacity and the capability to provide said research, that all relevant authorisations with respect to the carrying out of said research have been secured, that the said research will be carried out in accordance with the generally accepted ethical standards and that the said research will not inhibit the provision by the Trust of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.
- (6) Monitor reserves the right to refuse to authorise research in circumstances where Monitor is not satisfied that the Board of Directors has a proper basis for the written confirmation referred to in Condition 8(5).
- (7) The Trust is authorised to make facilities and staff available for the purposes of education, training or research carried on by others.

- (8) Any activities undertaken by the Trust, other than the provision of goods and services for purposes related to the provision of health care, shall be subject to any restrictions which may be imposed by Monitor in terms of section 43(3) of the Act.

9. Protection of property

- (1) Property needed for the purposes of providing any of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2 (including the ancillary services, accommodation and other facilities related thereto) and the mandatory training and education referred to in Condition 7(2) and listed in Schedule 3 is protected.
- (2) The Trust may not dispose any protected property without the approval of Monitor.
- (3) The Trust shall establish and maintain an asset register in respect of protected property, in accordance with guidance to be issued by Monitor.
- (4) The Trust shall make the asset register available for public inspection on payment of such reasonable fee, if any, as the Trust may determine.

10. Private health care

The proportion of total income of the Trust in any financial year derived from private charges shall not be greater than the percentage set out in Schedule 4.

11. Limit on borrowing

- (1) The total amount of the Trust's borrowing is subject to the limit set out in Schedule 5 and the principles set out in the Prudential Borrowing Code for NHS Foundation Trusts.
- (2) The limit is subject to annual review by Monitor.

12. Financial viability

The Trust shall at all times remain a going concern as defined by relevant accounting standards in force from time to time.

13. Dividend payments on Public Dividend Capital

The Trust shall be required to pay annually to the Department of Health a dividend on its Public Dividend Capital at a rate to be determined from time to time by the Secretary of State.

14. Information

The Trust shall disclose to Monitor and directly to any third parties as may be specified by the Secretary of State the information, if any, specified in Schedule 6 as may be varied from time to time and such other information as Monitor may from time to time require.

15. Entry and inspection of premises

The Trust shall allow Monitor, any member, officer or member of staff of Monitor, and any agent acting on behalf of Monitor, to enter and inspect premises owned or controlled by the Trust.

16. Fees

The Trust shall pay to Monitor such reasonable annual fee, if any, as may be determined by Monitor.

17. Representative membership

The Trust shall continue to take such reasonable steps (as may be required by Monitor, by such date or within such period as may be specified by Monitor), to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) the patients' constituency is representative of those eligible for such membership.

18. Co-operation with other bodies

(1) The Trust shall co-operate with Primary Care Trusts, Strategic Health Authorities, Special Health Authorities, the Commission for Health Care Audit and Inspection, NHS foundation trusts, other NHS trusts and other health authorities and organisations in accordance with the Act and any future guidance to be published by Monitor.

(2) The Trust shall co-operate with the Commission for Social Care Inspection, the Mental Health Act Commissioners, the National Oversight Group for High Security Hospitals and such other bodies (as may be specified in any future guidance to be published by Monitor) which have a remit covering activities related to the provision of mental healthcare services.

(3) The Trust shall co-operate with local authorities in the exercise of its own functions and in the exercise by the local authorities of their respective functions.

19. Emergency planning

The Trust shall assist the relevant authorities with, and participate in, local and national emergency planning and provision.

20. Information technology

The Trust shall participate in the national programme for information technology, in accordance with any guidance issued by Monitor.

21. Audit committee

(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.

(2) The Board of Directors shall satisfy itself that at least one member of the audit committee has recent and relevant financial experience.

22. Audit

- (1) The Audit Code for NHS Foundation Trusts (“the Audit Code”) contains the directions of Monitor under paragraph 24(5) of Schedule 7 to the Act with respect to the standards, procedures and techniques to be adopted by the auditor.
- (2) The Trust shall comply with the Audit Code.
- (3) The auditor shall comply with the Audit Code.

23. Public interest reporting

The Trust shall forward a report to Monitor within thirty days (or such shorter period as Monitor may specify) of the auditor issuing a public interest report in terms of Schedule 10 paragraph 3 of the Act. The report shall include details of the Trust’s response to the issues raised within the public interest report.

24. Notification

The Trust shall deal with Monitor in an open and co-operative manner and shall promptly notify Monitor of anything relating to the Trust of which Monitor would reasonably expect prompt notice, including, without prejudice to the foregoing generality, any anticipated failure or anticipated prospect of failure on the part of the Trust to meet its obligations under this authorisation or any financial or performance thresholds which Monitor may specify from time to time.

25. Information given to Parliament and to Members of Parliament

In addition to any statutory requirements, the Chairman, Chief Executive or any other person giving information to Parliament or to a Member of Parliament on behalf of a Trust shall ensure that they comply with the standards expected of Ministers of the Crown with regard to openness of dealings, the giving of accurate and truthful information and the correction of any inadvertent error at the earliest opportunity. Any question submitted to the Trust by a Member of Parliament shall be responded to by the Trust within the same timescale as that expected of Ministers with respect to Parliamentary questions.

AUTHORISATION OF EAST KENT HOSPITALS UNIVERSITY NHS FOUNDATION TRUST

Schedule 1

The Constitution (and Annexures)

East Kent Hospitals University NHS Foundation Trust

Constitution

17.02.09

NHS Foundation Trust Model Core 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.

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

the 2006 Act is the National Health Service Act 2006.

constitution means this constitution and all annexes to it.

Monitor is the Independent Regulator of NHS Foundation Trusts, as provided by Section 31 of the 2006 Act.

terms of Authorisation are the terms of authorisation issued by Monitor under Section 35 of the 2006 Act.

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

2. Name

The name of the foundation trust is East Kent Hospitals University NHS Foundation Trust (the trust).

3. Principal purpose

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

4. Powers

4.1 The powers of the trust are set out in the 2006 Act, subject to any restrictions in the terms of Authorisation.

4.2 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

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

5.1 a public constituency

5.2 a staff constituency

5.3 Not used

6. Application for membership

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

7. Public Constituency

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

7.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.

7.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.

8. Staff Constituency

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

8.1.1 he is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

8.1.2 he has been continuously employed by the trust under a contract of employment for at least 12 months.

8.2 Not used

8.3 Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.

8.4 Not used

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

Automatic membership by default – staff

8.6 An individual who is:

8.6.1 eligible to become a member of the Staff Constituency, and

8.6.2 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.

9. Not used

9.1 - 9.6 Not used

9.7 Not used

9.7.1 Not used

9.7.2 Not used

9.8 Not used

9.8.1 Not used

9.8.2 Not used

10. Restriction on membership

10.1 An individual who is a member of a constituency, may not while membership of that constituency continues, be a member of any other constituency.

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. Council of Governors – composition

- 11.1** The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 11.2** The composition of the Council of Governors is specified in Annex 4.
- 11.3** The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency. The number of governors to be elected by each constituency is specified in Annex 4.

12. Council of Governors – election of governors

- 12.1** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 12.2** The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date of the trust's Authorisation are attached at Annex 5.
- 12.3** 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 41 of the constitution amendment of the constitution)
- 12.4** An election, if contested, shall be by secret ballot.

13. Council of Governors - tenure

- 13.1** An elected governor may hold office for a period of up to 3 years.
- 13.2** An elected governor shall cease to hold office if he ceases to be a member of the constituency by which he was elected.
- 13.3** An elected governor shall be eligible for re-election at the end of his term, but for no more than three successive terms making nine years in total.
- 13.4** An appointed governor may hold office for a period of up to 3 years
- 13.5** An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.

13.6 An appointed governor shall be eligible for reappointment at the end of his term, but for no more than three successive terms making nine years in total.

14. Council of Governors – disqualification and removal

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

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

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

14.1.3 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.

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

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

14.4 The regulator, Monitor, may remove one or all of the governors from the Council if this is necessary to deal with a situation where the Trust is failing.
Governors will also be disqualified if they cease to meet the eligibility criteria, (mandatory or otherwise) for becoming governors, or if, through changing circumstances, they fall into the category of those who are excluded from becoming governors. Failure to meet the mandatory requirements under paragraph 14.1 will result in automatic termination. In circumstances where disqualification is under consideration for the non mandatory reasons set out in Annex 6, three weeks notice of the resolution must be given to the Council of Governors, and termination as a governor will require the approval of three quarters of those members of the Council of Governors present and voting at the meeting.

15. Council of Governors – meetings of governors

15.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 22.1 or paragraph 23.1 below) or, in his absence the Deputy Chairman (appointed in accordance with the provisions of paragraph 24 below) shall preside at meetings of the Council of Governors.

15.2 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 by resolution of the Council.

16. Council of Governors – standing orders

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

17. Council of Governors - conflicts of interest 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 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.

18. Council of Governors – travel expenses

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

19. Council of Governors – further provisions

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

20. Board of Directors – composition

20.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors. At least half the Board, excluding the chairman, shall be non executive directors.

20.2 The Board of Directors is to comprise:

20.2.1 a non-executive Chairman

20.2.2 a minimum of 5 and up to 7 other non-executive directors;
and

20.2.3 a minimum of 4 and up to 7 executive directors.

20.3 One of the executive directors shall be the Chief Executive.

20.4 The Chief Executive shall be the Accounting Officer.

20.5 One of the executive directors shall be the finance director.

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

20.7 One of the executive directors is to be a registered nurse or a registered midwife.

21. Board of Directors – qualification for appointment as a non-executive director

A person may be appointed as a non-executive director only if –

21.1 he is a member of the Public Constituency, and

21.2 Not used

21.3 Not used

21.4 he is not disqualified by virtue of paragraph 27 below.

22. Board of Directors – appointment and removal of chairman and other non-executive directors

22.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chairman of the Trust and the other non-executive directors.

22.2 Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

22.3 The initial chairman and the initial non-executive directors are to be appointed in accordance with paragraph 23 below.

23. Board of Directors – appointment of initial chairman and initial other non-executive directors

23.1 The Chairman of the applicant NHS Trust shall be appointed as the initial Chairman of the Trust if he wishes to be appointed.

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

23.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 21 above (other than disqualification by virtue of paragraph 27 below) do not apply to the appointment of the initial chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

23.4 An individual appointed as the initial chairman or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chairman or (as the case may be) non-executive director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

24. Board of Directors – appointment of deputy chairman

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman.

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

25.1 The non-executive directors shall appoint or remove the Chief Executive.

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

25.3 The initial Chief Executive is to be appointed in accordance with paragraph 26 below.

25.4 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

26. Board of Directors – appointment and removal of initial Chief Executive

26.1 The chief officer of the applicant NHS Trust shall be appointed as the initial Chief Executive of the trust if he wishes to be appointed.

26.2 The appointment of the chief officer of the applicant NHS trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Governors.

27. Board of Directors – disqualification

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

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

27.2 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.

27.3 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.

27.4 a non executive director who ceases to comply with section 21

28. Board of Directors – standing orders

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

29. Board of Directors - conflicts of interest of directors

If a director 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 Board of Directors, the director shall disclose that interest to the members of the Board of Directors as soon as he becomes aware of it. The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion

of a director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

30. Board of Directors – remuneration and terms of office

30.1 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.

30.2 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.

30.3 Pending the establishment of such a committee the Chairman of the Trust may make alternative provision for these matters to be decided

31. Registers

The trust shall have:

31.1 a register of members showing, in respect of each member, the constituency to which he belongs

31.2 a register of members of the Council of Governors;

31.3 a register of interests of governors;

31.4 a register of directors; and

31.5 a register of interests of the directors.

32. Admission to and removal from the registers

In relation to 31.1 above, the registers of members of the Trust will be validated annually

33. Registers – inspection and copies

33.1 The trust shall make the registers specified in paragraph 31 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

33.2 Not used

33.2.1 Not used

33.2.2 Not used

33.3 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, or their home, contact details or address, if the member so requests.

33.4 So far as the registers are required to be made available:

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

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

33.5 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.

34. Documents available for public inspection

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

34.1.1 a copy of the current constitution;

34.1.2 a copy of the current authorisation;

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

34.1.4 a copy of the latest annual report;

34.1.5 a copy of the latest information as to its forward planning; and

34.1.6 a copy of any notice given under section 52 of the 2006 Act.

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

34.3 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.

35. Auditor

35.1 The trust shall have an auditor.

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

36. Audit committee

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

37. Accounts

37.1 The trust shall keep accounts in such form as Monitor may with the approval of HM Treasury direct.

37.2 The accounts are to be audited by the trust's auditor.

37.3 The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the HM Treasury direct.

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

38. Annual report and forward plans

38.1 The trust shall prepare an Annual Report and send it to Monitor.

38.2 The trust shall give information as to its forward planning in respect of each financial year to Monitor.

38.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.

38.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.

39. Meeting of Council of Governors to consider annual accounts and reports

The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:

39.1 the annual accounts

39.2 any report of the auditor on them

39.3 the annual report.

40. Instruments

40.1 The trust shall have a seal.

40.2 The seal shall not be affixed except under the authority of the Board of Directors.

41. Amendment of the constitution

41.1 Amendments by the trust of its constitution are to be made with the approval of Monitor. For the avoidance of doubt, any amendments to the annexes attached to this constitution must also be approved by Monitor.

ANNEX 1 – THE PUBLIC CONSTITUENCY
(Paragraphs 7.1 and 7.3)

The areas specified as areas for public constituencies are the six local authority areas described in the table below, which also sets out the minimum numbers of members required in each area .

Constituency	Minimum number of members
Ashford Borough Council	100
Canterbury City Council	100
Dover District Council	100
Shepway District Council	100
Swale Borough Council	100
Thanet District Council	100
Rest of England and Wales	25

ANNEX 2 – THE STAFF CONSTITUENCY
(Paragraphs 8.4 and 8.5)

There are no classes within the Staff Constituency. The minimum number of members required in the Staff Constituency is 500

ANNEX 3 – THE PATIENTS’ CONSTITUENCY
(Paragraphs 9.4 and 9.6)

There is no Patients’ Constituency.

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

The Council of Governors will consist of a Chairman and 32 governors as follows:

Type of Governor	Number of Governors
Elected Governors	
Public constituency – residents of the following constituency areas	
Ashford Borough Council	3
Canterbury City Council	3
Dover District Council	3
Shepway District Council	3
Swale Borough Council	2
Thanet District Council	3
Rest of England and Wales	1
Staff Constituency	4
Appointed Governors	
Statutory	
Eastern and Coastal Kent Teaching PCT	2
Appointed jointly by Ashford Borough Council Canterbury City Council Dover District Council Shepway District Council Swale Borough Council Thanet District Council	1
From partnership organisations	
Canterbury Christ Church University	1
University of Kent	1
South East Coast Ambulance Service	1
Kent and Medway NHS and Social Care Partnership Trust	1
Nominated by the Kent Community Alliance of Networks (KentCAN) as a representative of the Voluntary sector	1
Kent County Council Social Services Department	1
Nominated as a representative of volunteers working with the Trust by the following Leagues of Friends :- <ul style="list-style-type: none"> ▪ The League of Friends of the Kent & Canterbury Hospital ▪ The League of Friends of the William Harvey Hospital ▪ League of Friends, Queen Elizabeth the Queen Mother Hospital ▪ League of Friends, Royal Victoria Hospital, Folkestone ▪ The League of Friends of Dover Hospitals 	1

ANNEX 5 –THE MODEL ELECTION RULES
(Paragraph 12.2)

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Part 1 - Interpretation

1. Interpretation

(1) In these rules, unless the context otherwise requires -

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

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

“**the regulator**” means the Independent Regulator for NHS foundation trusts;

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

(2) Other expressions used in these rules and in Schedule 7 to the National Health Service Act 2006 have the same meaning in these rules as in that Schedule.

Part 2 – Timetable for election

2. Timetable

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

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

3. Computation of time

(1) In computing any period of time for the purposes of the timetable -

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

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

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

Part 3 – Returning officer

4. Returning officer

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

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

5. Staff

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

6. Expenditure

The corporation is to pay the returning officer –

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

7. Duty of co-operation

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

Part 4 - Stages Common to Contested and Uncontested Elections

8. Notice of election

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

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the Council of Governors to be elected from that constituency, or class with that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination papers may be obtained;
- (e) the address for return of nomination papers, and the final date that they must be delivered to the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer, and
- (h) the date of the close of the poll in the event of a contest.

9. Nomination of candidates

(1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer -

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

but it is not necessary for a nomination to be on a form supplied by the returning officer.

10. Candidate's particulars

(1) The nomination paper must state the candidate's -

- (a) full names,
- (b) contact address in full, and

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

11. Declaration of interests

The nomination paper must state

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

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

12. Declaration of eligibility

The nomination paper must include a declaration made by the candidate –

- (a) that he or she is not prevented from being a member of the Council of Governors by 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 the constituency, or class within that constituency, for which the election is being held.

The declaration must be made by the candidate within 6 months of the close of the poll to be valid for the purposes of section 60(2) of the 2006 Act.

13. Signature of candidate

The nomination paper must be signed and dated by the candidate, indicating that

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

14. Decisions as to validity of nomination papers

(1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election as nominated unless and until the returning officer-

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

(2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds -

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

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

(4) Where the returning officer decides that a nomination paper is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for the decision.

(5) The returning officer is to send notice of the decision as to whether a nomination paper is valid or invalid to the candidate, at the contact address given in the candidate's nomination paper.

15. Publication of statement of candidates

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

(2) The statement must show –

- (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing,

as given in their nomination paper.

(3) The statement must list the candidates standing for election in alphabetical order by surname .

(4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers

(1) The corporation is to make the statement of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.

(2) If a person requests a copy or extract of the statement of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

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

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

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

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

Part 5 – Contested elections

19. Poll to be taken by ballot

- (1) The votes at the poll must be given by secret ballot.
- (2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

20. The ballot paper

- (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- (2) Every ballot paper must specify –
 - (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
 - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (e) instructions on how to vote,
 - (f) if the ballot paper is to be returned by post, the address for its return and the date of the close of the poll, and
 - (g) the contact details of the returning officer.
- (3) Each ballot paper must have a unique identifier.
- (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

(1)) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter is the person to whom the ballot paper was addressed,
- (b) that the voter has not marked or returned any other voting paper in the election, and
- (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.

(3) The declaration of identity is to include space for –

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter's signature, and
- (d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be invalid.

(6) The declaration of identity must be signed by the voter within six months of the close of the poll to be valid for the purposes of section 60(1) of the 2006 Act.

Action to be taken before the poll

22. List of eligible voters

(1) The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

(2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

23. Notice of poll

The returning officer is to publish a notice of the poll stating—

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the Council of Governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

24. Issue of voting documents by returning officer

(1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters—

- (a) a ballot paper, and ballot paper envelope,
- (b) a declaration of identity (if required),
- (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
- (d) a covering envelope.

(2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

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

(2) The covering envelope is to have –

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

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

- (a) the completed declaration of identity, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

The poll

26. Eligibility to vote

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

27. Voting by persons who require assistance

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

(2) Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

28. Spoilt ballot papers

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

(2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.

(3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she –

- (a) is satisfied as to the voter’s identity, and
- (b) has ensured that the declaration of identity attached to the original ballot paper has not been returned.

(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. Lost ballot papers

(1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she –

- (a) is satisfied as to the voter’s identity,
- (b) has no reason to doubt that the voter did not receive the original ballot paper, and
- (c) has ensured that the declaration of identity attached to the original ballot paper has not been returned.

(3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot paper

(1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed by rule 28(3) or 29(2) he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity has already been received by the returning officer in the name of that voter.

(2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”) –

- (a) the name of the voter, and

- (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

31. Declaration of identity for replacement ballot papers

(1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
- (b) of the particulars of that member's qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held.

(3) The declaration of identity is to include space for –

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter's signature, and
- (d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be invalid.

(6) The declaration of identity must be signed by the voter within six months of the close of the poll to be valid for the purposes of section 60(1) of the 2006 Act.

Procedure for receipt of envelopes

32. Receipt of voting documents

(1) Where the returning officer receives a –

- (a) covering envelope, or
- (b) any other envelope containing a declaration of identity, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.

(2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to –

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

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

33. Validity of ballot paper

(1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been returned before the close of the poll, with a declaration of identity that has been correctly completed, signed, and dated.

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

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

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

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

34. Declaration of identity but no ballot paper (public or patient constituency)

Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

- (a) mark the declaration of identity “disqualified”,

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

35. Sealing of packets

As soon as is possible after the completion of the procedure under rules 33 and 34, the returning officer is to seal the packets containing—

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the declarations of identity,
- (c) the list of spoiled ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

Part 6 - Counting the votes

stv36. Not used

37. Arrangements for counting of the votes

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

38. The count

- (1) The returning officer is to –
 - (a) count and record the number of ballot papers that have been returned, and
 - (b) count the votes according to the provisions in this Part of the rules.
- (2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.
- (3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

stv39. Not used

fpp 39. Rejected ballot papers

(1) Any ballot paper –

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

shall, subject to paragraphs (2) and (3) below, be rejected and not counted.

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

(3) A ballot paper on which a vote is marked –

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

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

(4) The returning officer is to –

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

(5) The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings –

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

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

stv40 – 46. Not used

fpp 46. Equality of votes

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

Part 7 – Final proceedings in contested and uncontested elections

fpp47. Declaration of result for contested elections

(1) In a contested election, when the result of the poll has been ascertained, the returning officer is to –

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected–
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the East Kent Hospitals University 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.

(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 fpp 39(5),

available on request.

stv47. Not used

48. Declaration of result for uncontested elections

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

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

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll

(1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets –

- (a) the counted ballot papers,
- (b) the ballot papers endorsed with “rejected in part”,
- (c) the rejected ballot papers, and
- (d) the statement of rejected ballot papers.

(2) The returning officer must not open the sealed packets of –

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the declarations of identity,
- (c) the list of spoilt ballot papers,

- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

(3) The returning officer must endorse on each packet a description of –

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

50. Delivery of documents

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

51. Forwarding of documents received after close of the poll

Where –

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

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

52. Retention and public inspection of documents

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

(2) With the exception of the documents listed in rule 53(1), the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

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

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

(1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

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

by any person without the consent of the regulator.

(2) A person may apply to the regulator to inspect any of the documents listed in (1), and the regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

(3) The regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

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

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

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

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

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

- (i) that his or her vote was given, and
- (ii) that the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

fpp54. Countermand or abandonment of poll on death of candidate

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

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

(2) Where a new election is ordered under paragraph (1), no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

(3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.

(5) The returning officer is to –

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

(6) The returning officer is to endorse on each packet a description of –

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

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

stv54. Not used

Part 10 – Election expenses and publicity

Election expenses

55. Election expenses

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

56. Expenses and payments by candidates

A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to –

- (a) personal expenses,
- (b) travelling expenses, and expenses incurred while living away from home, and
- (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100

57. Election expenses incurred by other persons

(1) No person may -

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

(2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

Publicity

58. Publicity about election by the corporation

(1) The corporation may –

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

as it considers necessary.

(2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, must be –

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,
- (c) compiled and distributed in consultation with all of the candidates standing for election, and
- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

59. Information about candidates for inclusion with voting documents

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

(2) The information must consist of –

- (a) a statement submitted by the candidate of no more than 250 words, and
- (b) a photograph of the candidate

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

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

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

Part 11 – Questioning elections and the consequence of irregularities

61. Application to question an election

(1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

(2) An application may only be made once the outcome of the election has been declared by the returning officer.

(3) An application may only be made to the regulator by -

- (a) a person who voted at the election or who claimed to have had the right to vote, or
- (b) a candidate, or a person claiming to have had a right to be elected at the election.

(4) The application must –

- (a) describe the alleged breach of the rules or electoral irregularity, and
- (b) be in such a form as the regulator may require.

(5) The application must be presented in writing within 21 days of the declaration of the result of the election.

(6) If the regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

(7) The regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the regulator.

- (8) The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- (9) The regulator may prescribe rules of procedure for the determination of an application, including costs.

Part 12 – Miscellaneous

62. Secrecy

(1) The following persons –

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

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

- (i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the candidate(s) for whom any member has voted

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

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

63. Prohibition of disclosure of vote

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

64. Disqualification

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

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

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

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

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

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

ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS
(Paragraph 14.3 and Note 21)

1.0 Disqualification.

With reference to Section 14 and paragraphs 14.3 and 14.4 the following additional provisions are made as to the circumstances in which an individual may not become or continue as a member of the Council of Governors :-

- 1.1 In respect of elected governors, he or she is disqualified from being a public, or staff member of the relevant constituency
- 1.2 He or she is an executive or non-executive director of the Trust or, in respect of elected governors, a governor, non-executive director, chairman, or chief executive of another NHS Foundation Trust
- 1.3 He or she is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs
- 1.4 In respect of elected governors, he or she ceases to be a member of the trust
- 1.5 He or she has had their name placed on registers of Schedule 1 offenders pursuant to the Sex Offenders Act 1977 and/or the Children and Young Person Act 1933
- 1.6 He or she has failed to attend at least half of the meetings of the Council of Governors in any financial year without a reason acceptable to the Council
- 1.7 He or she has failed to attend three consecutive meetings without a reason acceptable to the Council
- 1.8 He or she has failed to declare a significant conflict of interest
- 1.9 He or she has a conflict of interest making membership of the Council untenable
- 1.10 He or she is guilty of conduct or actions prejudicial to the Council or the Trust

In all cases where disqualification is being considered for the above reasons, three weeks notice of the resolution must be given to the Council, and termination as a governor will require the approval of three

quarters of those members of the Council of Governors present and voting at the meeting in accordance with paragraph 14.4

For the avoidance of doubt, an individual may not at the same time be both an elected and an appointed governor.

2.0 Terms of office of Council members.

2.1 In order to avoid the periods of office of members of the Council of Governors all ending at the same time, arrangements to stagger the initial terms of office on the establishment of the Council will be made.

2.2 As with elected governors, appointed governors may hold office for a period of up to three years and may serve for no more than three successive terms, making a total of nine years.

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

(Paragraph 16)

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INTERPRETATION

1. Save as otherwise permitted by law and subject to the Constitution, at any meeting the Chairman shall be the final authority on the interpretation of the Standing Orders, with a right of appeal to a committee of the Council of Governors convened for that purpose, whose decision shall be final and binding except in case of manifest error.

2. Any expression to which a meaning is given in the National Health Service Act 2006 and other Acts relating to the National Health Service or in the Financial Regulations made under the Act or regulations made under it shall have the same meaning in this interpretation and in addition

Council of Governors and (unless the context requires otherwise) "Council"	The Council of Governors of the Trust as constituted by the Constitution
Board of Directors	Chairman, Executive and Non-Executive Directors of the Trust collectively as a body
Chairman of the Council or Chairman of the Trust	Person appointed by the Council of Governors to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the Chairman of the Trust" shall be deemed to include the Deputy Chairman of the Trust if the Chairman is absent from the meeting or otherwise unavailable
Chief Executive	Chief Executive Officer of the Trust
Committee	A Committee of the Council of Governors
Constitution	The Constitution of the Trust
Committee members	Chairman of the committee and the governors (and other people by invitation) formally appointed by the

	Council of Governors to sit on or to Chairman specific committees
Executive Director	A member of the Board of Directors holding an executive office of the Trust
Member of the Council	A Governor of the Trust. (Member of the Council in relation to the Council of Governors does not include the Chairman)
Non-Executive Director	A member of the Board of Directors who does not hold an executive office of the Trust
SOs	Refers to the Standing Orders of the Council of Governors
Trust Secretary	A person who may be appointed to act independently of the Board to provide advice on corporate governance issues to the Council and the Chairman and monitor the Trust's compliance with the Regulatory Framework and these Standing Orders
Deputy Chairman	The Non-Executive Director appointed from amongst the Non-Executive Directors as Deputy Chairman by the Board of Governors in accordance with the constitution to take on the Chairman's duties if the Chairman is absent for any reason

1. INTRODUCTION

1.1 Regulatory Framework

The East Kent Hospitals University NHS Foundation Trust is a statutory body which became a public benefit corporation on 1 March 2009 following its approval as an NHS Foundation Trust by the Independent Regulator of NHS Foundation Trusts (Independent Regulator) pursuant to the National Health Service Act 2006.

NHS Foundation Trusts are governed by Act of Parliament, the National Health Service Act 2006, by their constitutions, and by the terms of their authorisation granted by the Independent Regulator (the Regulatory Framework).

The Regulatory Framework requires the Council of Governors of the Trust to adopt Standing Orders for the regulation of its proceedings and business.

All business of the Council of Governors will be conducted in the name of the Trust

2. THE COUNCIL OF GOVERNORS

2.1 Composition of the Council

The composition of the Council of Governors is set out in the constitution.

2.2 Role of the Chairman

The Chairman is not a member of the Council of Governors. Under the Regulatory Framework, the Chairman presides at meetings of the Council of Governors and has a casting vote.

Where the Chairman ceases to hold office, or where s/he has been unable to perform his/her duties as Chairman owing to illness or any other cause, the Deputy Chairman (a Non-Executive Director appointed by the Council of Governors) shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes his/her duties, as the case may be. References to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform his/her duties, be taken to include references to the Deputy Chairman.

3. MEETINGS OF THE COUNCIL

3.1 Calling meetings

Ordinary meetings of the Council of Governors shall be held at such times and places as the Chairman may determine. Not less than 3 and not more than 4 meetings will be held each year. One such meeting shall be the Annual General Meeting. Meetings will normally be held in public. However the Council may resolve to exclude the public where it wishes to discuss particular issues in private session

3.2 The Chairman may call meetings of the Council of Governors. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of governors including at least two elected and two appointed governors, has been presented to him/her, or if, without so refusing, the Chairman does not call a meeting within 7 days after such requisition has been presented to him/her, at the Trust's Headquarters, such one third or more governors may forthwith call a meeting of the Board.

3.3 Notice of meetings

3.3.1 Before each meeting of the Council of Governors, a notice of the meeting signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his/her behalf shall be delivered to every member of the Council, or sent by post to the usual place of residence of such governor, no less than six clear days in advance of the meeting

3.3.2 Notice of business to be transacted

Before each meeting of the Council of Governors, an agenda setting out the business of the meeting, signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his/her behalf shall be delivered to every member of the Council of Governors, or sent by post to the usual place of residence of such governor specifying the business proposed to be transacted at it so as to be available to the governor at least six clear days before the meeting, including weekends. Supporting papers, whenever possible, shall accompany the agenda, but will be dispatched no later than three clear days before the meeting save in an emergency.

3.4 Lack of service of the notice on any governor shall not affect the validity of a meeting.

- 3.5 In the case of a meeting called by the governors in default of the Chairman, the notice shall be signed by those respective governors and no business shall be transacted at the meeting other than that specified in the notice
- 3.6 A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of post or otherwise on the day following electronic or facsimile transmission.

3.7 Setting the agenda

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. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an appendix to the Standing Orders.)

- 3.8 A governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least 15 clear days including weekends before the respective meeting. Requests made less than 15 days before a meeting may be included on the agenda at the discretion of the Chairman

3.9 Attendance and questions from the public

The public shall be welcome at all meetings of the Council of Governors unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Chairman may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

Up to 15 minutes will be set aside at the end of each ordinary meeting to enable members of the public or other interested parties to ask questions of the Council. Questions on any matter that has been discussed at the meeting can be raised at this point. Questions on general matters related to the business of the Trust should be sent in writing to the Chairman at least 10 days prior to the meeting.

- 3.10 Nothing in these standing orders shall require the Trust to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Chairman.

3.11 Chairman of meeting

At any meeting of the Council, the Chairman of the Council, if present, shall preside. If the Chairman is absent from the meeting, or absent temporarily on the grounds of a declared conflict of interest, the Deputy Chairman, if there is one, and s/he is present, shall preside. If the Chairman and Deputy Chairman are absent, such Non-Executive Director as the Non-Executive Directors present shall choose, shall preside. Where the Chairman, Deputy Chairman, and other Non-Executive Directors are all absent or have a conflict of interest, the Deputy Chairman (to be appointed from amongst the Council of Governors) shall preside at the meeting and shall have a casting vote

3.12 Notices of motion

A governor of the Trust desiring to move or amend a motion shall send a written notice thereof signed by at least one other Governor at least 15 days before the meeting to the Chairman, 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 on the agenda

Emergency Motions:- Subject to the agreement of the Chairman, 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 meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Council at the commencement of the business of the meeting as an additional item included in the agenda. The Chairman's decision to include or exclude the item shall be final

3.13 Motions: Procedure at and during a meeting

i) Who may propose

A motion may be proposed by the Chairman of the meeting or any Governor present. It must also be seconded by another member.

ii) Contents of motions

The Chairman may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

- the reception of a report;
- consideration of any item of business before the Council;
- the accuracy of minutes;

- that the Council proceed to next business
- that the Council adjourn;
- that the question be now put.

iii) **Motion once under debate**

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.
- that the meeting proceed to the next business. (*)
- the motion be now put. (*)
- that a Governor be not further heard;
- a motion resolving to exclude the public, including the press

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

iv) **Amendments to motions**

A motion for amendment shall not be discussed unless it has been proposed and seconded.

Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Council. The Chairman's decision on this will be final

If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

v) **Rights of reply to motions**

a) Amendments

The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment, but may not otherwise speak on it.

b) Substantive / original motion

The member who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

3.14 Withdrawal of motion or amendments

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

3.15 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 6 calendar months shall bear the signature of the governor who gives it and also the signature of 4 other governors. When any such motion has been disposed of by the Council, it shall not be competent for any governor other than the Chairman to propose a motion to the same effect within 6 months, however the Chairman may do so if he/she considers it appropriate.

- 3.16 If a Governor persistently disregards the ruling of the Chairman by behaving improperly or offensively or deliberately obstructs business, the Chairman may move that the Governor be not heard further. If seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chairman may move that either the Governor leaves the meeting room or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

3.17 Chairman's ruling

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 Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

3.18 Voting

Every question at a meeting shall be determined by a majority of the votes of the Chairman of the meeting and the governors present and voting on the question and, in the case of any equality of votes, the Chairman or person presiding shall have a second or casting vote.

- 3.19 All questions put to the vote shall, at the discretion of the Chairman 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 governors present so request

- 3.20 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
- 3.21 If a governor so requests his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.22 In no circumstances may an absent governor vote by proxy. Absence is defined as being absent at the time of the vote.

3.23 Minutes

The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next meeting where they will be signed by the Chairman or person presiding

- 3.24 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting
- 3.25 Minutes shall be circulated in accordance with the Council's wishes. Where providing a record of a public meeting the minutes shall be made available to the public

3.26 Waiver of standing orders

These standing orders shall not be waived except:

3.26.1 where urgent action is required and the Chairman considers it to be in the interests of the Trust to waive one or more of the Standing Orders, s/he may do so, subject to such action being reported to and ratified by the next meeting of the Council

3.25.2 upon a notice of motion under Standing Order 3.12

3.25.3 at least half of the total number of governors, including not less than one third public governors, not less than one third staff governors and not less than one third appointed governors are present at the meeting

- 3.27 A decision to waive Standing Orders shall be recorded in the minutes of the next meeting of the Council of Governors
- 3.28 All waivers of Standing Orders shall be reported to the Audit Committee. The Committee shall review every decision to waive the Standing Orders

3.29 Variation and amendment of standing orders

The Council of Governors can only make proposals to amend these Standing Orders if:

- 3.29.1 a notice of motion under Standing Order 3.12 has been given, and
- 3.29.2 a majority of the governors present vote in favour of amendment, and
- 3.29.3 the variation proposed does not contravene a statutory provision or direction made by the Independent Regulator
- 3.29.4 any proposal for change is discussed with and ratified by the Board of Directors

3.30 Record of attendance

The names of the Chairman and governors, and any invited attendees present at the meeting shall be recorded in the minutes

3.31 Quorum

No business shall be transacted at a meeting of the Council of Governors unless there is a quorum present consisting as follows

- A minimum of ten governors
- A majority of elected governors from the Public Constituency
- At least one governor from each of the following
 - the Public Constituency
 - the Staff constituency
 - the Appointed governors

If insufficient members to constitute a quorum are in attendance within 30 minutes of the time fixed for a meeting, the meeting will stand adjourned for 7 days and at the reconvened meeting those present will constitute a quorum.

- 3.32 If a governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution because of the declaration of a conflict of interest he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business

4. DELEGATION OF FUNCTIONS AND STATUS OF STANDING ORDERS

4.1 Delegation of powers to committees

The Council may not delegate any of its functions or powers to any sub-committees or committees of the Council.

4.2 Non-Compliance with Standing Orders

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 Council for action or ratification. All members of the Council have a duty to disclose any non-compliance with these Standing Orders to the Trust Secretary as soon as possible.

5. COMMITTEES

5.1 Appointment of Committees

Subject to the constitution, the Terms of Authorisation and such binding guidance as may be given by the Independent Regulator, the Council of Governors may and, if so required by the Independent Regulator, shall appoint committees of the Council of Governors consisting wholly or partly of members of the Trust (whether or not they include governors of the Trust) or wholly of persons who are not members of the Trust (whether or not they include governors of the Trust). The Council of Governors may not delegate any of its powers to a committee but committees may act in an advisory capacity to assist the Council of Governors in carrying out its functions.

5.2 A committee appointed under Standing Order 5.1 may, subject to such directions as may be given by the Independent Regulator or the Council of Governors appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include governors of the Trust) or wholly of persons who are not members of the Trust committee (whether or not they include governors of the Trust). No powers may be delegated to sub-committees. They exist to advise and assist the committee/Council of Governors.

5.3 The standing orders of the Council of Governors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Council of Governors. The minimum quorum for any committee shall be two.

- 5.4 Each such committee or sub-committee shall have such terms of reference and be subject to such conditions (as to reporting to the Council) as the Council shall decide and shall be in accordance with the Regulatory Framework and any direction or guidance issued by the Independent Regulator. Such terms of reference shall have effect as if incorporated into the standing orders.
- 5.5 The Council of Governors shall approve the appointments to each of the committees which it has formally constituted, and their chairs. Where the Council determines that persons who are neither governors nor officers shall be appointed to a committee, the terms of such appointment shall be determined by the Council. The Council of Governors may request that external advisers assist them or any committee they appoint in carrying out its duties.
- 5.6 Where the Trust is required to appoint persons to a committee and/or to undertake statutory functions as required by the Independent Regulator, and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with the regulations laid down by the Independent Regulator.
- 5.7 The committees and sub-committees established by the Council shall be such committees as are required to assist the Council in discharging its responsibilities.
- 5.8 **Nominations Committee**
- 5.8.1 The council shall appoint a Nominations Committee to be responsible for the identification and nomination of non executive directors, including the Chairman, and to make recommendations to the Council.
- 5.8.2 The Committee will also recommend to the Council the remuneration and terms of appointments of the Chairman and NEDs
- 5.8.3 The Nominations Committee will operate in accordance with guidance set out in the NHS Foundation Trust Code of Governance issued by the Independent Regulator, or as shall from time to time be further issued by the Regulator.

5.9 **Confidentiality**

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 Council or shall otherwise have concluded on that matter.

- 5.10 A governor of the Trust or a member of a committee shall not disclose any matter reported to the Council or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council or committee shall resolve that it is confidential.
- 5.11 A governor of the Trust or a member of a committee shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in 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 meeting which make take place on such reports or papers.

6. DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

6.1 Declaration of Interests

The Regulatory Framework requires Council members to declare interests which are relevant and material to the Council. Interests should be declared on appointment and updated to the Trust Secretary as circumstances change, or as directed by the Independent Regulator, and at least annually.

- 6.2 Interests which should be regarded as 'relevant and material' are set out in paragraph 17 of the Trust's constitution:
- 6.3 At the time Council members' interests are declared, they should be recorded in the Council's minutes. Any changes notified to the Trust Secretary in between meetings should be declared at the next Council meeting following the change occurring.
- 6.4 Council members' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Council's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 6.5 During the course of a meeting, if a conflict of interest is established, the member of the Council concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 6.6 There is no requirement for the interests of Council members' spouses or partners to be declared. However, if the Council members' spouses or partners, if living together, have any pecuniary interest, direct or indirect, in contracts or proposed contracts with the Trust, this is regarded as relevant and should be disclosed.

6.7 If Board members have any doubt about the relevance of an interest this should be discussed with the Chairman or the Trust Secretary.

6.8 Register of Interests

The Trust Secretary shall maintain a register of members' interests. This will include details of all directorships and other relevant and material interests which have been declared by Council members as defined in Standing Order 6.2.

6.9 The register will be subject to regular review by the Trust Secretary at each meeting or as directed by the Independent Regulator. The register will be updated as and when members' declare an interest/revise a declaration. Any such changes made will be declared and noted at the next meeting of the Council of Governors.

6.10 The register will be available to the public and the Chairman will take reasonable steps to bring the existence of the register to the attention of the local population and to publicise arrangements for viewing it.

6.11 In establishing, maintaining, updating and publicising the register, the Trust will comply with all guidance issued from time to time by the Independent Regulator.

7. DISPUTE RESOLUTION PROCEDURES

Provisions for the resolution of disputes about the constitution or its interpretation, whether raised by the Board of Directors or Council of Governors, will be established. For the avoidance of doubt, these procedures will apply to disputes about the constitution or its interpretation between the Board of Directors and the Council of Governors.

7.1 Disputes shall be referred in the first instance to the Chairman of the Council of Governors.

7.2 If appropriate the Chairman may refer the dispute to a committee of the Council of Governors to advise the full Council of Governors.

7.3 Any unresolved dispute is to be submitted to an arbitrator agreed by the parties or nominated in default of agreement by decision of the Council and Board of Directors. The arbitrator's decision will be binding and conclusive on all parties.

8. PROCESS FOR THE APPOINTMENT OF NON-EXECUTIVE DIRECTORS

- 8.1 When a vacancy arises or is scheduled to arise within 6 months, a Nominations Committee shall be convened with clear terms of reference to advise the Council of Governors on the appointment of Non-Executive Directors.

9. PROCESS FOR THE APPOINTMENT OF THE CHAIRMAN

- 9.1 Subject to the provisions within the constitution in relation to the appointment and removal of the Chairman, the Chairman shall be appointed in accordance with the process of open competition.
- 9.2 When a vacancy arises or is scheduled to arise within 6 months, a Nominations Committee shall be convened with clear terms of reference to advise the Council of Governors on the appointment of the Chairman

10. PROCESS FOR THE APPOINTMENT OF AUDITORS

- 10.1 The Council will appoint external auditors following a recommendation from the Audit Committee to which will be delegated the tendering and selection arrangements. The recommendation will set out the reasons for the proposed choice of external auditor.

11. STANDARDS OF BUSINESS CONDUCT

11.1 Duty of compliance

Governors should comply with the Trust's values, the Trust's code of conduct, Trust's policy on Standards of Business Conduct and the requirements of the Regulatory Framework, including the Terms of Authorisation, and any binding guidance issued by the Independent Regulator.

11.2 Canvassing of and recommendations by, members of the Council in relation to appointments

Canvassing of directors or governors of the Trust or of any committee of the Trust directly or indirectly for any appointment with the Trust shall disqualify the candidate for such appointment. This clause of the Standing Orders shall be brought to the attention of candidates.

- 11.3 A member of the Council shall not solicit for any person any appointment with the Trust or recommend any person for such appointment. This clause of the Standing Orders shall not preclude a member of the Council from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 11.4 Informal discussions outside appointments panels or committees, whether solicited or unsolicited should be declared to the panel or the committee.

12. DECLARATION OF ELIGIBILITY

- 12.1 At their first meeting, all governors shall be required to sign declarations of their right to represent their constituency and to vote at Council of Governors' meetings. These declarations shall be valid for the duration of their term of office. Declaration forms are attached .

13. MISCELLANEOUS

13.1 Standing Orders to be given to members of the Council

It is the duty of the Trust Secretary to ensure that existing and new members of the Council are notified and understand their responsibilities within the constitution and these standing orders.

13.2 Review of Standing Orders

These Standing Orders shall be reviewed annually

GOVERNORS' DECLARATION

PART 1

**EAST KENT HOSPITALS UNIVERSITY NHS FOUNDATION TRUST (the
"Trust")**

I,(insert name)

Of (insert address)

Hereby declare that I am entitled to stand for election to the Council of Governors as a Governor elected by *one of the public constituencies / the staff constituency** because I am a member of one of the *public constituencies staff / constituency ** and that I am not prevented from being a member of the Council of Governors of the Trust by paragraph 8 of Schedule 7 of the National Health Service Act 2006 or under the constitution of the Trust.

Signed

Print
Name.....

Date of Declaration

*delete as appropriate

PART 2

**EAST KENT HOSPITALS UNIVERSITY NHS FOUNDATION TRUST (the
“Trust”)**

I,(insert name)

Of (insert address)

Hereby declare that I am entitled to vote at meetings of the Council of Governors as a Governor elected by *one of the public constituencies / the staff constituency** or because *I have been appointed as a Partner Governor* and that I am not prevented from being a member of the Council of Governors of the Trust by paragraph 8 of Schedule 7 of the National Health Service Act 2006 or under the constitution of the Trust.

Signed.....

Print.....
Name

Date of Declaration

*delete as appropriate

**ANNEX 8 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE
OF THE BOARD OF DIRECTORS**
(Paragraph 28 and Note 27)

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INTRODUCTION

Statutory Framework

East Kent Hospitals University NHS Foundation Trust (the Trust) is a body corporate which became a public benefit corporation on 1 March 2009 following its approval as an NHS Foundation Trust by the Independent Regulator of NHS Foundation Trusts (Independent Regulator) pursuant to the National Health Service Act 2006 (the 2006 Act).

The Trust Offices are at Kent & Canterbury Hospital, Ethelbert road, Canterbury, CT1 3NG.

NHS Foundation Trusts are governed by Acts of Parliament, mainly the 2006 Act, by their constitutions and by the terms of their authorisation granted by the Independent Regulator (the Regulatory Framework).

The functions of the Corporation are conferred by the Regulatory Framework.

As a body corporate the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable

Reservation and Delegation of Powers

Under the Standing Orders relating to the Arrangements for the Exercise of Functions (SO 4) the Board exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee appointed by virtue of SO 5 or by an officer of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit.

Delegated Powers are covered in a separate document (Scheme of Reservation and Delegation of Powers).

1 INTERPRETATION

1.1 Save as permitted by law and subject to the Constitution, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she should be advised by the Chief Executive or Trust Secretary).

1.2 Any expression to which a meaning is given in the 2006 Act or in the Regulations or Orders made under the 2006 Act shall have the same meaning in this interpretation and where there is a conflict between the 2006 Act and another legislative provision the 2006 Act interpretation shall prevail (unless, in either case, the context otherwise requires) and in addition:

"Accounting Officer" shall be the Officer responsible and accountable for funds entrusted to the Trust. He shall be responsible for ensuring the proper stewardship of public funds and assets and performing the functions

delegated to him by the Constitution in relation to the Trust's accounts. For this Trust it shall be the Chief Executive.

"Trust" means East Kent Hospitals University NHS Foundation Trust.

"Board of Directors" and (unless the context otherwise requires)

"Board" shall mean the Chairman and other non-executive directors, and the executive directors appointed by the relevant committee of the Trust.

"Council of Governors" means the Council of Governors of the Trust.

"Budget" shall mean a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust;

"Chairman" is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the Chairman of the Trust" shall be deemed to include the Deputy Chairman of the Trust if the Chairman is absent from the meeting or is otherwise unavailable.

"Chief Executive" shall mean the Chief Executive Officer of the Trust.

"Committee" shall mean a committee of the Board of Directors.

"Committee Members" shall be the directors formally appointed by the Trust to sit on or to chair specific committees.

"Constitution" means the constitution of the Trust.

"Contract" shall include any proposed contract or other course of dealing.

"Deputy Chairman" means the non-executive director appointed by the Council of Governors to take on the Chairman's duties if the Chairman is absent for any reason.

"Director" shall mean a person appointed as a director in accordance with the Constitution and includes the Chairman.

"Finance Director" shall mean the chief finance officer of the Trust.

"Funds held on trust" shall mean those funds which the Trust holds on trust at its date of authorisation as an NHS Foundation Trust or chooses subsequently to accept. Such funds may or may not be charitable.

"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 (SOs) and Standing Financial Instructions (SFIs).

"Officer" means an employee of the Trust.

"SFIs" means Standing Financial Instructions.

"SOs" means Standing Orders.

"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);

"Trust Secretary" means a person who may be appointed to act independently of the Board to provide advice on corporate governance issues to the Board and the Chairman and monitor the Trust's compliance with the Regulatory Framework and these standing orders

2. THE TRUST

2.1 Preamble

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

2.2 The Trust has the functions conferred on it by the Regulatory Framework.

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

2.4 Directors acting on behalf of the Trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission.

2.5 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board. These powers and decisions and those delegated by the Board to officers and other bodies are set out in the "Scheme of Reservation and Delegation of Powers".

2.6 Composition of the Board

In accordance with, but always subject to, the provisions of the Constitution, the composition of the Board shall be:

- The Chairman of the Trust
- A minimum of 5 and up to 7 other Non executive directors excluding the Chairman
- A minimum of 4 and up to 7 Executive directors including:
 - The Chief Executive (and Accounting Officer)
 - The Director of Finance
 - A medical or dental practitioner
 - A registered nurse or registered midwife.

2.7 Appointment of the Chairman and other Non-Executive Directors

The Chairman and the other Non-Executive Directors are appointed by the Council of Governors.

2.8 Appointment of the Executive Directors

The Chief Executive is appointed by the Chairman and other Non-Executive Directors, subject to the approval of the Council of Governors. The other

Executive Directors are appointed by the Appointments Committee that the Board shall appoint from time to time for that purpose.

2.9 Terms of Office of the Chairman and other Non-Executive Directors

The regulations setting out the period of tenure of office of the Chairman and other Non-Executive Directors and for the termination or suspension of office of the Chairman and other Directors are contained in the Constitution of the Trust.

2.10 Appointment of Deputy Chairman

Subject to SO 2.11 below, the Council of Governors will appoint one of the Non-Executive Directors to be Deputy Chairman, for such period, not exceeding the remainder of his term as a Director, as they may specify on appointing him/her.

2.11 Any Director so appointed may at any time resign from the office of Deputy Chairman by giving notice in writing to the Chairman. The Council of Governors may thereupon appoint another Non Executive Director as Deputy Chairman in accordance with the provisions of Standing Order 2.10

2.12 Powers of Deputy Chairman

Where the Chairman of the Trust has died or has ceased to hold office, or where he has been unable to perform his duties as Chairman owing to illness or any other cause, the Deputy Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes his duties, as the case may be; and references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform his duties, be taken to include references to the Deputy Chairman.

2.13 Appointment and Powers of Senior Independent Director

Subject to SO 2.14 below, the Board of Directors may appoint one of the independent Non Executive Directors (as defined in the NHS Foundation Trust Code of Governance published by the Independent Regulator) to be the Senior Independent Director, in consultation with the Council of Governors for such period, not exceeding the remainder of his term as a Director, as they may specify on appointing him. The Senior Independent Director shall perform the role set out in the Trust's "Senior Independent Director Job Description", as amended from time to time by resolution of the Board.

2.14 Any Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chairman. The

Board of Directors, in consultation with the Council of Governors, may thereupon appoint another independent Non Executive Director as Senior Independent Director in accordance with the provisions of Standing Order 2.13.

- 2.15 The posts and duties of the Deputy Chairman and Senior Independent Director will not be combined. This decision may be reviewed at any time by the Board of Directors, in consultation with the Council of Governors.
- 2.16 The role of the Senior Independent Director will include acting as a conduit for concerns to be raised by governors if the usual mechanisms of contact and discussion have been exhausted and, subject to the agreement of the Council of Governors, making arrangements for the annual evaluation of the performance of the Chairman. The process to achieve this evaluation and its outcome will be agreed with and reported to the Council of Governors.

2.17 Joint Executive Directors

Where more than one person is appointed jointly to an Executive Director post those persons shall count as one person for the purposes of these standing orders:-

- (a) either or both of those persons may attend or take part in meetings of the Board;
- (b) if both are present at a meeting they should cast one vote if they agree;
- (c) in the case of disagreements no vote should be cast;
- (d) the presence of either or both of those persons should count as the presence of one person for the purposes of a quorum.

2.18 Role of Directors

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.

(1) Chief Executive

The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust. He/she is the Accounting Officer for

the Trust and shall be responsible for ensuring the discharge of obligations under Financial Directions and in line with the requirements of the Accounting Officer Memorandum for Trust Chief Executives.

(2) **Non-Executive Directors**

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

(3) **Chairman**

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

2.19 Corporate role of the Board

(1) All business shall be conducted in the name of the Trust.

(2) All funds received in trust shall be held in the name of the Trust as corporate trustee.

2.20 Scheme of Reservation and Delegation of Powers

The Board may resolve that certain powers and decisions be exercised only by the Board. These powers and decisions are set out in the Scheme of Reservation and Delegation of Powers. Those powers which it has delegated to officers and other bodies are also contained in the Scheme of Reservation and Delegation of Powers

3. MEETINGS OF THE BOARD

3.1 Calling Meetings

Ordinary meetings of the Board shall be held at such times and places as the Board may determine. In the event that a meeting of the Board is to be held in public pursuant to paragraph 3.36, a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's principal offices at least three clear days before the meeting.

3.2 The Chairman may call a meeting of the Board at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at

least one-third of the whole number of directors, has been presented to him/her, or if, without so refusing, the Chairman does not call a meeting within seven days after such requisition has been presented to him, at the Trust's Headquarters, such one third or more directors may forthwith call a meeting.

3.3 Notice of Meetings

Before each meeting of the Board, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his behalf shall be delivered to every director, or sent by post to the usual place of residence of such director, so as to be available to him at least six clear days before the meeting. The agenda will be sent to Directors six days before the meeting. Supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three clear days before the meeting, save in emergency.

3.4 Lack of service of the notice on any director shall not affect the validity of a meeting.

3.5 In the case of a meeting called by directors in default of the Chairman, the notice shall be signed by those directors and no business shall be transacted at the meeting other than that specified in the notice.

3.6 A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post or otherwise the day following electronic or facsimile transmission.

3.7 Setting the Agenda

The Board may determine that certain matters shall appear on every agenda for a meeting of the Board.

3.8 A director desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least 15 clear days before the meeting, subject to Standing Order 3.3. Requests made less than 15 days before a meeting may be included on the agenda at the discretion of the Chairman.

3.9 Chairman of Meeting

At any meeting of the Board, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Deputy Chairman, if there is one and he/she is present, shall preside. If the Chairman and Deputy

Chairman are absent such non-executive director as the directors present shall choose shall preside.

- 3.10 If the Chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy Chairman, if present, shall preside. If the Chairman and Deputy Chairman are absent, or are disqualified from participating, such non-executive director as the directors present shall choose shall preside.

3.11 Notices of Motion

A director of the Board desiring to move or amend a motion shall send a written notice thereof at least 15 clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations.

Emergency Motions:- Subject to the agreement of the Chairman, a member 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. 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 Chairman's decision to include or exclude the item shall be final.

3.12 Motions: Procedure at and during a meeting

i) Who may propose

A motion may be proposed by the Chairman of the meeting or any member present. It must also be seconded by another member.

ii) Contents of motions

The Chairman may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

- the reception of a report;
- consideration of any item of business before the Board;
- the accuracy of minutes;
- that the Board proceed to next business;
- that the Board adjourn;
- that the question be now put.

iii) **Motion once under debate**

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

- an amendment to the motion.
- the adjournment of the discussion or the meeting.
- that the meeting proceed to the next business. (*)
- the appointment of an ad hoc committee to deal with a specific item of business.
- the motion be now put. (*)
- that a member/director be not further heard;

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

iv) **Amendments to motions**

A motion for amendment shall not be discussed unless it has been proposed and seconded.

Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board. The Chairman's decision on this will be final

If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

v) **Rights of reply to motions**

a) Amendments

The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment, but may not otherwise speak on it.

b) Substantive/original motion

The member who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

3.13 Withdrawal of Motion or Amendments

A motion or amendment once moved and seconded may be withdrawn by the proposer

3.14 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 calendar months shall bear the signature of the director(s) who gives it and also the signature of three other directors. Before considering any such motion of which notice shall have been given, the Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation. When any such motion has been disposed of by the Board, it shall not be competent for any director other than the Chairman to propose a motion to the same effect within six months; however the Chairman may do so if he/she considers it appropriate. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

3.15 Chairman's Ruling

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

3.16 Voting

Every question at a meeting shall be determined by a majority of the votes of the directors present and voting on the question. In the case of any equality of votes, the Chairman shall have a further or casting vote.

3.17 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the directors present so request.

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

3.19 If a director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

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

- A manager who has been formally appointed 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
- A manager attending the Board meeting 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.
- For the voting rules relating to joint Executive Directors see Standing Order 2.17

3.21 **Minutes**

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

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

3.23 **Waiver of Standing Orders**

Except where this would contravene any statutory provision or any guidance issued by the Independent Regulator, any one or more of the Standing Orders may be waived at any meeting, provided that at least two-thirds of the Board are present, including one Executive Director and two Non Executive Directors, and that a majority of those present vote in favour of suspension.

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

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

3.26 **Suspension of Standing Orders**

Except where this would contravene any statutory provision or any guidance issued by the Independent Regulator, any one or more of the

Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one executive director and two non-executive directors, and that a majority of those present vote in favour of suspension.

3.27 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.

3.28 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the directors.

3.29 No formal business may be transacted while Standing Orders are suspended.

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

3.31 Variation and Amendment of Standing Orders

These Standing Orders shall be amended only if:

- a notice of motion under Standing Order 3.11 has been given;
- a recommendation of the Chairman or Chief Executive is included on the agenda for the meeting;
- no fewer than half the total of the Trust's non-executive directors 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 guidance issued by the Independent Regulator.

3.32 Record of Attendance

The names and titles of the directors present at the meeting shall be recorded in the minutes.

3.33 Quorum

No business shall be transacted at a meeting of the Board unless at least one third of the whole number of the directors are present including at least one executive director and two non-executive directors.

3.34 If a director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6 or 7) he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a

position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one executive director to form part of the quorum shall not apply where the executive directors are excluded from a meeting (for example, when the Board considers the recommendations of the Remuneration Committee).

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

3.36 Admission of public and the press

3.36.1 Subject to paragraph 3.36.2, Board meetings shall be held in private but the whole or any part of the meeting may be held in public if the Board so resolves

3.36.2 Individual members of the public and the press may, at the absolute discretion of the Chairman, be admitted to all or part of a Board meeting

3.36.3 In the event that the public and press are admitted to all or part of a Board meeting , the Chairman (or Deputy Chairman if one has been appointed) or the person presiding over the meeting shall give such directions as he thinks fit with 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

3.36.4 In the event that the public and press are admitted to all or part of a Board meeting they shall be required to withdraw if the Board so resolves

3.36.5 Nothing in these Standing Orders shall be construed as permitting the introduction by the public, or press representatives, of recording, transmitting, video or similar apparatus into meetings of the Board or Committee thereof. Such permission shall be granted only upon resolution of the Board of Directors

3.37 Observers at Board meetings

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

4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

4.1 Exercise of functions

Subject to the Regulatory Framework and such guidance as may be issued by the Independent Regulator, the Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 5.1 or 5.2 below or by a director or an officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.

4.2 Emergency Powers

The powers which the Board has retained to itself within these Standing Orders (SO 2.5) may in emergency or for an urgent decision be exercised by the Chief Executive and the Chairman, after having consulted two non executive directors where possible. The exercise of such powers by the Chief Executive and the Chairman shall be reported to the next formal meeting of the Board for formal ratification.

4.3 Delegation to Committees

The Board shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees, which it has formally constituted. The constitution and terms of reference of these committees, or subcommittees, and their specific executive powers shall be approved by the Board.

4.4 Delegation to officers

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

- 4.5 The Chief Executive shall prepare a schedule of matters reserved to the Board and a scheme of delegation (Scheme of Reservation and Delegation of Powers) identifying his/her proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Reservation and Delegation of Powers which shall be considered and approved by the Board as indicated above.

- 4.6 Nothing in the Scheme of Reservation and Delegation of Powers shall impair the discharge of the direct accountability to the Board of the Finance Director or other executive director to provide information and advise the Board in accordance with any statutory requirements or guidance issued by the Independent Regulator. Outside these statutory requirements the roles shall be accountable to the Chief Executive for operational matters.
- 4.7 Overriding Standing Orders – If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All Board Directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive or Chairman of the Audit Committee as soon as possible.

5. COMMITTEES

5.1 Appointment of Committees

Subject to the Regulatory Framework and any guidance as may be issued by the Independent Regulator, the Board may and, if so required by the Independent Regulator, shall appoint committees of the Board, consisting wholly of directors of the Board. The Trust shall determine the membership and terms of reference of these committees and shall if it requires to, receive and consider reports from them.

- 5.2 A committee appointed under SO 5.1 may, subject to any guidance issued by the Independent Regulator and to any restriction imposed by the Board, appoint subcommittees consisting wholly of one or more members of the committee.
- 5.3 The Standing Orders of the Board, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Board.
- 5.4 Each such committee or sub-committee shall have such terms of reference and powers ,reviewed annually, and be subject to such conditions (as to reporting back to the Board), as the Board shall decide..
- 5.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.
- 5.6 The Board shall approve the appointments to each of the committees which it has formally constituted

5.7 Confidentiality

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 or shall otherwise have concluded on that matter.

- 5.8 A Director shall not disclose any matter reported to the Board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or committee shall resolve that it is confidential.

5.9 Committees established by the Board of Directors

The Board will establish committees required of it by legislation or the Independent Regulator's NHS Foundation Trust Code of Governance. These will include :-

5.9.1 Audit Committee

In line with legislation and the Code of Governance, the Board of Directors will establish and constitute an Audit Committee to provide the Board with an independent and objective review of its financial and internal control systems, financial information and compliance with laws, guidance, and regulations governing the NHS. The terms of reference will be approved by the Board and reviewed on an annual basis.

The Audit Committee will be composed of a minimum of three independent non-executive directors, of which one must have significant, recent and relevant financial experience.

5.9.2 Remuneration Committee

A Remuneration Committee will be established and constituted by the Board of Directors, comprised of a minimum of three independent non-executive directors. The terms of reference of the Committee will be approved by the Board and reviewed on an annual basis.

The purpose of the Committee will be to decide on the appropriate remuneration, allowances, and terms of and conditions of service for the Chief Executive and other Executive Directors including:

- (i) all aspects of salary (including any performance-related elements/bonuses);
- (ii) provisions for other benefits, including pensions and cars;
- (iii) arrangements for termination of employment and other contractual terms.

The Committee may also recommend and monitor the level and structure of remuneration for senior management

5.9.3 Charitable Funds Committee

In line with its role as a corporate trustee for any funds held in trust, either as charitable or non charitable funds, the Board will establish a Charitable Funds Committee to administer those funds in accordance with any statutory or other legal requirements or best practice required by the Charities Commission.

5.9.4 Appointments Committee

The Board shall appoint from time to time an Appointments Committee comprised of the Chairman, the other Non-Executive Directors and the Chief Executive. The purpose of the Appointments Committee shall be to appoint the Executive Directors other than the Chief Executive.

5.9.5 Other Committees

The Board may also establish such other committees as required to discharge its responsibilities, for example a Finance and Investment Committee

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

6.1 Declaration of Interests

The Regulatory Framework requires directors to declare interests which are relevant and material to the board of which they are a director. All existing directors should declare such interests. Any directors appointed subsequently should do so on appointment or as soon as they arise.

6.2 Interests which are relevant and material

- 6.2.1 Interests which should be regarded as "relevant and material" are to be interpreted in accordance with the Regulatory Framework:

- a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
- b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
- d) A position of Authority in a charity or voluntary organisation in the field of health and social care.
- e) Any connection with a voluntary or other organisation contracting for NHS services.
- f) Research funding/grants that may be received by an individual or their department;
- g) Interests in pooled funds that are under separate management.
- h) To the extent not covered above, any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to lenders or banks.
- i) Any other commercial interest in the decision before the meeting.

6.2.2 Any member of the Board of Directors who comes to know that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her (as defined in Standing Order 7 below and elsewhere) has any pecuniary interest, direct or indirect, shall declare his/her interest by giving notice in writing of such fact to the Trust as soon as practicable.

6.2.3 If Directors have any doubt about the relevance of an interest, this should be discussed with the Chairman.

6.3 Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered. If directors have any doubt about the relevance of an interest, this should be discussed with the Chairman, or the Trust Secretary.

6.4 At the time directors' interests are declared, they should be recorded in the board minutes. Any changes in interests should be declared at the next board meeting following the change occurring.

6.5 Directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the board's annual report.

The information should be kept up to date for inclusion in succeeding annual reports.

- 6.6 During the course of a board 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.
- 6.7 There is no requirement for the interests of board directors' spouses or partners to be declared. Note however that SO 7 requires that the interest of directors' spouses, if living together, in contracts should be declared.

6.8 Register of Interests

The Trust Secretary will ensure that a Register of Interests is established to record formally declarations of interests of directors. In particular the Register will include details of all directorships and other relevant and material interests which have been declared by both executive and non-executive directors, as defined in SO 6.2. Attendees of Board Committees who are not Board directors will be required to declare any relevant or material interests.

- 6.9 These details will be kept up to date on a regular basis, and the Register will be formally reviewed once a year.
- 6.10 The Register will be available to the public and the Trust Secretary will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.
- 6.11 In establishing, maintaining, updating and publicising the Register, the Trust shall comply at all times with the Regulatory Framework and any guidance issued by the Independent Regulator. In the event of conflict between these Standing Orders and the Regulatory Framework or guidance issued by the Independent Regulator, the latter shall prevail.
- 6.12 Standing Order 6 applies to a committee or sub-committee of the Board as it applies to the Board and applies to all members of any such committee or sub-committee whether or not he or she is also a Director.

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

- 7.1 Subject to the following provisions of this Standing Order, if a director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement

disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

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

7.3 Any remuneration, compensation or allowances payable to a director by the Trust or otherwise by virtue of paragraph 9 of Schedule 2 to the NHS & Community Care Act 1990 shall not be treated as a pecuniary interest for the purpose of this Standing Order.

7.4 For the purpose of this Standing Order a director shall be treated, subject to SO 7.5, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

(a) he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;

or

(b) 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 other matter under consideration and in the case of married persons living together or persons living together as partners, the interest of one partner shall, if known to the other, be deemed for the purposes of this Standing Order to be also the interest of that partner.

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

(a) of his membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;

(b) of an interest in any company, body or person with which he is connected as mentioned in SO 7.4 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

7.6 Where a director:

(a) 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

(b) 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 less, and

(c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, this Standing Order shall not prohibit him/her from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his/her duty to disclose his/her interest.

- 7.7 Standing Order 7 applies to a committee or sub-committee or joint committee of the Board as it applies to the Board, and to any member of such a committee or subcommittee whether or not he or she is also a Director.

8. STANDARDS OF BUSINESS CONDUCT

8.1 Policy

Staff must comply with the national guidance contained in HSG(93)5 'Standards of Business Conduct for NHS staff', which has been adopted by the Trust as its Code of Conduct, and any guidance issued by the Independent Regulator. In addition, they must adhere to the Trust's Counter Fraud Policy and Procedure for East Kent Hospitals Staff, and any other guidance produced by the Trust

8.2 Interest of Officers in Contracts

If it comes to the knowledge of a director or an officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Chief Executive of the fact that he/she is interested therein. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

- 8.3 An officer must also declare to the Chief Executive any other employment or business or other relationship of his, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Chief Executive will ensure that such declarations are formally recorded.

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

Canvassing of directors or governors 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. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.

8.5 A director of the Trust 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.

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

8.7 Relatives of Directors or Officers

Candidates for any staff appointment shall when making application disclose in writing whether they are related to any director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.

8.8 The directors and every officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that director or officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.

8.9 On appointment, directors (and prior to acceptance of an appointment in the case of executive directors) should disclose to the Trust whether they are related to any other director or holder of any office within the Trust.

8.10 Where the relationship of an officer or another director to a director of the Trust is disclosed, the Standing Order headed 'Disability of directors in proceedings on account of pecuniary interest' (SO 7) shall apply.

9. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

9.1 Custody of Seal

The Common Seal of the Trust shall be kept by the Trust Secretary in a secure place.

9.2 Sealing of Documents

Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two Directors of the Board, not from the originating department, and shall be attested by them. A report of all sealings shall be made to the Board at least quarterly.

9.3 Register of Sealing

The Trust Secretary shall keep a register in which he/she, or another manager of the Trust authorised by him/her, shall enter a record of the sealing of every document.

10. SIGNATURE OF DOCUMENTS

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

10.2 In land transactions, the signing of certain supporting documents will be delegated to Managers and set out clearly in the Scheme of Reservation and Delegation of Powers but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed), which may only be signed by the Chief Executive or his nominated deputy with a second Director as in 9.2 for documents requiring sealing.

11. MISCELLANEOUS

11.1 Standing Orders to be given to Directors and Officers

It is the duty of the Chief Executive to ensure that existing directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and SFIs. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate of Standing Orders.

11.2 Review of Standing Orders

Standing Orders shall be reviewed annually by the Trust.

ANNEX 9 – FURTHER PROVISIONS

1. Membership of the Foundation Trust.

- 1.1 With reference to Section 10 and paragraph 10.4 of the constitution if a member of the Trust ceases to meet the criteria for initially becoming a member, he or she will be automatically disqualified from membership.
- 1.2 Other criteria for exclusion or disqualification from membership are as follows
 - Anyone under the age of 16
 - Anyone who has been involved in any act of violence or aggression against Trust staff (whether directly employed or not), or a Trust volunteer in the five years leading up to the next election. This will apply whether or not the act occurred on or off the Trust premises.
 - Anyone who has been identified by court order as a vexatious complainant

2. Chairman and Non executive Directors.

- 2.1 With the exception of the arrangements set out section 23 of the constitution the appointment of Chairman and Non Executive Directors will be by competition for a maximum of three years.

Thereafter reappointment will continue to be by competition, again for a maximum of three years at a time.

The total length of service permissible will be nine years.

- 2.2 Neither the Chairman nor the Non Executive Directors of the Trust may otherwise be employees of the Trust
- 2.3 Non executive directors will be subject to additional exclusion requirements over the mandatory ones. These are if:-
 - He or she is an executive director of the Trust or, a governor, non-executive director, chairman, or chief executive of another NHS Foundation Trust
 - He or she is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs
 - He or she ceases to be a member of the Trust
 - He or she has had their name placed on registers of Schedule 1 offenders pursuant to the Sex Offenders Act 1977 and/or the Children and Young Person Act 1933
 - He or she has failed to declare a significant conflict of interest
 - He or she has a conflict of interest making appointment or continuation as a non executive director untenable
 - He or she is guilty of conduct or actions prejudicial to the Council or the Trust

In addition non executive directors will be expected to adhere to the Code of Conduct for Directors

- 2.4. The Chairman should meet the qualification requirements for Non Executive Directors set out in the constitution, and be subject to the same disqualification and exclusion criteria

3. Statutory /Required Committees

The Trust will establish committees required by statute or by the Independent Regulator.

4. NHS Foundation Trust Code of Governance

The Trust will have due regard to the Code of Governance published by Monitor, the Independent Regulator, as providing advice on good practice. In accordance with Monitor's requirements it will make a disclosure statement concerning its compliance with the code, and give an explanation where it does not meet its provisions

5. Trust Secretary.

The Trust will appoint a Trust Secretary and define his or her role and responsibilities. The appointment and removal of the Trust Secretary will be a matter for the Chief Executive and the Chairman jointly

6. Resolution of disputes.

The Trust will establish procedures for the resolution of disputes about the constitution or its interpretation, which will include referral to an arbitrator in the event that they remain unresolved. Reference to these will be included in the standing orders of the Council of Governors

7. Indemnity

- 7.1 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 Council of Governors or Board of Directors functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 7.2 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, Council members or Directors to meet all or any liabilities which are properly the liabilities of the Trust under the paragraph above.

8. Amending the constitution.

The constitution will be reviewed annually. Changes to it will be approved by the Board of Directors and the Council of Governors by decisions made in accordance with their standing orders by those present and voting, and the Independent Regulator. The population figures of the Public Constituency areas will be reviewed every five years.

AUTHORISATION OF EAST KENT HOSPITALS UNIVERSITY NHS FOUNDATION TRUST

Schedule 2

Mandatory Goods and Services

AUTHORISATION OF EAST KENT HOSPITALS UNIVERSITY NHS FOUNDATION TRUST

Schedule 3

Mandatory Education and Training

AUTHORISATION OF EAST KENT HOSPITALS UNIVERSITY NHS FOUNDATION TRUST

Schedule 4

Private Health Care

**AUTHORISATION OF EAST KENT HOSPITALS UNIVERSITY NHS FOUNDATION
TRUST**

PRIVATE HEALTH CARE

In 2002/03 the proportion of the total patient income derived from private health charges was 0.6%

Pursuant to section 44 of the Act and Condition 10 of this Authorisation the proportion of total income of the Trust in any financial year derived from private charges shall not be greater than 0.6%.

DEFINITION:

Private patient income

Total patient
related income

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Schedule 5

Limit on Borrowing

AUTHORISATION OF EAST KENT HOSPITALS UNIVERSITY NHS FOUNDATION TRUST

PRUDENTIAL BORROWING LIMIT

Pursuant to section 46 of the Act, the Prudential Borrowing Limit ("PBL") for the year 2008/09 is the sum of the following:

- (i) Maximum cumulative long term borrowing: £102.9 million and
- (ii) Approved working capital facility: not to exceed £31.0 million

AUTHORISATION OF EAST KENT HOSPITALS UNIVERSITY NHS FOUNDATION TRUST

Schedule 6

Information

Full details of the information which the Trust shall disclose to Monitor directly and to any third parties as may be specified by the Secretary of State and as may be varied from time to time are set out on Monitor's website at www.monitor-nhsft.gov.uk.