Ashford and St. Peter's Hospitals NHS
NHS Foundation Trust

TRUST BOARD
27th September 2012

TITLE	**Review of Constitution- Epsom and the Health and Social Care Act 2012**
EXECUTIVE SUMMARY	The Trust needs to undertake a review of its Constitution for two reasons: 1. Epsom Transaction 2. Health and Social Care Act 2012 The attached paper explains the views of the small Task Group established by the Council of Governors and the Board, together with a general timetable for agreements to be reached. The paper includes a number of principles proposed for adoption in determining changes to the shape of the Council of Governors which have now been agreed at the Council of Governor meeting held on 11th September 2012. These would be used to form the basis of consultation with stakeholders and does not mean a decision on the shape of the Council has been taken.
BOARD ASSURANCE (Risk) / IMPLICATIONS	The Trust must have, and comply with, a legally compliant Constitution as part of its Terms of Authorisation.
STAKEHOLDER / PATIENT IMPACT AND VIEWS	The draft Constitution was discussed and agreed at the Council of Governor meeting on 11th September 2012.
EQUALITY AND DIVERSITY ISSUES	The membership of the Trust is drawn from the local catchment for the Trust and the Council of Governors monitors that it is representative with regards to age/gender/ethnicity and social representation.
LEGAL ISSUES	The Trust must have a legally compliant Constitution. The draft Constitution has drawn upon the 2012 Monitor Model Constitution and has been reviewed by DAC Beachcroft.
The Trust Board is asked to:	Approved the revised Constitution as the basis for consultation, together with the next steps identified in section 9 of the paper.
Submitted by:	Jane Gear Head of Corporate Affairs
Date:	12th September 2012
Decision:	For approval.

CONSTITUTION REVIEW SEPTEMBER 2012

1 RATIONALE

There are 2 reasons that the Trust needs to undertake a review of its Constitution:

1. Epsom transaction
2. Health and Social Care Act 2012

2 TIMESCALES AND APPROVALS

2.1 Epsom

We must have a 'fit for purpose' Constitution for Epsom. There are a number of external factors relating to the Transaction Process which impact on the timetable for the changes to the Constitution.

As part of the overall Transaction process the Trust submits an Integrated Business Plan to Monitor, likely to be October/November 2012. In terms of general content structure this is similar to the Integrated Business Plan which was submitted in 2010 and must include a draft Constitution.

The Trust also has to undertake a process of stakeholder engagement as part of the Monitor process. This will probably start during October/November 2012. The document needs to include a proposal on the Council of Governors and membership catchment areas.

The submission to Monitor will be clear that the Constitution is draft and further changes may take place on:

- The membership catchments (dependent on the stakeholder response and views of the Council of Governors and the Board)
- The make up of the Council of Governors (dependent on the stakeholder response and views of the Council of Governors and the Board)
- Some details in the Constitution e.g. defining Transactions (dependent on the views of the Council of Governors and the Board)

The results of the stakeholder engagement will be available for the January/February 2013 Council and Board meetings. Agreement on the shape of the Council of Governors needs to be reached at this point so that the draft Constitution can be updated and elections can be held.

Proceedings for an election take a minimum of 40 working days. Using the minimum mandated time frame elections must commence by 3rd May 2013 which would allow the Governors to be elected from 28th June 2013 with the Transaction coming into effect from 1st July 2013. These additional elections would be held on the basis that the new Governors would join the Council subject to the Transaction proceeding.

In summary therefore, we need to get agreement from the 11th September 2012 Council of Governors meeting (obtained) and the 27th September 2012 Board meeting to proceed with the Monitor submission on the basis of a draft revised Constitution.

2.2 **Health and Social Care Act 2012**

Monitor has indicated it is unlikely that it will approve the majority of the changes resulting from the Act- it will be down to the Council of Governors and Board. (One exception relates to the Commencement Orders bringing in the changes to the private patient cap and title changes etc. from October 2012 – see previous agenda item).

We must be in a position to implement the new governance arrangements when the Commencement Orders/Statutory Instruments for Chapter 7 Part 4 of the Act come into force- now thought likely to be as late as March 2013.

Therefore the final version of the full Constitution should be approved by both bodies around March 2013 at the latest to come into effect by 1st April 2013. A potential complicating factor is if Monitor wants to use the Transaction process to agree these changes too.

2.3 **Summary of timetable and approvals**

1. September 2012 Council of Governors and Board agree draft construct of Council of Governors and revised draft Constitution.

2. October/November 2012 draft Constitution submitted to Monitor

3. October- December 2012- stakeholder engagement including proposed make up of Council of Governors.

4. January/February 2013 Council of Governors and Board consider results of stakeholder engagement and agree the construct of the Council of Governors. This must be agreed by the Board and Council of Governors otherwise the elections can not commence. This will be provisional dependent on final agreement of the Epsom transaction.

5. May 2013 elections commence (on the presumption that the transaction proceeds to July 2013 timetable).

6. February /March 2013; Council of Governors and Board agree remainder of Constitution (if not finalised in December 2012/early January 2013).

3 FUTURE STRUCTURE OF THE COUNCIL

This is a core element of the Constitution and needs to be in the Stakeholder Engagement document distributed in October/ November 2012.

3.1 Task Groups

Once the Trust was announced as Preferred Partner on 1st June 2012 the Council and Board agreed membership of a further Task Group which included David Frank, Michèle Low, Chris Howorth, Hugh Meares, Terry Price, Aileen McLeish and Jane Gear. (Hugh Meares was unable to attend the meeting). The Group reviewed the draft principles put forward the previous year and then progressed towards a recommendation (see 3.4 below).

A subsequent meeting was held on 21st August. Some members of the Task Group

were able to be there together with a few additional Governors.

There was then a full discussion with at the Council of Governor meeting held on 11th September 2012. The main issues raised were concerned with the reduced level of Borough representation, and the need to have the number of Staff Governors proportionate to the impact of the Transaction.

3.2 Catchments

Constituencies have to be based on 'defined electoral areas for the purposes of local government'.

There is changed wording in the 2012 Act-S 153 regarding membership-

> 'in deciding which areas are to be public constituencies, or in deciding whether there is to be a patients' constituency, an NHS FT must have regard to the need for those eligible for such membership to be representative of those to whom the trust provides services'.

3.3 Task Group approach

Rather than revisit the data used to create the membership and Council back in 2009, a blank sheet approach was taken.

The Group considered different ways of deciding the apportionment of seats including basing it on activity flows/population size/proportion of patients to population.

Two main options were explored in some detail. Overall it was felt that new outpatients are a good metric of users of the hospitals. Looking at local population would align seats with densely populated areas (e.g. Croydon) but not be so representative of users (see 3.2 above). Adopting this as the metric would also result in whole scale change in the allocation of seats which was not felt to be helpful. The Group agreed that overall the most straightforward approach was to base the allocation of seats on patient flow.

3.4 Proposed Principles (Updated in the light of the Council of Governor meeting on 11th September 2012)

1. Epsom stakeholders (staff and residents) need to understand the principles underpinning the construction of the Council and be comfortable that they are fair and equitable.

2. The optimal size for the new Council of Governors would be 30 and it should not exceed 34. As the inclusion of Epsom represents an increase of around 30% on the Trust's current turnover the spread of seats would be around 2/3 ASPH to 1/3 Epsom.

3. Constituencies would be allocated their seats based on the outpatient population expressed as a % of the Trust's total patient population (rounded up) using the following bands:

    a. 10% or greater - would have 3 seats
    b. 5-10%- would have 2 seats
    c. less than 5% would have 1 seats

    The allocation of elected seats would be capped at 3 irrespective of the patient proportion.

4. Boroughs in which a major hospital site was located would be offered an appointed Governor seat.

5. In order to maintain a cap of three seats for any one Borough, where a Borough qualifies for appointed seat there would be one less public/ elected Governor.

6. Staff constituencies are currently based on staff categories not sites but the 3 sites will make this more complex for the Staff Governors to function. It is important that Epsom staff are represented on the Council and this should be on a similar basis to the overall approach to Epsom representation generally (2/3 ASPH and 1/3 Epsom) leading to two Epsom staff seats

7. Boroughs with less than 1% of outpatient activity would not be offered a specific seat. If possible they could be included with neighbouring constituencies e.g. Guildford, Richmond, Croydon.

4 SUGGESTED MEMBERSHIP CATCHMENTS

Using the new Outpatient flow data for both Ashford and St Peter's Hospitals and Epsom Hospital (with a cut off where a local authority ward had less than 10 patients in the year), the membership catchments are proposed as attachment 1.

At the moment some of our constituencies are only PART of a Borough- e.g. Elmbridge. This changes with the incorporation of Epsom activity and a revised Annex 1 to the Constitution has been prepared (attachment 2).

5 STAFF GOVERNORS

The Council of Governors agreed that as offering Epsom two seats which were site specific moved away from the current approach based on professional groupings that :-

1. This should be expressed in a way to show that it was a transitional stage- to be reviewed once the organisation was fully merged; and

2. Epsom staff should be encouraged to suggest what the two constituencies should be.

6 SUGGESTED CONSTRUCT OF THE COUNCIL

The impact of the draft principles is:

- 21 Public Governors

- 5 Appointed Governors

- 7 Staff Governors

This gives a total of 33 Governors. The NHS Act requires that the publically elected Governors are in the majority meaning a minimum of 17 public Governors; this requirement is met.

A chart of the suggested construct of the Council is attached (3)

Specific implications include:

- The merger of some existing public Constituencies

- Changes to the wards included in the Constituencies (see para 4 above)
- Changes to Borough representation as stakeholder bodies
- Relationship with new Clinical Commissioning Groups to be developed through other avenues.

6.1 Transition arrangements

The Trust is currently holding elections for the Governors who were elected for an initial two year term (rather than the standard three years) in December 2010.

Signing the Transfer Agreement for the Transaction is scheduled for May 2013 and therefore the timetables for the current elections and the Transaction are not aligned. The Constitution will need to specify the arrangements for the Transition.

7 HEALTH AND SOCIAL CARE ACT

The Group also reviewed the first redraft of the main body of the Constitution which incorporates the changes brought about by the 2012 Act. This is attached as a draft for comment- (attachment 3)- it will form the basis of the Trust's submission to Monitor noting that there is further work to do including:

- Defining a transaction
- Interpreting 'sharing the Board agenda and minutes'.
- Specifying the Transition arrangements

The Board can be assured the Constitution is legally drafted as

- it has drawn from the revised template produced by Monitor for use by applicant foundation trusts
- it has been reviewed by the Trust's lawyers.

8 TRUST NAME

Once agreed by the Board this will need to be incorporated in the Constitution.

9 FUTURE WORK AND NEXT STEPS

In addition to the items identified in Para 5, the Group did not have the opportunity to discuss

- Revised Standing Orders for both the Board and the Council of Governors which are formal parts of the Constitution.
- Remaining Annexes for the Constitution (attachment 4) including Annex 6B – Disqualification criteria
- Code of Conduct for the Council of Governors

All these need to be agreed prior to 1st April 2013 (i.e. the implementation of the Act). It is suggested that the Task Group meet again to consider these and then an open session is held for any Governor or Board member to attend and discuss all the drafts. (Probably November/ December 2012).

The final version of the full Constitution to be agreed at the February 2013 Board and Council of Governors meetings at the latest.

The Head of Communications is drafting the consultation document. It was agreed to share the draft with representatives from the Task Group members of the Council of Governors prior to finalising it.

10 CONCLUSION

The Board is asked to **agree**

1. The principles to be used in determining the shape of the Council of Governors to be used in the consultation

2. The draft construct of the Council of Governors to be used in the consultation

3. The extended membership area to be used in the consultation

4. The draft Constitution

5. Next steps (see 9 above)

Noting that all the documents are draft subject to the outcome of consultation.

New Outpatient data from both Trusts 2011/12

Borough	New Out Patients	% of total
Spelthorne	36765	22
Runnymede	22677	14
Woking	22043	13
Elmbridge	20303	12
Epsom & Ewell	14684	9
Hounslow	11735	7
Mole Valley	11006	7
Reigate & Banstead	9012	5
Sutton	3318	2
Surrey Heath	2707	2
Kingston	1895	1
Windsor and Maidenhead	1311	1
Richmond	949	0.5
Guildford	968	0.5
Croydon	751	0.5
Merton	618	
Hillingdon	180	
Ealing	146	
Haringey	119	
Slough	107	
Bracknell Forest	104	
Waverley	62	
Rushmore	28	
Bracknell	48	
Tandridge	44	
Coventry	39	
Horsham	30	
Dorset	27	
Lambeth	18	
Ash Vale	15	
Cheltenham	13	
New Forest	12	
South Bucks	10	
Wokingham	10	
	161727	
Other	2712	
	164439	96.5

NB Boroughs/ wards in red are additional to current

Proposed ANNEX 1

ANNEX 1
THE PUBLIC CONSTITUENCY

Local Authority	Area of the Public Constituency (as defined by electoral wards)	Minimum Number of Members	Number of Governors to be elected
Elmbridge (whole borough)	**Claygate**	50	**3**
	Cobham and Downside		
	Cobham Fairmile		
	Esher		
	Hersham North		
	Hersham South		
	Hinchley Wood		
	Long Ditton		
	Molesey East		
	Molesey North		
	Molesey South		
	Oatlands Park		
	Oxshott & Stoke D'Abernon		
	St. George's Hill		
	Thames Ditton		
	Walton Ambleside		
	Walton Central		
	Walton North		
	Walton South		
	Weston Green		
	Weybridge North		
	Weybridge South		
Epsom and Ewell (whole Borough)	**Auriol**	50	1
	College		
	Court		
	Cuddington		
	Ewell		
	Ewell Court		
	Nonsuch		
	Ruxley		
	Stamford		
	Stoneleigh		
	Town		
	West Ewell		
	Woodcote		

Hounslow London (**whole borough)**	Bedfont	50	3
	Brentford		

AND Richmond upon Thames (Part Borough)	**Chiswick Homefields** **Chiswick Riverside** Cranford Feltham North Feltham West Hanworth Park Hanworth Heston Central Heston East Heston West Hounslow Central **Hounslow South** Hounslow Heath Hounslow West **Isleworth** **Osterley and Spring Grove** **Syon** **Turnham Green** **Fulwell and Hampton Hill,** **Ham, Petersham &** **Richmond Riverside,** Hampton **Hampton North** **Hampton Wick** Heathfield **North Richmond** **South Richmond** **South Twickenham** **St Margarets & North Twickenham,** **Teddington** **Twickenham Riverside,** **West Twickenham,** **Whitton**		
Kingston (whole Borough)	**Alexandra** **Berrylands** **Beverley** **Canbury** **Chessington North and Hook** **Chessington South** **Coombe Hill,** **Coombe Vale** **Grove** **Norbiton** **Old Malden** **Tolworth and Hook Rise,** **Tudor** **St James** **St Marks**	**50**	**1**

	Surbiton Hill		

Mole Valley (whole borough)	**Ashtead Common**	50	2
	Ashtead Park		
	Ashtead Village		
	Beare Green		
	Bookham North		
	Bookham South		
	Box Hill and Headley		
	Brockham Betchworth and Buckland		
	Capel Leigh and Newdigate		
	Charlwood		
	Dorking North		
	Dorking South		
	Fetcham East		
	Fetcham West		
	Holmwoods		
	Leatherhead North		
	Leatherhead South		
	Leith Hill		
	Mickleham Westhumble and Pixham		
	Okewood		
	Westcott		
Reigate and Banstead (whole Borough)	**Banstead Village**	50	2
	Chipstead Hooley and Woodmansterne		
	Earlswood and Whitebushes		
	Horley Central		
	Horley East		
	Horley West		
	Kingswood with Burgh Heath		
	Meadvale and St John`s		
	Merstham		
	Nork		
	Preston		
	Redhill East		
	Redhill West		
	Reigate Central		
	Reigate Hill		
	Salfords and Sidlow		
	South Park and Woodhatch		
	Tadworth and Walton		
	Tattenhams		
Runnymede(whole borough)	Addlestone Bourneside	150	3
	Addlestone North		
	Chertsey Meads		
	Chertsey South and Row Town		
	Chertsey St. Ann's		

	Egham Hythe		
	Egham Town		
	Englefield Green East		
	Englefield Green West		
	Foxhills		
	New Haw		
	Thorpe		
	Virginia Water		
	Woodham		
Spelthorne(whole borough)	Ashford Common	150	3
	Ashford East		
	Ashford North and Stanwell South		
	Ashford Town		
	Halliford and Sunbury West		
	Laleham and Shepperton Green		
	Riverside and Laleham		
	Shepperton Town		
	Staines South		
	Staines		
	Stanwell North		
	Sunbury Common		
	Sunbury East		
Surrey Heath (whole borough)	**Bagshott**	50	1
	Bisley		
	Chobham		
	Frimley		
	Frimley Green		
	Heatherside		
	Lightwater		
	Mytchett and Deepcut		
	Old Dean		
	Parkside		
	St Michaels		
	St Pauls		
	Town		
	Watchetts		
	West End		
	Windlesham		
Sutton, Merton and Croydon (parts)	**Addiscombe (Croydon)** **Broad Green** **Coulsdon East** **Coulsdon West** **Croham** **Fairfield** **Fieldway** **Heathfield** **Kenley** **Purley** **Sanderstead** **Selsdon and Ballards** **Waddon**	**50**	**1**
	Abbey (merton) **Cannon Hill** **Cricket Green**		

	Dundonald **Figges Marsh** **Lavender Fields** **Longthornton** **Lower Morden** **Merton Park** **Pollards Hill** **Ravensbury** **Raynes Park** **St Helier** **Trinity** **Village** **West Barnes**		
	Beddington North (Sutton) **Beddington South** **Carshalton Central** **Carshalton South and Clockhouse** **Cheam** **St Helier** **Stonecot** **Sutton Central** **Sutton North** **Sutton South** **Sutton West** **The Wrythe** **Wallington North** **Wallington South** **Wandle Valley** **Worcester Park**		

Windsor and Maidenhead	**Castle without**	50	1
	Clewer East		
	Clewer North		
	Clewer South		
	Datchet		
	Eton and Castle		
	Eton Wick		
	Horton and Wraysbury		
	Old Windsor		
	Park		
	Sunninghill		
	Sunningdale and South Ascot		
	Trinity		

Woking(whole borough)	Brookwood	150	3
	Byfleet		
	Goldsworth East		
	Goldsworth West		
	Hermitage and Knaphill South		
	Horsell East and Woodham		
	Horsell West		
	Kingfield and Westfield		

AND Guildford (part Borough)	Knaphill		
	Maybury and Sheerwater		
	Mayford and Sutton Green		
	Mount Hermon East		
	Mount Hermon West		
	Old Woking		
	Pyrford		
	St. John's and Hook Heath		
	West Byfleet		
	Ash Vale		
	Ash Wharf		
	Burpham		
	Christchurch		
	Clandon and Horsley		
	Effingham		
	Friary and St Nicolas		
	Holy Trinity		
	Lovelace		
	Merrow		
	Onslow		
	Pirbright		
	Send		
	Shalford		
	Stoke		
	Stoughton		
	Tillingbourne		
	Westborough		
	Worplesdon		

Draft Construct of Council post Epsom transaction

Ashford and St Peter's Hospitals NHS FT				**Post Transfer**			
Constituency	**membership**	**Public Seats**	**Appt Gov**	**Constituency**	**membership**	**Public Seats proposed**	**Appt Gov**
Elmbridge	Part Borough	**1**		Elmbridge	Whole Borough	**3**	
Guildford	Part Borough	**1**		Epsom & Ewell	Whole Borough	**1**	**1**
Hounslow	Part Borough	**2**		Hounslow & Richmond	Whole Borough	**2**	
				Kingston	Whole Borough	**1**	
				Mole Valley	Whole Borough	**2**	
Richmond	Part Borough	**1**		Reigate & Banstead	Whole Borough	**2**	
Runnymede	Whole Borough	**3**	**1**	Runnymede	Whole Borough	**2**	**1**
Spelthorne	Whole Borough	**3**	**1**	Spelthorne	Whole Borough	**2**	**1**
Surrey Heath		**1**		Surrey Heath	Enlarged part Borough	**1**	
				Sutton, Merton and Croydon	Parts of boroughs	**1**	
Windsor & Maidenhead	Part Borough	**1**		Windsor & Maidenhead	Enlarged part Borough	**1**	
Woking &	Whole Borough	**3**	**1**	Woking & Guildford	Woking whole Borough and enlarged part of Guildford	**3**	
Other stakeholder/appointed governors			**4**				**2**
Staff Governors			**5**				**7**
Total		**16**	**12**			**21**	**12**

2012)

Annexes to the Constitution

ANNEX 1 – THE PUBLIC CONSTITUENCY
ANNEX 2 – THE STAFF CONSTITUENCY
ANNEX 3 Not used
ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS
ANNEX 5 – THE MODEL ELECTION RULES
ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS
ANNEX 7 – STANDING ORDERS – COUNCIL OF GOVERNORS
ANNEX 8 – STANDING ORDERS – BOARD OF DIRECTORS
ANNEX 9 – FURTHER PROVISIONS

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ASHFORD AND ST. PETER'S HOSPITALS NHS FOUNDATION TRUST

CONSTITUTION

With Beachcrofts comments

Constitution

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1. Interpretation and definitions

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

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

"Accounting Officer"	means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;
"Annual Members Meeting"	is defined in paragraph 11 of the Constitution
"the 2006 Act"	means the National Health Service Act 2006;
"the 2012 Act"	means the Health and Social Care Act 2012
"Appointed Governors"	means the Local Authority Governors and the Partnership Organisation Governors specified in Annex 4
"Appointing Organisation"	means the organisation responsible for appointing the Appointed Governors, as specified in Annex 4;
"Area of the Trust"	means the area consisting of all the areas specified in Annex 1 as an area for the Public Constituency;

"Board of Directors" means the Board of Directors of the Trust as constituted in accordance with this Constitution and referred to in paragraph 23 and "Board" shall be construed accordingly;

"Chairman" means the Chairman of the Trust appointed in accordance with paragraph 26 of this Constitution;

"Chief Executive" means the Chief Officer (and Accounting Officer) of the Trust appointed in accordance with paragraphs 29 of this Constitution;

"Class" means one of the six descriptions of individuals who are eligible for Membership of the Staff Constituency in accordance with paragraph 8 of this Constitution;

"Committee" shall mean a committee appointed by the Trust;

"Committee Member" shall be persons formally appointed by the Trust to sit on or to chair specific Committees;

"Constituencies" means the Public Constituencies and the Staff

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	Constituency;
“Constitution”	means this Constitution of Ashford and St. Peter's Hospitals NHS Foundation Trust and all annexes to it;
“Council of Governors”	means the Council of Governors of the Trust as constituted in accordance with this Constitution;
“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”	means an Executive Director or Non Executive Director on the Board of Directors;
“Elected Governors”	means the Public Governors and the Staff Governors;
“Executive Director”	means a person appointed as an Executive Director of the Trust under sections 15-19 of Schedule 7 of the 2006 Act and in accordance with paragraph 29 of this Constitution and who is an officer of the Trust;
"Finance Director"	means the Director of Finance/ Chief Finance Officer of the Trust;
“Financial Year”	means a period of 12 months ending with 31st March in any year as defined in section 275(1) of the 2006 Act
“Funds Held On Trust”	shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Schedule 6, Paragraph 8 of the 2006 Act. Such funds may or may not be charitable;
“Governor”	means a Governor on the Council of Governors and being either an Elected Governor or an Appointed Governor;
“Heath Service Body”	means a body which is a health service body for the purpose of Section 9(4) of the 2006 Act;

Deleted: and which shall have the same meaning as the “Board of Governors” in the 2006 Act;

Deleted: “Director of Finance and Information”

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Deleted: the period beginning with the date on which the Trust is authorised and ending with the next 31st March; and¶
(b) . each successive period of twelve months beginning with 1st April;

Deleted: “Independent Regulator” or “Monitor”

Deleted: means the independent regulator of NHS foundation trusts as provided by Section 31 of the 2006 Act;

"Lead Governor"	means the Governor appointed by the Council of Governors whose role is more fully described at Annex 7 paragraph 3;
"Local Authority"	means a local authority specified in Annex 4, which is a local authority for an area which includes the whole or part of the Area of the Trust;
"Local Authority Governor"	means a member of the Council of Governors appointed by a Local Authority in accordance with the provisions of this Constitution and as specified in Annex 4;
"**Member"**	means a Member of the Trust as determined in accordance with paragraph 5 of this Constitution;
"Membership"	means membership of the Trust through being a Member of one of its Constituencies;
"Membership Strategy"	means a document explaining how the Trust will recruit and support an active Membership by engaging Members and Governors in the business of the Trust;
"Model Election Rules"	means the model form rules for the conduct of elections published from time to time by the Department of Health and as currently set out in Annex 5;
"Motion"	means a formal proposition to be discussed and voted on during the course of a meeting;
"NHS Foundation Trust Code of Governance"	means the Code of Governance published by Monitor in 2010 or such similar or further guidance as Monitor may publish from time to time;
"Nominated Officer"	means an Officer charged with the responsibility for discharging specific tasks within SOs and SFIs;
"Non-Executive Director"	means a person appointed as a Non-Executive Director of the Trust under Schedule 7 of the 2006 Act and in accordance with paragraph 26 of this Constitution;
"Officer"	means an employee of the Trust;
"Partnership Organisations"	means those organisations designated as partnership organisations for the purposes of this Constitution specified in Annex 4;
"Partnership Organisation	means each member of the Council of Governors

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Governor"	appointed in accordance with the provisions of this Constitution by each of the Partnership Organisations specified in Annex 4;
“Patients”	means individuals who have attended any of the Trust's premises for care;
"Public Benefit Corporation"	means a body corporate which is constituted in accordance with Schedule 7 of the NHS Act;
“Public Governor”	means a member of the Council of Governors elected by the Members of a Public Constituency;
“Public Constituency”	means a public constituency of the Trust as defined in Annex 1;
“Regulator” or “Monitor”	means the corporate body known as Monitor as provided by Section 61 of the 2012 Act
“Secretary”	means the secretary of the Trust or any other person appointed to perform the duties of the Secretary of the Trust;
"Senior Independent Director"	means a Non-Executive Director nominated to the role of Senior Independent Director in accordance with the provisions of this Constitution;
“SFIs”	means Standing Financial Instructions;
“Staff Classes”	means the classes of the Staff Constituency as specified in Annex 2;
“Staff Constituency”	means that part of the Trust’s Membership consisting of the staff of the Trust and other persons as more particularly provided for at paragraph 8 of this Constitution and which is divided into the Staff Classes as specified in Annex 2;
“Staff Governor”	means a member of the Council of Governors elected by a Staff Class;
"Standing Orders (or SOs)"	means whichever of the Standing Orders for the Council of Governors at Annex 7 or the Standing Orders for the Board of Directors at Annex 8 as is relevant;

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Deleted: means each member of the Council of Governors appointed in accordance with the provisions of this Constitution by each of the Primary Care Trusts specified in Annex 4;

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Deleted: means the authorisation issued to the Applicant Trust by the Independent Regulator under Section 35 of the 2006 Act;

“the Trust”	means Ashford and St. Peter's Hospitals NHS Foundation Trust;
"Trust Volunteers"	means those individuals who are eligible to become Members of the Trust Volunteer Staff Class within the Staff Constituency specified in paragraph 5 of Annex 2;
“Trust’s Hospital”	means any premises used by the Trust for the provision of goods and services for the purposes of the health service in England falling within the definition of “hospital” in Section 275 of the 2006 Act;

2. Name

The name of the foundation trust is Ashford and St. Peter's Hospitals NHS Foundation Trust.

3. Principal purpose

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

3.2 The Trust does not fulfil its principal purpose unless, in each Financial Year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provisions of goods and services for any other purpose.

3.3 The Trust may provide goods and services for any purposes related to:

3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and

3.3.2 the promotion and protection of public health.

3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

4. Powers

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

4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust except for those powers reserved to the Council of Governors.

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 and

5.2 a Staff Constituency

6. Application for membership

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

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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 a Public Constituency.

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

7.4 Further provisions relating to Membership of the Public Constituency are set out in Annex 9.

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 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as Members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months, including but not limited to Trust Volunteers.

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

8.4 The Staff Constituency shall be divided into six (6) descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

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

Automatic Membership by default – staff

8.6 An individual who is:

8.6.1 eligible to become a Member of the Staff Constituency, and is

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8.6.2 invited by the Trust to become a Member of the Staff Constituency and a Member of the appropriate Class within the Staff Constituency,

shall become a Member of the Trust as a Member of the Staff Constituency and appropriate Class within the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.

9. Patients' Constituency

9.1 Not used

10. Restriction on Membership

10.1 An individual who is a Member of a Constituency, or of a Class within a Constituency, may not while membership of that Constituency or Class continues, be a Member of any other Constituency or Class.

10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any Constituency other than the Staff Constituency.

10.3 An individual must be at least 14 years old to become a Member of the Trust.

10.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 9 – Further Provisions.

11 Annual Members meeting

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

12. Council of Governors – composition

12.1 The Trust is to have a Council of Governors, which shall comprise both elected and Appointed Governors.

12.2 The composition of the Council of Governors is specified in Annex 4.

12.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their Constituency or, where there are Classes within a Constituency, by their Class within that Constituency. The number of Governors to be elected by each Constituency, or, where appropriate, by each Class of each Constituency, is specified in Annex 4.

12.4 The Council of Governors shall nominate one of their Governors to be the Lead Governor.

13. Council of Governors – election of Governors

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13.1 Elections for elected Members of the Council of Governors shall be conducted in accordance with the Model Election Rules.

13.2 The Model Election Rules as published from time to time by the Department of Health form part of this Constitution. The Model Election Rules current at the date of the Trust's Constitution are attached at Annex 5.

13.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 45 of this Constitution (amendment of the constitution).

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

14. Council of Governors - tenure

14.1 Subject to the transitional provisions in Annex 6, paragraph 1, an elected Governor may hold office for a period of up to 3 years.

14.2 An elected Governor shall cease to hold office if s/he ceases to be a Member of the Constituency or Class by which s/he was elected.

14.3 An elected Governor shall be eligible for re-election at the end of his/her term, subject to the provisions of paragraph 14.8 below.

14.4 An appointed Governor may hold office for a period of up to 3 years.

14.5 An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him/her or if the Appointing Organisation ceases to exist and there is no successor in title to it.

14.6 An appointed Governor shall be eligible for re-appointment at the end of his/her term

14.7 A Governor shall be eligible for re-election or re-appointment as appropriate at the end of his/her term.

14.8 A Governor shall not hold office for more than 6 years or 2 terms of office which ever is the least.

14.9 For the purposes of this paragraph 14 ,"year" means the period of 12 months commencing on authorisation or such other date on which the election or appointment of a Governor takes effect.

14.10 Further provisions relating to a Governor's tenure are set out in Annex 6.

15. Council of Governors – disqualification and removal

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

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

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

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

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

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

15.4 This Constitution makes provision for the removal of Governors in Annex 6C.

16. Council of Governors- duties of the Governors

16.1 The general duties of the Governors are:-

16.1.1 to hold the Non Executive Directors individually and collectively to account for the performance of the Board of Directors, and

16.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public

16.2 The Trust must take steps to ensure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

17. Council of Governors – meetings of Governors

17.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 26 below) or, in his absence the Deputy Chairman (appointed in accordance with the provisions of paragraph 28 below)], shall preside at meetings of the Council of Governors.

17.2 Meetings of the Council of Governors shall be open to members of the public save that members of the public may be excluded from a meeting for grounds specified in Annex 7 Standing Orders for the Council of Governors).

17.3 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance) the

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Council of Governors may require one or more of the Directors to attend a meeting.

18. Council of Governors – Standing Orders

The Standing Orders for the practice and procedure of the Council of Governors are attached at Annex 7.

19. Council of Governors – referral to the Panel

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

19.1.1 to act in accordance with its Constitution , or

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

19.2 A Governor may refer a question to the panel only if more than half of the members of the Council of Governors voting approve the referral.

20. Council of Governors - conflicts of interest of Governors

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

20.2 The Standing Orders for the Council of Governors shall make provision for the annual disclosure of interests and arrangements for the exclusion of a Governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

21. Council of Governors – travel expenses

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

22. Council of Governors – further provisions

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

23. Board of Directors – composition

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

23.2 The Board of Directors is to comprise:

23.2.1 a Non-Executive Chairman

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23.2.2 Up to 6 other Non-Executive Directors (excluding the Chairman; and

23.2.3 Up to 6 Executive Directors.

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

23.4 The Chief Executive shall be the Accounting Officer.

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

23.6 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

23.7 One of the Executive Directors is to be a registered nurse or a registered midwife.

23.8 The operation of paragraph 23.2 above shall be that at all times at least half of the Board of Directors, excluding the Chairman, shall be Non Executive Directors.

23.9 The Board may determine that the operational directors may attend meetings of the Board of Directors as and when required to provide operational advice and support to assist the Board in the discharge of their responsibilities. For the avoidance of doubt, such operational directors will not be statutory Directors under the 2006 Act, nor will they be able to vote and will bear no responsibility or liability for any action or decisions of the Board of Directors.

24. Board of Directors- general duty

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

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

A person may be appointed as a Non-Executive Director only if –

25.1 s/he is a Member of the Public Constituency, and

25.2 s/he is not disqualified by virtue of paragraph 30 below.

26. Board of Directors – appointment and removal of chairman and other non-Executive Directors

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

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

27. Board of Directors- appointment of Senior Independent Director

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The Board shall, following consultation with the Council of Governors, appoint one of the independent Non Executive Directors as a Senior Independent Director to act in accordance with Monitor's Code of Governance and the Board's Standing Orders.

28. 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.

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

29.1 The Non-Executive Directors shall appoint or remove the Chief Executive.

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

29.3 A committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

30. Board of Directors – disqualification

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

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

30.2 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.

30.3 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.

30.4 A person who falls within further grounds for disqualification as set out in Annex 9D.

31. Board of Directors – meetings

32.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

32.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

32. Board of Directors – Standing Orders

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The Standing Orders for the practice and procedure of the Board of Directors are attached at Annex 8.

33. Board of Directors - conflicts of interest of Directors

33.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:

33.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interest of the Trust

33.1.2 a duty not to accept a benefit from a third party solely by reason of being a Director or doing (or not doing) anything in that capacity.

33.2 The duty referred to in sub-paragraph 33.1.1 is not infringed if –

33.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

33.2.2 the matter has been authorised in accordance with the Constitution.

33.2 The duty referred to in sub-paragraph 33.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

33.3 In sub-paragraph 33.1.2, "third party" means a person other than –

33.3.1 the Trust, or

33.3.2 a person acting on its behalf.

33.4 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.

33.5 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

33.6 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.

33.7 This paragraph does not require a declaration of an interest of which the director is not aware or where the Director is not aware of the transaction or arrangement in question.

33.8 A Director need not declare an interest –

33.8.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;

33.8.2 If, or to the extent that, the Directors are already aware of it;

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33.8.3 If, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered –

33.8.3.1 by a meeting of the Board of Directors, or

33.8.3.2 by a committee of the Directors appointed for the purpose under this Constitution.

33.9 The Board of Directors shall adopt Standing Orders specifying the arrangements for excluding Directors from discussion or consideration of the contract or other matters as appropriate.

34. Board of Directors – remuneration and terms of office

34.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other Non-Executive Directors.

34.2 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

35. Registers

The Trust shall have:

35.1 a register of Members showing, in respect of each Member, the Constituency to which s/he belongs and, where there are Classes within it, the Class to which s/he belongs;

35.2 a register of members of the Council of Governors;

35.3 a register of interests of Governors;

35.4 a register of Directors; and

35.5 a register of interests of the Directors.

36. Admission to and removal from the registers

The Trust will comply with the Public Benefit Corporation (Register of Members) Regulations 2004 as amended or updated from time to time.

The Secretary to the Trust shall remove from the register of members the name of any Member who ceases to be entitled to be a Member under the provisions of the Constitution.

37. Registers – inspection and copies

37.1 The Trust shall make the registers specified in paragraph 35 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

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37.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any Member of the Trust, if the Member so requests.

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

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

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

37.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

38. Documents available for public inspection

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

38.1.1 a copy of the current Constitution;

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

38.1.3 a copy of the latest annual report;

38.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:

38.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L(trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.

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

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

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

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

38.2.5 a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following

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Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.

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

38.2.7 a copy of any final report published under section 65I (administrator's final report),

38.2.8 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.

38.2.9 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

38.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

39. Auditor

39.1 The Trust shall have an auditor.

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

40. 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.

41. Accounts

41.1 The Trust must keep proper accounts and proper records in relation to the accounts.

41 .2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts

41.3 The accounts are to be audited by the Trust's auditor.

41.4 The Trust shall prepare in respect of each Financial Year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.

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

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42. Annual report, forward plans and non NHS work

42.1 The Trust shall prepare an Annual Report and send it to Monitor.

42.2 The Trust shall give information as to its forward planning in respect of each Financial Year to Monitor.

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

42.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.

42.5 Each forward plan must include information about –

42.5.1. the activities other than the provision of goods and services for the purposes of the Health Service in England that the Trust proposes to carry on, and

42.5.2 the income it expects to receive from doing so.

42.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 42.5.1 the Council of Governors must

42.6.2 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions, and

42.6.3 notify the Directors of the Trust of its determination.

42.7 A proposal to increase by 5% or more the proportion of the Trust's total income in any Financial Year attributable to activities other than the provision of goods and services for the purposes of the health service in England may only be implemented the proposal if more than half of the members of Council of Governors of the Trust voting approve its implementation.

43. Presentation of the Annual Accounts and Report to the Governors and Members

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

43.1.1 the annual accounts

43.1.2 any report of the auditor on them

43.1.3 the annual report.

43.2 The documents shall also be presented to the Members of the Trust at the Annual Members Meeting with at least one member of the Board of

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Directors in attendance

43.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 43 1 with the Annual Members' Meeting.

43.5 Nothing in sub-paragraph 43.2 shall prevent the Governors from holding a general meeting more than once a year.

44. Instruments

44.1 The Trust shall have a seal.

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

45 Amendment of the Constitution

45.1 The Trust may make amendments of this Constitution only if –

45.1.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments, and

45.1.2 more than half of the members of the Board of Directors of the Trust voting approve the amendments.

45.2 Amendments made under paragraph 45.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as this Constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

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

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

45.3.2 The Trust must give the Members an opportunity to vote on whether they approve the amendment.

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

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

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46. Mergers etc. and significant transactions

46.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.

46.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction

46.3 "Significant transaction" means [insert descriptions; xxxx

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

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

The Council of Governors shall appoint the chairman of the applicant NHS Trust as the initial chairman of the Trust, if he wishes to be appointed.

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.

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.

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.

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

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

The non-executive directors shall appoint the chief officer of the applicant NHS Trust as the initial Chief Executive of the Trust, if he wishes to be appointed.

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.

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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.

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Pending the committee being established by the Council of Governors, the terms and allowances applied by the applicant Trust will apply.

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Meeting of Council of Governors to consider annual accounts and reports

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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.

No proposal for amendment of this Constitution will be submitted to Monitor unless it has first been approved by the Board of Directors who shall have consulted with the Council of Governors before so doing

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