

**DORSET COUNTY HOSPITAL
NHS FOUNDATION TRUST
(A PUBLIC BENEFIT CORPORATION)**

CONSTITUTION

June 2016

TABLE OF CONTENTS

<i>Paragraph</i>	<i>Page</i>
1. Interpretation and Definitions	3
2. Name.....	6
3. Principal purpose	6
4. Other purposes.....	7
5. Powers	7
6. Membership and Constituencies.....	7
7. Application for membership.....	7
8. Public Constituency.....	8
9. Staff Constituency	8
10. Restriction on membership	9
11. Council of Governors – composition	10
12. Council of Governors – election of Governors	10
13. Council of Governors – tenure	11
14. Council of Governors – disqualification and removal.....	11
15. Council of Governors – meetings of Governors	11
16. Council of Governors – Standing Orders	12
17. Council of Governors – conflicts of interest of Governors	12
18. Council of Governors – expenses.....	12
19. Council of Governors – further provisions.....	12
20. Board of Directors – composition	12
21. Board of Directors – qualification for appointment as a Non-Executive Director.....	13
22. Board of Directors – appointment and removal of Chairman.....	13
23. Board of Directors – appointment of Vice Chairman	14
24. Board of Directors – appointment and removal of Chief Executive	14
25. Board of Directors – disqualification	14
26. Board of Directors – Standing Orders.....	15
27. Board of Directors – conflicts of interest of Directors.....	15
28. Board of Directors – remuneration and terms of office	15
29. Registers	16
30. Admission to and removal from the registers.....	16
31. Registers – inspection and copies	16
32. Documents available for public inspection	16
33. Auditor	17
34. Audit Committee.....	17
35. Annual Accounts	17
36. Annual report and forward plans and non-NHS work.....	17
37. Meeting of Council of Governors to consider annual accounts and reports	18
38. Instruments.....	18
39. Addition and Amendment to the Constitution.....	18
40. Annual Members' Meetings	18
41. Governors' Training and Development	18
ANNEX 1 – THE PUBLIC CONSTITUENCY	18
ANNEX 2 – THE STAFF CONSTITUENCY	20
ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS	21
ANNEX 4 – THE RULES FOR ELECTIONS.....	22
ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS	68
ANNEX 6 – STANDING ORDERS – COUNCIL OF GOVERNORS	73
ANNEX 7 – STANDING ORDERS – BOARD OF DIRECTORS.....	84
ANNEX 8 – FURTHER PROVISIONS	116

1. **Interpretation and Definitions**

1.1 In this Constitution:

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

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

This version of the Constitution also incorporates 2012 Act amendments which have come into force on 1 April 2013 as a result of the first and second commencement orders (Statutory Instruments 2012/1319 and 2012/1831).

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

1.3 References in this Constitution to legislation include all amendments, replacements, or re-enactments made to that legislation.

1.4 References to legislation include all regulations, orders statutory guidance or directions made in respect of it.

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

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

“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
“Appointed Governors”	means Governors who have been appointed as representatives of partnership organisations as listed in Annex 3
“Area of the Trust”	means the area specified for the area of the Public Constituencies in Annex 1
“Audit Committee”	means a committee of the Board of Directors pursuant to paragraph 34 of this Constitution
“Auditor”	Means the External Auditor of the Trust appointed by the Council of Governors pursuant to paragraph 33 of this Constitution
“Authorisation”	Means the authorisation formerly issued to the Trust by Monitor under Section 35 of the 2006 Act
“Board of Directors”	means the Board of Directors of the Trust as constituted in accordance with this Constitution and the 2006 Act
“Corporation”	means reference to the Dorset County Hospital NHS Foundation Trust
“Chairman”	means the Chairman of the Trust
“Chief Executive”	means the Chief Executive of the Trust
“Code of Conduct”	means any code which the Trust may publish from time to time to govern or guide the conduct of Council of Governors, Directors

and employees of the Trust

- “Constitution”** means the Constitution together with the annexes and appendices attached hereto
- “Council of Governors”** means the Council of Governors as constituted in accordance with this constitution which has the same meaning as ‘Council of Governors’ in the 2006 Act
- “Director”** means a member of the Board of Directors of the Trust
- “Elected Governor”** means a Governor elected by either the Public or Staff constituencies
- “Finance Director”** means the Finance Executive Director on the Board of Directors
- “Financial Year”** means:
- (a) the period beginning with the date on which the corporation is authorised under paragraph 25(6) Schedule 7 of the 2006 Act and ending with the 31st March
 - (b) each successive period of twelve months beginning with 1st April
- “Governor”** means a member of the Council of Governors and includes both Appointed and Elected Governors
- “Health Service Body”** is an organisation as defined in the National Health Service Act 2006 and for the purposes of this Constitution will include NHS Foundation Trusts
- “Hospital”** means Dorset County Hospital and all associated hospitals and facilities at which the Trust provides good and/or services
- “Immediate Family Member”** means either:
- (a) a partner whether married, in a civil partnership (Civil Partnership Act 2004) or some other similar arrangement, whether or not residing in the same household
 - (b) a child related to the partner/s
 - (c) a sibling or step-sibling
 - (d) a parent or step-parent
- a partner (as defined in sub-paragraph (a) above) of a person identified in sub-paragraphs (b-d)

“Independent Regulator”	means the regulator for the purposes of Part 2 of the 2006 Act known as Monitor
“Independent Mediation”	means a service provided by the NHS or a contracted supplier which is independent of Dorset County Hospital NHS Foundation Trust
“Licence”	is the provider licence issued by Monitor under the 2012 Act
“Local Authority Governor”	means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of the Area of the Trust.
“Member”	means a Member (public or staff) of the Foundation Trust
“Monitor”	is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act.
“Nomination and Remuneration Committee”	Means a committee appointed by the Council of Governors to oversee the arrangements for selection, appointment and succession planning of Non-Executive Directors.
“Partnership Organisation Governor”	means an Appointed Governor of the Council of Governors appointed by a partnership organisation
“Patient”	means any person whose name is recorded as a patient on the Trust’s patient administration system or other record maintained by the Trust for the purpose of identifying patients of the Trust
“Clinical Commissioning Group (CCG) Governor”	means a Governor appointed from the local CCG representing the commissioners for the Trust
“Public Constituency”	means the constituency of the Trust constituted in accordance with paragraph 8 of this Constitution and made up of the Public Constituencies as identified in Annex 1
“Public Governor”	means a Governor elected by the members of the Public Constituency in accordance with this Constitution
“Register of Governors”	means the Register of Governors which the Trust is required to have and maintain under Paragraph 20 of Schedule 7 to the 2006 Act
“Secretary”	means the Secretary of the Trust or any other person appointed by the Trust to perform the duties of the Secretary of the Trust including a joint, assistant or deputy Secretary or such other person as may be appointed by the Trust to perform the functions of the Secretary under this Constitution
“Senior Independent Director”	means a Non-Executive Director appointed by the Board of Directors in consultation with the Council of Governors to be available to members, Directors and Governors if they have concerns which contact through the normal channels of Chairman, Chief Executive or Finance Director has failed to resolve or for which such contact is inappropriate. The Senior Independent Director can be the Vice Chairman.

“Staff Constituency”	means the constituency of the Trust constituted in accordance with paragraph 9 of this Constitution
“Staff Governor”	means a Governor elected by the members of the Staff Constituency in accordance with this Constitution
“Sex Offenders Order”	means a Sexual Offences Preventative Order or a Risk of Sexual Harm Order made under Part II of the Sexual Offences Act 2003
“Sex Offenders Register”	means the Register of Sex Offenders maintained under Part I of the Sex Offenders Act 1997 (as amended by the Sexual Offences Act 2003)
“Terms of Authorisation”	are the terms of authorisation formerly issued by Monitor under Section 35 of the 2006 Act, subsequently replaced by the Provider Licence introduced by the 2012 Act.
“2006 Act”	is the National Health Service Act 2006
“2012 Act”	is the Health and Social Care Act 2012
“Trust”	means the Dorset County Hospital NHS Foundation Trust
“Trust Hospital”	means all or any hospital or other patient care facilities administered by the Trust from time to time and designated by the Trust as falling within this definition
“Trust Subcontractor”	means an individual or a contractor to the Trust whose employees exercise functions on behalf of the Trust
“Vexatious complainant”	means any person who, in the opinion of the Board of Directors and/or Council of Governors, persistently and without reasonable grounds makes a vexatious complaint(s)
“Vexatious complaint”	means any unjustified complaint, the effect of which in the opinion of the Board of Directors and/or Council of Governors is to subject the Trust (or any of its staff, agents, patients or carers) to inconvenience, harassment or expense
“Vice Chairman”	means the Vice Chairman of the Trust and usually the Senior Independent Non-Executive Director, who will deputise for the Chairman as required
“voluntary organisation”	is a body, other than a public or local authority, the activities of which are not carried on for profit

2. Name

The name of the Trust is Dorset County Hospital NHS Foundation Trust.

3. Principal purpose

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

3.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for

any other purposes.

- 3.3 The Trust may provide goods and services for any purposes related to—
- 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. Other purposes

- 4.1 Without prejudice to the Trust's principal purpose as noted in paragraph 3:
- 4.2 The Trust may also carry on activities other than those mentioned in the principal purpose, subject to any restrictions in the authorisation, for the purposes of making additional income available in order to carry out its principal purpose.
- 4.3 The Trust may carry out research in connection with the provision of healthcare and make facilities and staff available for the purposes of education, training or research carried on by others.

5. Powers

- 5.1 The powers of the Trust are set out in the 2006 Act, subject to any restrictions in the terms of its Authorisation
- 5.2 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 5.3 Any of these powers may be delegated to a Committee of Directors or to an Executive Director.
- 5.4 In the exercise of its powers, the Trust shall have regard to the NHS Constitution, the core principles of the NHS and those of the Trust as set out in Appendix 1 of Annex 8.

6. Membership and constituencies

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

- 6.1 a public constituency
- 6.2 a staff constituency

7. Application for membership

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

- 7.1 An individual may become a member by application to the Trust in accordance with this Constitution or, where so provided for in this Constitution, by being given automatic membership by the Trust unless they choose to opt out.
- 7.2 Where an individual applies to become a member of the Trust, the Trust shall consider his application for membership as soon as reasonably practicable following its receipt and in any event no later than 28 days from the date upon which the application is received and unless that individual is ineligible for membership or is disqualified from membership the Secretary shall cause his

name to be entered forthwith on the Trust's register of members and that individual shall thereupon become a member.

- 7.3 Where an individual is given automatic membership by the Trust to become a member that individual shall automatically become a member and shall have their name entered on the Trust's register of members following the expiration of 14 days after the giving of that invitation unless within that period the individual has informed the Trust that he does not wish to become a member.
- 7.4 An individual shall become a member on the date upon which his name is entered on the Trust's register of members and that individual shall cease to be a member upon the date upon which his name is removed from the register of members as provided for in this Constitution.
- 7.5 The Trust shall take reasonable steps to secure that taken as a whole the actual membership of the Public Constituency is representative of those eligible for such membership.
- 7.6 The Trust shall take reasonable steps to ensure that those that are eligible for membership are representative of the Trust's service users.

8. Public Constituency

- 8.1 An individual who lives in the constituency areas as specified in Annex 1 known as the Public Constituency area may become or continue as a member of the Trust.
- 8.2 Those individuals who live in an area specified in an area for any public constituency are referred to collectively as the Public Constituency.
- 8.3 The minimum number of members in each Local Authority area for the Public Constituency is specified in Annex 1.
- 8.4 Public Constituency members:
- 8.4.1 Are not eligible to become a member of the Staff Constituency and are not members of any other constituency;
 - 8.4.2 Must not be disqualified for membership under Annex 8;
 - 8.4.3 Must be at least 16 years of age at the time of their application to become a member; and
 - 8.4.4 Must have applied to the Trust to become a member and that application has been accepted by the Trust.
- 8.5 An individual shall be deemed to live in the Area of the Trust if this is evidenced by his name appearing on the then current Electoral Roll at an address within the Public Constituency Area of the Trust or the Trust acting by the Secretary is otherwise satisfied that the individual lives within the Public Constituency Area of the Trust.

9. Staff Constituency

- 9.1 An individual who is employed by the Trust under a contract of employment with the Trust automatically becomes or continues as a member of the Trust provided:
- 9.1.1 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
 - 9.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.

- 9.2 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

For the avoidance of doubt the following individuals may be considered individuals who exercise functions for the purpose of the Trust:

- 9.2.1 those working for a partnership organisation, based at the Trust. including staff with honorary contracts at the Trust, and
- 9.2.2 those employed by contractors providing services that the Trust would otherwise provide itself.
- 9.3 For the avoidance of doubt, volunteers will be incorporated within the Public Constituency.
- 9.4 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency
- 9.5 The minimum number of members in the Staff Constituency is specified in Annex 2.
- 9.6 Membership by default will apply to all staff who are:
- 9.6.1 eligible to become a member of the Staff Constituency, and
- 9.6.2 invited by the Trust to become a member of the Staff Constituency
- and these individuals 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.
- 9.7 Staff Constituency members:
- 9.7.1 Are not eligible to become a member of the Public Constituency;
- 9.7.2 Must not be disqualified for membership under Annex 8;
- 9.7.3 Must be at least 16 years of age at the time of their application to become a member; and
- 9.8 Employees that have opted out of membership must apply to the Trust if they wish to be reinstated as a Public Constituency member and the application will be accepted by the Trust.

10. Restriction on membership

- 10.1 An individual who satisfies the criteria for membership of a constituency within the Trust, may not while a member of that constituency become a member of any other constituency within the Trust.
- 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.

Establishing and notification of membership restriction

- 10.3 Where the Trust has reason to believe that a person is ineligible for membership under paragraphs 8 and 9 or may be disqualified from membership under Annex 8, the Secretary shall carry out reasonable enquiries to establish if this is the case.

- 10.4 Where the Secretary considers that there may be reasons for concluding that a member or an applicant for membership may be ineligible or be disqualified for membership he shall advise that individual of those reasons in summary form and invite representations from the member or applicant for membership within 28 days or such other reasonable period as the Secretary may in his absolute discretion determine. Any representations received shall be considered by the Secretary and he shall make a decision on the member's or applicant's eligibility or disqualification as soon as reasonably practicable and shall give notice in writing of that decision to the member or applicant within 14 days of the decision being made.
- 10.5 If no representations are received within the said period of 28 days or longer period (if any) permitted under the preceding paragraph, the Secretary shall be entitled nonetheless to proceed and make a decision on the member's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from him.
- 10.6 Upon a decision being made under paragraphs 10.4 or 10.5 above that the Member is ineligible or disqualified from membership the member's name shall be removed from the register of members forthwith and he shall thereupon cease to be a member.
- 10.7 Any decision made under this paragraph to disqualify a member or an applicant for membership may be referred by the member or applicant concerned to the Dispute Resolution Procedure under Annex 8.
- 10.8 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 8.

11. Council of Governors – composition

- 11.1 The Trust is to have a Council of Governors, which shall comprise of both Elected and Appointed Governors.
- 11.2 The composition of the Council of Governors is specified in Annex 3.
- 11.3 The members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their constituency. The number of Governors to be elected by each constituency is specified in Annex 3.
- 11.4 More than half the members of the Council of Governors must be elected by members of the Public Constituency.
- 11.5 Four Governors must be elected by the Staff Constituency.
- 11.6 At least one Governor must be appointed by a Clinical Commissioning Group for which the Trust provides goods or services.
- 11.7 At least one Governor must be appointed by one or more qualifying local authorities.
- 11.8 A qualifying local authority is a local authority for an area which includes the whole or part of an area specified in the constitution as the area for a public constituency.
- 11.9 An organisation specified in the Constitution as a partnership organisation may appoint one or more Governors, the number to be appointed to be in line with Annex 3.

12. Council of Governors – election of Governors

- 12.1 Elections for elected Governors of the Council of Governors shall be conducted in accordance with the Rules for Elections, as may be varied from time to time.

- 12.2 The Rules for Elections, as may be varied from time to time, form part of this Constitution and are attached at Annex 4.
- 12.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this Constitution. For the avoidance of doubt, the Trust cannot amend the Model Rules.
- 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 three years (tenure).
- 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 tenure.
- 13.4 An Elected Governor may hold office for a period of up to three consecutive tenures.
- 13.5 Appointed Governors will cease to hold office if the sponsoring organisation withdraws its sponsorship of them.

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 Isles 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 Members will be disqualified as a Governor if they are not 18 years of age at the date they are nominated for election or appointment.
- A Governor may resign from that office at any time during the tenure of that office by giving notice in writing to the Secretary.
- 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 5.

15. Council of Governors – meetings of Governors

- 15.1 The Chairman of the Trust (appointed in accordance with the provisions of paragraph 22 below) or, in his absence, the Vice Chairman (appointed in accordance with the provisions of paragraph 23 below), shall preside at meetings of the Council of Governors.
- The Chairman of the meeting shall have the casting vote.
- 15.2 The Chief Executive and the other Directors (both Executive and Non-Executive) of the Board may be invited to attend the Council of Governors meetings.
- 15.3 Under the 2012 Act, Governors have the power to require one or more Directors to attend a meeting of the Council to obtain information on the performance of the

Trust and to help Governors decide whether to propose a vote on the performance of the Trust. Trusts must report the number of times this power is used in each year in their Annual Report.

- 15.4 Where a vote is proposed under s.15.3, a minimum of three-quarters of all Governors present at a general meeting of the Council must agree that the performance of the Trust is of such significant concern that action by the Council of Governors is required, such action to be confined to application of the statutory duties of Governors as set out in the 2006 and 2012 Acts.
- 15.5 Meetings of the Council of Governors shall be open to members of the public.
- 15.6 Members of the public may be excluded from all or part of any meeting by resolution of the Council of Governors on the grounds that:
- 15.6.1 publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
- 15.6.2 for other special reasons stated in the resolution and arising from the nature of the business or the proceedings; or
- 15.6.3 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.
- 15.7 Council of Governors meetings may be held at various times to suit the working arrangements of the Governors.

16. Council of Governors – Standing Orders

The Standing Orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 6. Amendment of these Standing Orders does not require amendment of the Constitution, as the current version of Standing Orders is deemed to prevail.

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 – expenses

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

Governors will be reimbursed expenses wholly incurred to allow attendance as determined by the Trust:

- Child care expenses actually incurred and receipted;
- Carer expenses actually incurred and receipted;
- Travel costs will be paid against expenses actually incurred and receipted for Public Transport or at the Public Transport mileage rate for personal car use.

The Trust will not remunerate Governors for loss of earnings.

19. Council of Governors – further provisions

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

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 (NEDs).
- 20.2 The Board of Directors is to comprise:
- 20.2.1 a Non-Executive Chairman
 - 20.2.2 up to 8 other Non-Executive Directors, 2 of whom may be non-voting Associate Non-Executive Directors;
 - 20.2.3 up to 6 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.
- 20.8 The Board shall determine whether each Non-Executive Director is independent in character and judgment and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the non-executive director's judgment.
- 20.9 At least half the Board, excluding the Chairman should comprise of independent Non-Executive Directors determined by the Board to be independent.
- 20.10 One of the independent directors will be appointed as the senior independent director for the remainder of his/her tenure by the Board of Directors in consultation with the Council of Governors.
- 20.11 In the event that the number of NED's (including the Chairman) is equal to the number of Executive Directors, the Chairman (and in his absence, the Vice Chairman), shall have the casting vote at meetings of the Board of Directors in accordance with the Standing Orders for Directors attached at Annex 7.
- 20.12 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

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 as identified in Annex 1
- 21.2 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 shall appoint or remove the Chairman of the Trust and the other Non-Executive Directors. The appointment shall require the approval of a majority of the members of the Council of Governors present and voting at the meeting.
- 22.2 Removal of a Non-Executive Director (including the Chairman) requires the approval of a minimum of three-quarters of all the members of the Council of Governors.

23. Board of Directors – appointment of Vice Chairman

- 23.1 The Council of Governors at a general meeting shall appoint one of the Non-Executive Directors as a vice chairman. The process to be followed in making this appointment is set out at Annex 8.

24. Board of Directors – appointment and removal of the Chief Executive and other executive directors

- 24.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 24.2 The appointment of the Chief Executive shall require the approval of a majority of the members of the Council of Governors present and voting at a meeting.
- 24.3 A committee consisting of the Chairman or Vice Chairman, the Chief Executive and other Non-Executive Directors shall appoint the other Executive Directors. A committee consisting of the Chairman or Vice Chairman, the Chief Executive and other Non-Executive Directors shall remove the other Executive Directors.
- 24.4 The Chief Executive of a Trust cannot become the Chairman of the same Trust

Board of Directors – disqualification

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

- (a) a person who is a member of the council of governors, or a governor or director of an NHS body or another NHS foundation trust;
- (b) a person who is a member of the patients' forum of an NHS organisation;
- (c) a person who is the spouse, partner, parent or child of a member of the board of directors of the Trust;
- (d) a person who is a member of a local authority's scrutiny committee covering health matters;
- (e) a person who has been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
- (f) a person who has made a composition or arrangement with, or granted a Trust deed for, their creditors and have not been discharged in respect of it;
- (g) a person who has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;
- (h) a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- (i) in the case of a non-executive director, they are no longer a member of the public constituency;
- (j) a person whose tenure of office as a Chair or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- (k) a person who has had their name removed, other than by reason of resignation, from any list prepared under sections 91, 106, 123 and 146 of the 2006 Act and have not subsequently had their name included on such a list;
- (l) a person who has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;

- (m) in the case of a non-executive director they have refused to fulfil any training requirement established by the Board of Directors; or
- (n) a person who has refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for directors.
- (o) a person who does not meet the requirements of the Fit and Proper Persons Test.

26. Board of Directors – Standing Orders

The Standing Orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 7. Amendment of these Standing Orders does not require amendment of the Constitution, as the current version of Standing Orders is deemed to prevail.

27. 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.

28. Board of Directors – remuneration and terms of service

The Board of Directors 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.

Council of Governors – Nomination and Remuneration Committee

The Council of Governors at a general meeting shall establish a Nomination and Remuneration Committee which under delegated authority from the Council of Governors, develops proposals on the remuneration and allowances and the terms and conditions of office, of the Chairman and the other Non-Executive Directors for approval by the Council of Governors at a general meeting.

29. Registers

The Trust shall have:

- 29.1 a register of members showing, in respect of each member, the constituency to which he belongs
- 29.2 a register of members of the Council of Governors;
- 29.3 a register of interests of members of the Council of Governors;
- 29.4 a register of Directors; and
- 29.5 a register of interests of the Directors.

30. Admission to and removal from the registers

The Trust Board shall nominate a Secretary who may or may not be an employee. The Secretary may not be a Governor or the Chief Executive or the Finance Director.

The Secretary shall be responsible for keeping the registers up to date from information received by them, and the registers may be kept in either paper or electronic form. Removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practical and in any event within 14 days of receipt.

Register of Members

Subject to paragraph 31 above, members must complete and sign an application in the form prescribed by the Secretary or follow the electronic application procedure available on the Trust's website.

The Secretary shall maintain the register in two parts. Part one, which shall be the register referred to in the 2006 Act, shall include the name of each Member and the constituency or class to which they belong, and shall be open to inspection by the public in accordance with the paragraphs below. Part two shall contain all the information from the application form and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party. Notwithstanding this provision the Trust shall extract such information as it needs in aggregate to satisfy itself that the actual membership of the Trust is representative of those eligible for membership and of its service-users and for the administration of the provisions of this Constitution.

Register of Governors

The register shall list the names of Governors, their category of membership of the Council of Governors (public, staff, partnership organisation) and an address through which they may be contacted which may be the Secretary's place of work.

Register of Interests of the Governors

The register shall contain the names of each Governor, whether he has declared any interests and, if so, the interests declared in accordance with this Constitution and/or the Standing Orders for Governors.

Register of Directors

The register shall list the names of Directors, their capacity on the Board of Directors and an address through which they may be contacted which may be the Secretary's place of work.

Register of Interests of Directors

The register shall contain the names of each Director, whether he has declared any interests and, if so, the interests declared in accordance with this Constitution and/or the Standing Orders for the Board of Directors.

31. Registers – inspection and copies

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

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.

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

- they are to be available for inspection free of charge at all reasonable times; and
- a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 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.

32. Documents available for public inspection

The Trust shall make the following documents available for inspection either in electronic or hard copy format by members of the public free of charge at all reasonable times:

- a copy of the current Constitution;
- a copy of the current Licence;
- a copy of the latest annual accounts and of any report of the Auditor on them;
- a copy of the latest annual report;
- a copy of the latest information as to its forward planning; and
- a copy of any notice given under section 52 of the 2006 Act.

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

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.

33. Auditor

The Trust is to have an Auditor.

The Council of Governors at a general meeting shall appoint or remove the Trust's Auditor.

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

The Board of Directors may resolve that its external auditors be appointed to carry out additional services outside the remit of the prescribed Foundation Trust audit work. Any such additional work is to be approved by the Council of Governors in accordance with the Trust's External Auditor Additional Services Policy.

34. 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.

35. Annual accounts

- 35.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 35.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 35.3 The accounts are to be audited by the Trust's auditor.
- 35.4 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.
- 35.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

36. Annual report and forward plans and non-NHS work

- 36.1 The Trust shall prepare an Annual Report and send it to Monitor.
- 36.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 36.3 The document containing the information with respect to forward planning (referred to above), shall be prepared by the Directors.
- 36.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 36.5 Each forward plan must include information about –
 - 36.5.1 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
 - 36.5.2 the income it expects to receive from doing so.
- 36.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 38.5.1 the Council of Governors must –
 - 36.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions, and

36.6.2 notify the Directors of the Trust of its determination.

- 36.7 If the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England, it may implement the proposal only if more than half of the members of Council of Governors of the Trust voting approve its implementation.

37. Council of Governors' receipt of annual accounts and reports

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

- 37.1 the annual accounts
- 37.2 any report of the auditor on them
- 37.3 the annual report.

38. Instruments

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

39. Addition and Amendment to the Constitution

The Trust may make additions and amendments to this Constitution (including its Annexes) with the joint approval of the Board of Directors and Council of Governors.

The proposed additions and/or amendments will be presented first to the Board of Directors for approval and subsequently to the Council of Governors. More than half of all Governors present at a general meeting must agree the proposed additions and/or amendments to the Constitution.

If the proposed changes affect the powers or duties of the Council of Governors, the membership must be given an opportunity to vote on these changes at the next Annual Members' Meeting. At least one member of the Council of Governors must attend this meeting to present the change. If more than half of the members voting agree, the changes remain in effect, otherwise they cease to have effect and the Trust must take such steps as are necessary to change its Constitution again or adopt any changes that are approved.

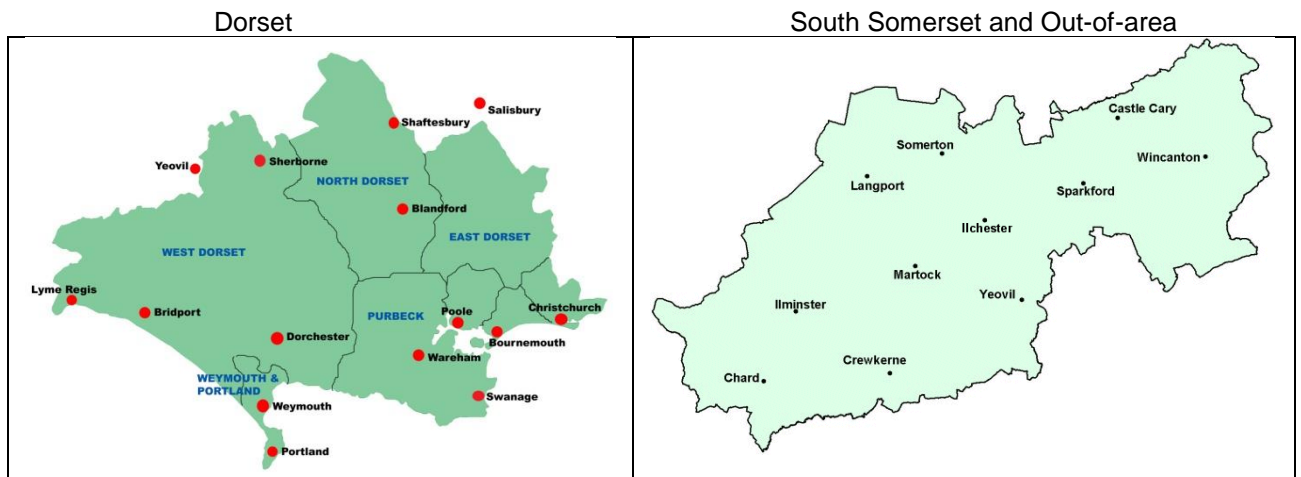
40. Annual Members' Meeting

The Trust must hold an Annual Members' Meetings to receive the Annual Report and Accounts and any report of the auditor. The Trust may, if agreed by at least half of the whole of the Council of Governors, combine the Annual Members' Meeting with the Governors' meeting which is held for the purpose of considering the Trust's Annual Report and Accounts (see s. 39 above).

41. Governors' Training and Development

The Board of Directors has a statutory duty to equip the Trust's Governors with the skills and knowledge they need to carry out their role, The Board will make every reasonable effort to ensure that each Governor is able to fulfil his role to the best of his ability.

ANNEX 1 – THE PUBLIC CONSTITUENCY



The Public Constituency consists of 5 constituencies which will be drawn from the following Local Authorities areas and will include a combined South Somerset and Out-of-area constituency to cover the rest of England:

Public Constituency	Detail
West Dorset	West Dorset District Council including Uplyme
Weymouth and Portland	Weymouth and Portland Borough Council
North Dorset	North Dorset District Council
Purbeck, East Dorset, Christchurch, Poole and Bournemouth	East Dorset District Council
	Christchurch Borough Council
	Poole Borough Council
	Bournemouth Borough Council
	Purbeck District Council
South Somerset and Rest of England	South Somerset District Council and Rest of England

The minimum number of members in the Public Constituency will be 1000.

ANNEX 2 – THE STAFF CONSTITUENCY

The Staff Constituency will not be divided into classes but will consist of four Members to the Council of Governors irrespective of profession or department allowing those members to focus on the development of the Trust rather than on the narrow interests of their respective profession or department.

The minimum number of members in the Staff Constituency will be 500.

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

Appointed Members (8)		Tenure		Role
Appointed Members from Statutory Organisations (2)				
Clinical Commissioning Group (CCG)	Dorset CCG	1	Organisational tenure = 3 yrs	To represent the Trust's main commissioners and key health economy partners
Local Authority	Dorset County Council	1	Organisational tenure = 3 yrs	To represent key local non-NHS local authority health economy partners
Appointed Members from Partnership Organisations (6)				
Voluntary and Charitable Sector	Dorset Kidney Fund Age UK Weldmar Hospicecare Trust Friends of Dorset County Hospital Diabetes UK Vacancy for further national/regional healthcare charity.	1 1 1 1 1 1	Organisational tenure = 3 yrs	To engage and assist the Trust in local developments
Elected Public Members (16)				
Local Authority Areas	West Dorset including Uplyme	6	3 yrs.	To represent the public and patients who are served by the NHS Foundation Trust
	Weymouth and Portland	5	3 yrs.	
	North Dorset	2	3 yrs.	
	Purbeck, East Dorset, Christchurch, Poole and Bournemouth Borough	2	3 yrs.	
	South Somerset and Rest of England	1	3 yrs.	
Elected Staff Members (4)				
	Staff Membership is not split into staff classes	4	3 yrs	To assist the Trust in development and delivery of services through active representation from those who deliver the services
TOTAL Council of Governors		28		

ANNEX 4**Dorset County Hospital NHS Foundation Trust Council of Governors Election Rules**

The Trust has adopted the Model Election Rules. It will determine the result of the election using the First Past the Post Option.

MODEL ELECTION RULES 2014

PART 1: INTERPRETATION

1. Interpretation

PART 2: TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

PART 3: RETURNING OFFICER

4. Returning officer
5. Staff
6. Expenditure
7. Duty of co-operation

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election
9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination forms
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination forms
17. Withdrawal of candidates
18. Method of election

PART 5: CONTESTED ELECTIONS

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

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll
24. Issue of voting information by returning officer

- 25. Ballot paper envelope and covering envelope
- 26. E-voting systems

The poll

- 27. Eligibility to vote
- 28. Voting by persons who require assistance
- 29. Spoilt ballot papers and spoilt text message votes
- 30. Lost voting information
- 31. Issue of replacement voting information
- 32. ID declaration form for replacement ballot papers (public and patient constituencies)
- 33. Procedure for remote voting by internet
- 34. Procedure for remote voting by telephone
- 35. Procedure for remote voting by text message

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

- 36. Receipt of voting documents
- 37. Validity of votes
- 38. Declaration of identity but no ballot (public and patient constituency)
- 39. De-duplication of votes
- 40. Sealing of packets

PART 6: COUNTING THE VOTES

- STV41. Interpretation of Part 6
- 42. Arrangements for counting of the votes
- 43. The count
- STV44. Rejected ballot papers and rejected text voting records
- FPP44. Rejected ballot papers and rejected text voting records
- STV45. First stage
- STV46. The quota
- STV47. Transfer of votes
- STV48. Supplementary provisions on transfer
- STV49. Exclusion of candidates
- STV50. Filling of last vacancies
- STV51. Order of election of candidates
- FPP51. Equality of votes

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

- FPP52. Declaration of result for contested elections
- STV52. Declaration of result for contested elections
- 53. Declaration of result for uncontested elections

PART 8: DISPOSAL OF DOCUMENTS

- 54. Sealing up of documents relating to the poll
- 55. Delivery of documents
- 56. Forwarding of documents received after close of the poll
- 57. Retention and public inspection of documents
- 58. Application for inspection of certain documents relating to election

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

- FPP59. Countermand or abandonment of poll on death of candidate

STV59. Countermand or abandonment of poll on death of candidate

PART 10: ELECTION EXPENSES AND PUBLICITY

Expenses

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

Publicity

- 63. Publicity about election by the corporation
- 64. Information about candidates for inclusion with voting information
- 65. Meaning of "for the purposes of an election"

PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES

- 66. Application to question an election

PART 12: MISCELLANEOUS

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

PART 1: INTERPRETATION

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS**2. Timetable**

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

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination forms to returning officer	Not later than the twenty eighth day before the day of the close of the 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

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

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

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.

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

5. Staff

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

6. Expenditure

6.1 The corporation is to pay the returning officer:

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

7. Duty of co-operation

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

- (a) full name,
- (b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication), and
- (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

- 11.1 The nomination form must state:
- (a) any financial interest that the candidate has in the corporation, and
 - (b) whether the candidate is a member of a political party, and if so, which party,
- and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility

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

13. Signature of candidate

- 13.1 The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:
- (a) they wish to stand as a candidate,
 - (b) their declaration of interests as required under rule 11, is true and correct, and
 - (c) their declaration of eligibility, as required under rule 12, is true and correct.
- 13.2 Where the return of nomination forms in an electronic format is permitted, the returning officer shall specify the particular signature formalities (if any) that will need to be complied with by the candidate.

14. Decisions as to the validity of nomination

- 14.1 Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:
- (a) decides that the candidate is not eligible to stand,
 - (b) decides that the nomination form is invalid,
 - (c) receives satisfactory proof that the candidate has died, or
 - (d) receives a written request by the candidate of their withdrawal from candidacy.
- 14.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:
- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
 - (b) that the paper does not contain the candidate's particulars, as required by

rule 10;

- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

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

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.

16.2 If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

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

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

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

20. The ballot paper

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

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

("declaration of identity")

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

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

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

Action to be taken before the poll

22. List of eligible voters

22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held

who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

22.2 The list is to include, for each member:

(a) a postal address; and,

(b) the member's e-mail address, if this has been provided

to which his or her voting information may, subject to rule 22.3, be sent.

22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

23. Notice of poll

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

(a) the name of the corporation,

(b) the constituency, or class within a constituency, for which the election is being held,

(c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,

(d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,

(e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,

(f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,

(g) the address for return of the ballot papers,

(h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;

(i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,

(j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,

(k) the date and time of the close of the poll,

(l) the address and final dates for applications for replacement voting information, and

(m) the contact details of the returning officer.

24. Issue of voting information by returning officer

24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following

information by post to each member of the corporation named in the list of eligible voters:

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

("postal voting information").

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

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

("e-voting information").

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

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

for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

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

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

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

26. E-voting systems

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

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

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

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

- (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
- (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (v) instructions on how to vote and how to make a declaration of identity,
 - (vi) the date and time of the close of the poll, and
 - (vii) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to

at the election;

- (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote,
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
- (f) prevent any voter from voting after the close of poll.

26.5

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

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

26.6

The returning officer shall ensure that the text message voting facility and text

messaging voting system provided will:

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

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

- 28.1 The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 28.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

29. Spoilt ballot papers and spoilt text message votes

- 29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
- (a) is satisfied as to the voter's identity; and

- (b) has ensured that the completed ID declaration form, if required, has not been returned.

29.4 After issuing a replacement ballot paper for a spoiled ballot paper, the returning officer shall enter in a list (“the list of spoiled ballot papers”):

- (a) the name of the voter, and
- (b) the details of the unique identifier of the spoiled ballot paper (if that officer was able to obtain it), and
- (c) the details of the unique identifier of the replacement ballot paper.

29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.

29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoiled text message vote, if he or she can obtain it.

29.7 The returning officer may not issue a replacement voter ID number in respect of a spoiled text message vote unless he or she is satisfied as to the voter’s identity.

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

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

30. Lost voting information

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

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

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

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

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

31. Issue of replacement voting information

- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
- (a) the name of the voter,
 - (b) the unique identifier of any replacement ballot paper issued under this rule;
 - (c) the voter ID number of the voter.

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

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

*Polling by internet, telephone or text***33. Procedure for remote voting by internet**

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

34. Voting procedure for remote voting by telephone

- 34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.
- 34.2 When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.

- 34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.
- 34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

35. Voting procedure for remote voting by text message

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

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

36. Receipt of voting documents

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

37. Validity of votes

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she

is to:

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

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

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

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

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

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

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

38. Declaration of identity but no ballot paper (public and patient constituency)¹

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

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

39. De-duplication of votes

39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been

¹ It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

used more than once to cast a vote in the election.

39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:

- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
- (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number

39.3 Where a ballot paper is disqualified under this rule the returning officer shall:

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
- (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
- (d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,
- (c) the list of spoiled ballot papers and the list of spoiled text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

and ensure that complete electronic copies of the internet voting records,

telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

PART 6: COUNTING THE VOTES

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

“non-transferable vote” means a ballot document:

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

or

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

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

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

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

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

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

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

“stage of the count” means:

(a) the determination of the first preference vote of each candidate,

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

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

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

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

42. Arrangements for counting of the votes

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

42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:

- (a) the board of directors and the council of governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes in the relevant election, and
 - (ii) a policy governing the use of such software, and
- (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

43.1 The returning officer is to:

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

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

43.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

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

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

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

STV44.3 Any text voting record:

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

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

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

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

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

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

FPP44.6 Any text voting record:

- (a) on which votes are given for more candidates than the voter is entitled to vote,
- (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (c) which is unmarked or rejected because of uncertainty,

shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.

FPP44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

FPP44.8 A text voting record on which a vote is marked:

- (a) otherwise than by means of a clear mark,

(b) by more than one mark,

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

FPP44.9 The returning officer is to:

(a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and

(b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

FPP44.10 The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:

(a) voting for more candidates than the voter is entitled to,

(b) writing or mark by which voter could be identified, and

(c) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of text voting records rejected in part.

STV45. First stage

STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.

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

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

STV46. The quota

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

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

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

STV47. Transfer of votes

STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference

votes are given for that candidate into sub- parcels so that they are grouped:

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

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

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

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

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

STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:

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

STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:

- (a) a transfer value calculated as set out in rule STV47.4(b), or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

STV47.8 Each transfer of a surplus constitutes a stage in the count.

STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:

- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
- (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.

STV47.11 This rule does not apply at an election where there is only one vacancy.

STV48. Supplementary provisions on transfer

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

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
- (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.

STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:

- (a) record the total value of the votes transferred to each candidate,
- (b) add that value to the previous total of votes recorded for each candidate and record the new total,
- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
- (d) compare:
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

STV48.3 All ballot documents transferred under rule STV47 or STV49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so

treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

STV49. Exclusion of candidates

STV49.1 If:

- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule STV50, one or more vacancies remain to be filled,

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

STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

- (a) ballot documents on which a next available preference is given, and
- (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).

STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.

STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub-parcels according to their transfer value.

STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).

STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.

STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.

STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the

next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.

STV49.10 The returning officer shall after each stage of the count completed under this rule:

- (a) record:
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
- (b) add that total to the previous total of votes recorded for each candidate and record the new total,
- (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
- (d) compare:
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

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

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

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

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

STV50. Filling of last vacancies

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

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

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

STV51. Order of election of candidates

- STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.
- STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.
- STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.
- FPP51.1 Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

FPP52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

FPP52.2 The returning officer is to make:

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule FPP44.5,
- (c) the number of rejected text voting records under each of the headings in rule FPP44.10,

available on request.

STV52. Declaration of result for contested elections

STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected –
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

STV52.2 The returning officer is to make:

- (a) the number of first preference votes for each candidate whether elected or

not,

- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule STV44.1,
- (f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

53. Declaration of result for uncontested elections

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

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

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

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

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

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

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

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

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

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

- (a) any voting documents are received by the returning officer after the close of the poll, or

- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement voting information are made too late to enable new voting information to be issued,

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

57. Retention and public inspection of documents

- 57.1 The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.
- 57.2 With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.
- 57.3 A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

- 58.1 The corporation may not allow:
- (a) the inspection of, or the opening of any sealed packet containing –
 - (i) any rejected ballot papers, including ballot papers rejected in part,
 - (ii) any rejected text voting records, including text voting records rejected in part,
 - (iii) any disqualified documents, or the list of disqualified documents,
 - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
 - (v) the list of eligible voters, or
 - (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,
- by any person without the consent of the board of directors of the corporation.
- 58.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- 58.3 The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –
- (a) persons,
 - (b) time,

(c) place and mode of inspection,

(d) production or opening,

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

58.4

On an application to inspect any of the documents listed in rule 58.1 the board of directors of the corporation must:

(a) in giving its consent, and

(b) in making the documents available for inspection

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

(i) that his or her vote was given, and

(ii) that Monitor has declared that the vote was invalid.

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

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

FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.

FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.

FPP59.5 The returning officer is to:

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

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

FPP59.6 The returning officer is to endorse on each packet a description of:

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

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

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

PART 10: ELECTION EXPENSES AND PUBLICITY

*Election expenses***60. Election expenses**

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

62.1 No person may:

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

62.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

*Publicity***63. Publicity about election by the corporation**

63.1 The corporation may:

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

as it considers necessary.

63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:

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

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

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

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

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

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

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

PART 12: MISCELLANEOUS

67. Secrecy

67.1 The following persons:

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

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

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

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

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

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

ANNEX 5**ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS****Eligibility to be a Governor**

A person may not become a Governor and, if already holding such office, will immediately cease to do so, if:

1. He is an Executive Director of the Trust, or an Officer or Director of another NHS Foundation Trust or any other NHS body, unless such Foundation Trust or NHS body is an appointing organisation which is appointing him under this Constitution;
2. He is under eighteen years of age;
3. He is a member of a local authority's scrutiny committee covering health matters;
4. Being a member of one of the public constituencies, he fails to sign a declaration in the form specified by the Council of Governors of,
 - (a) the particulars of his qualification to vote as a member of the Trust, and
 - (b) that he is not prevented from being a Governor;
5. If he is or has been subject to a sex offender order;
6. He is incapable by reason of mental disorder, illness or injury of managing or administering his property and affairs;
7. He has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
8. He is a person whose tenure of office as the Chairman or as an Officer or Director of a health service body has been terminated on the grounds that his appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
9. He has within the preceding five years been convicted in the British Isles of any offence and a sentence of imprisonment (whether suspended or not) without the option of a fine was imposed on him;
10. He has been declared by any NHS organisation as a vexatious complainant or has been removed from membership of another Foundation Trust.

Requirement of Governor to notify Trust

Where a person has been elected or appointed to be a Governor and he becomes disqualified from office under section 14 or under this annex of the constitution, he shall notify the Secretary in writing of such disqualification.

Termination of office and removal of Governors

A person holding office as a Governor shall immediately cease to do so if:

1. He resigns by notice in writing to the Secretary;
2. If it otherwise comes to the notice of the Secretary at the time the Governor takes office or later that the Governor is disqualified;
3. He fails to attend a minimum of two meetings of the Council of Governors in any Financial Year, unless the other Governors are satisfied that:
 - a. the absences were accepted as being due to reasonable causes; and

- b. he will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
4. In the case of an elected Governor, he ceases to be a member of the Trust;
 5. In the case of an appointed Governor, the appointing organisation terminates the appointment;
 6. He has failed to undertake training which the Council of Governors requires all Governors to undertake;
 7. He has failed to sign and deliver to the Secretary a statement in the form required by the Council of Governors confirming acceptance of the Governor's Code of Conduct;
 8. He is removed from the Council of Governors by a resolution approved by a majority of the remaining Governors present and voting in confidence at a general meeting of the Council of Governors on the grounds that:
 - a. he has committed a serious breach of the Governor's Code of Conduct, or
 - b. he has acted in a manner detrimental to the interests of the Trust.
 9. Any Member of the Council of Governors who is expelled from the Council of Governors as a breach of the conditions laid down by this constitution will not be allowed to be re-admitted to the Council of Governors within 5 years.
 10. If it comes to the notice of the Secretary to the Trust at the time of his appointment or later that the Member of the Council of Governors is disqualified, he shall immediately declare that the person in question is disqualified and notify him in writing to that effect. Upon receipt of any such notification, that person's tenure of office, if any, shall be terminated and he shall cease to act as a Member of the Council of Governors.
 11. The Council of Governors may establish a Standards Committee, to be chaired by the Lead Governor, for the purposes of considering instances which may lead to the removal or censure of a Governor. The Standards Committee shall provide a mechanism for Governor peer review and accountability and shall be established with formal Terms of Reference, to be agreed by the Council of Governors at an open meeting.

Council of Governors Vacancies

1. Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply:
 - Where the vacancy arises amongst the appointed Members, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office. Where the appointing organization fails to make such an appointment, the matter will be referred to the Board of Directors for consideration.
 - Where the vacancy arises amongst the elected Members, the Council of Governors shall be at liberty either:
 - to call an election within three months to fill the seat for the remainder of that term of office, or
 - to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office to fill the seat for any unexpired period of the term of office, or
 - to carry one or more vacancies (such number to be agreed by the Council of Governors) until the next set of elections due, so long as this is not detrimental to the conduct of Council business.

Statutory Duties, Roles and Responsibilities

The statutory duties and other roles and responsibilities of the Governors are to:

1. Appoint or remove the Chairman and the other Non-Executive Directors. The removal of a Non-Executive Director requires the approval of three-quarters of the Governors of the Council of Governors voting in confidence;
2. Establish a Nomination and Remuneration Committee (NRC) of the Governors to, under delegated authority, make proposals for approval by the Council of Governors regarding the appointment and re-appointment of the Non-Executive Directors (including the Chair and Vice Chair appointments), and the remuneration and allowances and the other terms and conditions of office of the Non-Executive Directors taking into account the current benchmarking information and national guidelines.
3. Appoint or remove the Trust's external auditor.
4. Approve (by a majority of the Council of Governors present and voting at a general meeting) an appointment by the Chairman and Non-Executive Directors of the Chief Executive.
5. Give the views of the Council of Governors to the Trust Board of Directors for the purposes of the preparation (by the Directors) of the document containing information as to the Trust's forward planning in respect of each financial year to be given to the Independent Regulator;
6. Hold the Non-Executive Directors individually and collectively to account for the performance of the Board.
7. Represent the interests of members as a whole and of the public.
8. Consider the annual accounts, any report of the auditor on them, and the annual report;
9. Respond to any matter as appropriate when consulted by the Board.
10. Develop the membership of the Trust and represent the interests of members.
11. Act in the best interests of the Trust and adhere to its values and Code of Conduct for Governors.
12. Regularly feedback information about the Trust, its vision and its performance to the constituencies and partnership organizations that either elected or appointed them.
13. Approve significant transactions by a majority of half of all Governors present and voting at a general meeting (Note: all Governors with an interest in the transaction to be voted on will be excluded from voting). Significant transaction in this context means:

Ratio	Description	Significant
Assets	The gross assets (total of fixed assets and current assets) subject to the transaction divided by the gross assets of the Trust	≥ 20%
Income	The income attributable to the assets or the contract associated with the transaction divided by the income of the Trust	≥ 20%
Consideration to total Trust capital	The gross capital (the market value of the target's shares and debt securities plus the excess of current liabilities over current assets) of the company or business being acquired/divested divided by the total capital of the Trust following completion	≥ 20%

14. Approve any proposed merger, acquisition, separation or dissolution of the Trust presented to the Council of Governors by the Board of Directors for approval. Half of all Governors must approve any such proposal.
15. Monitor has the power to establish a panel of persons to which a Governor can refer questions as to whether the Trust has failed or is failing to act in accordance with its Constitution or Chapter 5 of the 2006 Act. The Council of Governors must first approve the referral to the panel. Approval means at least half of the Governors present and voting at a general meeting agree with the referral. The Lead Governor shall act as the Council of Governor's contact with Monitor for the purposes of making a referral and throughout that referral. Governors should always seek to discuss any issues that may arise in the first instance with the Chairman or other Non-Executive Director. Referral to the panel should be viewed as a last resort only to be used if Governors are not able to obtain a resolution to their concerns through internal discussion.

Appointment of Non-Executive Directors, (including the Chair and the Vice-Chair)

1. The Council of Governors (CoG) is responsible for determining the processes to be adopted for the appointment and reappointment of Non-Executive Directors, the Chair and the Vice Chair.
2. To assist the CoG, the Council will establish a Nomination and Remuneration Committee (NRC) with duties delegated to it by the CoG as noted in its Terms of Reference.
3. The NRC will take advice from within the Foundation Trust and, where necessary, external advice will also be sought.
4. Where a Chair vacancy occurs at short notice, other than by notice from the Independent Regulator, the Vice Chair will fulfill the Chair's role during the interim period before a permanent appointment is made. If necessary, an independent Non-Executive Director should also be appointed to the Vice Chair position for the same period of time. The temporary appointments will be approved by the CoG at a general meeting.
6. The appointment or reappointment of the Chair, Vice Chair and Non-Executive Directors will be agreed at a general meeting of the CoG. Consideration will be given to the views of key stakeholders and the Trust Board, in particular the other Non-Executive Directors, when assessing the appointment or reappointment of the Chair or Vice Chair.

Referral of concerns relating to quality by the Council of Governors to the Care Quality Commission (CQC)

1. The Council of Governors collectively has the right to refer concerns regarding quality to the CQC. The Council of Governors must first approve the referral to the CQC. Approval means at least half of the Governors present and voting at a general meeting agree with the referral. The Lead Governor shall act as the Council of Governor's contact with the CQC for the purposes of making a referral and throughout that referral. Governors should always seek to discuss any issues that may arise in the first instance with the Chairman or other Non-Executive Director. Referral to the CQC should be viewed as a last resort only to be used if Governors are not able to obtain a resolution to their concerns through internal discussion.

Process for holding Non-Executive Directors to account for the performance of the Board

1. The Board will furnish the Council of Governors with regular reports relating to the Trust's operational and financial performance, quality and safety outcomes, and patient experience. In addition, ad hoc reports of a topical nature will be provided as deemed appropriate by the Board of Directors. Governors have the right to request further information on these or additional matters provided this information is relevant to the Governor role and/or not commercially or personally sensitive. Governors have the right to request that information presented to them is provided in a different format if that would serve to make the information more accessible.
2. Governors will be provided with suitable and sufficient opportunities to question Directors, including access to public Board meetings, Board Committee meetings, Director attendance at Council of Governor meetings, and Non-Executive Director attendance at Governors Working Group meetings. Governors and Directors can agree further opportunities for interaction as

deemed appropriate by both bodies.

3. Should Governors be dissatisfied with the responses they receive to their questions from one or more Non-Executive Directors, they should refer the matter to the Chairman who will coordinate the provision of a full and satisfactory response from the Chief Executive or other Executive Director(s). Should the Chairman not provide Governors with a satisfactory response, the Council of Governors can require one or more Executive Directors to attend the following open Council of Governors meeting. This requirement will be recorded in the Trust's Annual Report for that financial year.

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

FOREWORD

Dorset County Hospital NHS Foundation Trust is a Public Benefit Corporation established on 1 June 2007 under the National Health Service Act 2006.

As such, the Trust has specific powers to contract in its own name and to act as a corporate Trustee. In its latter role the Trust is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held on behalf of patients.

The principal place of business of the Trust is Dorset County Hospital.

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

A Code of Business Conduct lays down certain procedures where there is concern about possible conflicts of interest of Members.

A Code of Practice on Openness in the NHS sets out the requirements for public access to information on the NHS.

Dorset County Hospital NHS Foundation Trust believes that public service values lie at its heart. High standards of corporate and personal integrity based on a recognition that patients come first, is a fundamental value of the Trust.

Everything done by the Trust should be able to stand the test of scrutiny, public judgment on propriety, and professional codes of conduct.

There should be sufficient transparency about the Trust's activities to promote confidence between the Trust and its staff, patients and the public.

Council of Governors Standing Orders

Contents

Foreword

- 1 Interpretation**
- 2 General Information**
- 3 Composition of the Council of Governors**
Appointment and Removal of the Chairman and Vice Chairman of Council
Powers of Vice Chairman
- 4 Meetings of Council of Governors**
Meetings held in Public
Calling Meetings
Notice of Meetings
Setting the Agenda
Chairman of Meeting
Notices of Motions
Chairman's Ruling
Voting
Suspension of Standing Orders
Variation and Amendment of Standing Orders
Record of Attendance
Minutes
Quorum
- 5 Arrangements for Exercise of Functions by Delegation**
Emergency Powers
Delegation to Committees
- 6 Committees**
Appointment of Committees
Confidentiality
- 7 Declaration of Interests and Register of Interests**
Declaration of Interest
Register of Interests
- 8 Confidentiality**
- 9 Insurance**
- 10 Compliance – Other Matters**

1. Interpretation

- 1.1. Save as permitted by law, the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she shall be advised by the Chief Executive and Director of Finance).
- 1.2. Any expression to which a meaning is given in the Health Service Acts or in the Regulations or Orders made under the Acts shall have the same meaning in this interpretation and in addition:

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

"TRUST" means Dorset County Hospital NHS Foundation Trust.

"BOARD" shall mean the Chairman and Non-Executive Directors, appointed by the Council of Governors, and the Executive Directors appointed by the Non-Executive Directors and (except for his own appointment) by the Chief Executive.

"BUDGET" shall mean a resource, expressed in financial terms, and 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 non-executive director appointed by the Council of Governors i.e. the Vice Chairman, to take on the Chairman's duties if the Chairman is absent from the meeting or is otherwise unavailable.

"CHIEF EXECUTIVE" shall mean the chief officer of the Trust.

"COMMITTEE" shall mean a committee appointed by the Council of Governors.

"COMMITTEE MEMBERS" shall be persons formally appointed by the Council of Governors to sit on or to chair specific committees.

"DIRECTOR" shall mean a person appointed to the Board of Directors in accordance with the Trust's Constitution and includes the Chairman.

"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.

"OFFICER" means an employee of the Trust.

"SOs" mean Standing Orders.

2. General Information

- 2.1. The Purpose of the Council of Governors Standing Orders is to ensure that the highest standards of Corporate Governance and Conduct are applied to all Council meetings and associated deliberations.
- 2.2. All business shall be conducted in the name of the Trust.
- 2.3. The Board of Directors shall appoint Trustees to administer separately charitable funds received by the Trust and for which they are accountable to the Charity Commission.

3. Composition of the Council of Governors

- 3.1. The composition of the Council of Governors shall be, in accordance with Section 11 of the Trust's Constitution.
- 3.2. **Appointment and Removal of the Chairman and Vice Chairman of the Council of Governors.** These appointments shall be made by the Governors in accordance with Sections 22 and 23 of the Trust's Constitution.
- 3.3. **Duties of Vice Chairman** – Where the Chairman of the Trust has died or has otherwise ceased to hold office or where he has been unable to perform his duties as Chairman owing to illness, absence from England and Wales, or any other cause, references to the Chairman shall, so long as there is no Chairman able to perform his/her duties, be taken to include references to the Vice Chairman.

4. Meetings of the Council of Governors

4.1 Meetings held in Public

- 4.1.1 Meetings of the Council of Governors must be open to the public.
- 4.1.2 The Council of Governors may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that:
 - (i) Publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
 - (ii) There are special reasons stated in the resolution and arising from the nature of the business of the proceedings;
- 4.1.3 The Chairman may exclude any member of public from the meeting of the Council if he is interfering with or preventing any conduct of the meeting.
- 4.1.4 Meetings of the Council of Governors shall be held at least four times each year at times and places that the Council of Governors may determine.

4.2 Calling Meetings

Notwithstanding, 4.1.4 above, the Chairman may, in exceptional circumstances, call a meeting of the Council of Governors at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by a majority of the Governors, or if without so refusing, the Chairman does not call a meeting within fourteen days after requisition to do so, then the Governors may forthwith call a meeting provided they have been requisitioned to do so by more than half of the Governors.

4.3 Notice of Meetings

- 4.3.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted shall be delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him at least five clear days before the meeting. Lack of service of the notice on any Governor shall not affect the validity of a meeting.
- 4.3.2 Notwithstanding the above requirement for notice, the Chairman may waive notice on written receipt of the agreement of at least half of Governors.
- 4.3.3 In the case of a meeting called by Governors in default of the Chairman, those Governors calling the meeting shall sign the notice and no business shall be transacted at the meeting other than that specified in the notice.
- 4.3.4 Failure to serve such a notice on more than three quarters of Governors will invalidate the meeting. A notice will be presumed to have been served

at the time at which the notice would be delivered in the ordinary course of the post.

4.4 **Setting the Agenda**

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

4.4.2 A Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman or Secretary at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.

4.5 **Chairman of Meeting**

At any meeting of the Council of Governors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting, the Vice Chairman shall preside. Otherwise, such Governor as the Governors that are present shall choose shall preside.

4.6 **Notices of Motions**

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

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

4.6.3 Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Governors who give it and also the signature of four 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 six months; however the Chairman may do so if he/she considers it appropriate.

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

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

(a) An amendment to the motion.

(b) The adjournment of the discussion or the meeting.

(c) The appointment of an ad hoc committee to deal with a specific item of business.

(d) That the meeting proceeds to the next business.

(e) That the motion be now put.

Such a motion, if seconded, shall be disposed of before the motion, which was originally under discussion or about to be discussed. No amendment

to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

In the case of motions under (d) and (e), to ensure objectivity motions may only be put by a Governor who has not previously taken part in the debate.

4.7 Chairman's Ruling

4.7.1 Statements of Governors made at meetings of the Council 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 observed at the meeting. The Chairman has the right to bring any item under discussion to a conclusion if to allow the discussion to continue would impact upon the Council's ability to complete the other business to be transacted at the meeting within the allotted timescales.

4.8 Voting

4.8.1 Decisions at meetings shall be determined by a majority of the votes of the Governors present and voting unless otherwise specified in the Constitution. In the case of any equality of votes, the person presiding shall have a second or casting vote.

4.8.2 All decisions 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.

4.8.3 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.

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

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

4.9 Suspension of Standing Orders (SOs)

4.9.1 Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of members of the Council are present and that a majority of those present vote in favour of suspension.

4.9.2 A decision to suspend SOs shall be recorded in the minutes of the meeting.

4.9.3 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the directors.

4.9.4 No formal business may be transacted while SOs are suspended.

4.9.5 The Audit Committee shall review every decision to suspend SOs.

4.10 Variation and Amendment of Standing Orders

4.10.1 These Standing Orders shall be amended only if:

- a notice of motion has been given; and

- no fewer than half the total of the Governors vote in favour of amendment; and
- at least two-thirds of the Governors are present; and
- the variation proposed does not contravene a statutory provision.

4.10.2 Variation and amendment to the Standing Orders is an amendment to the Constitution. Under section 37 of the Act, an NHS Foundation Trust may make an amendment of its constitution with the approval of the regulator (Monitor).

4.11 **Record of Attendance**

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

4.12 **Minutes**

4.12.1 The Minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting and will be signed by the person presiding at it.

4.12.2 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.

4.12.3 Minutes shall be circulated in accordance with the Governors' wishes.

4.12.4 The Minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of Section 4.1 of these Standing Orders (required by Code of Practice on Openness in the NHS).

4.13 **Quorum**

4.13.1 No business shall be transacted at a meeting of the Council of Governors unless at least one-third of the whole number of the Governors is present.

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

5 **Arrangements for the Exercise of Functions by Delegation**

5.1 **Emergency Powers** – The powers which the Council of Governors has retained to itself within these Standing Orders may in emergency be exercised by the Chairman after having consulted at least five elected Governors. The exercise of such powers by the Chairman shall be reported to the next formal meeting of the Council for ratification.

5.2 **Delegation to Committees** – The Council of Governors may agree from time to time to the delegation of some or all of its non-statutory duties to committees or sub-committees, which it has formally constituted. The composition and terms of reference of these committees, or sub-committees, and their specific powers shall be approved by the Council.

6 **Committees**

6.1 Further provisions

- 6.2 The Council of Governors may appoint committees of the Council consisting wholly of persons who are Governors. Non-Governors may attend such committees if appropriate under the Committee's terms of reference but they shall have no vote.
- 6.3 A committee so appointed may appoint sub-committees consisting wholly of persons who are Governors. Non-Governors may attend such committees if appropriate under the Committee's terms of reference but they shall have no vote.
- 6.4 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees so established by the Council.
- 6.5 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Council) as the Council shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 6.6 Committees may not delegate their powers to a sub-committee unless expressly authorized by the Council of Governors.
- 6.7 The Council of Governors shall approve the membership to all committees/sub committees that it has formally constituted and shall determine the Chairman of each committee/sub-committee.

7 Confidentiality

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

8 Declaration of Interests and Register of Interests**8.1 Declaration of Interests**

Governors are required to comply with the Trust's Standards of Business Conduct and to declare interests that are relevant and material to the Council. All Governors should declare such interests on appointment and on any subsequent occasion that a conflict arises. Appointed Governors representing organisations that fall into the categories outlined at 8.1.1 and whose role on the Council of Governors is to represent the interests of such organisations and is clearly understood as such must declare third party interests.

8.1.1 Interests regarded as "relevant and material" are:

- a) Directorships, including non-executive directorships held in private companies or PLC's (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) Employment with any private company, business or consultancy.
- d) Significant share holdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS.

e) A position of authority in a charity or voluntary organisation in the field of health and social care.

f) Any connection with a voluntary or other organisation contracting for NHS services.

8.1.2 If a Governor has any doubt about the relevance of an interest, he should discuss it with the Chairman who shall advise him whether or not to disclose the interest.

8.1.3 At the time Governors' interests are declared, they should be recorded in the Council of Governors minutes and entered on a Register of Interests of Governors to be maintained by the Secretary. Any changes in interests should be declared at the next Council meeting following the change occurring.

8.1.4 Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report.

8.1.5 During the course of a Council meeting, if a conflict of interest is established, the Governor concerned shall, unless two thirds of those Governors present agree, otherwise withdraw from the meeting and play no part in the relevant discussion or decision.

8.1.6 There is no requirement for the interests of Governors' spouses or partners to be declared. [Note however that regulations require that the interest of Governors' spouses, if living together, in contracts should be declared].

8.2 **Register of Interests**

8.2.1 The Trust Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Governors.

8.2.2 Details of the Register will be kept up to date and reviewed annually.

8.2.3 The Register will be available to the public.

9. **Insurance**

9.1 Members of the Council of Governors who have acted honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly.

9.2 Any costs arising in respect of insurance cover for Governors will be met by the Foundation Trust.

10 **Compliance – Other Matters**

10.1 All Governors shall comply with the Code of Conduct for Governors. Governors that do not so comply may be referred by their peers to the Standards Committee as defined in Annex 5, Termination and Removal of Governors (s. 11).

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

Author(s)	Trust Secretary
Version	2014: v1
Version Date	February 2015
Implementation/approval Date	11 February 2015
Review Date	February 2018 (or sooner if legislative and/or regulatory/best practice governance changes require this)
Review Body	Audit Committee (but requiring Board approval)
Policy Reference Number	

i. INTRODUCTION

1. The Trust's Standing Orders have been compiled in accordance with the requirements and provisions of the NHS and Community Care Act 1990, Health and Social Care (Community Health and Standard) Act 2003, the National Health Service Act 2006 (the 2006 Act), the Health and Social Care Act 2008 (the 2008 Act), the Health Act 2009 (the 2009 Act), and the Health and Social Care Act 2012 (the 2012 Act).
2. Failure to comply with Standing Orders and Standing Financial Instructions is a disciplinary matter which could result in dismissal.

ii. STANDING ORDERS

1. Standing Orders set out the composition and responsibilities of the Board of Directors and the code of conduct to which its members must comply. They also set out how Board business should be conducted and contain the Trust's rules in relation to procurement.
2. A number of decisions in relation to the operation and management of the Trust are reserved for the Board of Directors (the Board), and the Scheme of Delegation (as referred to in Standing Orders) sets out what these are. It is important that all staff are aware of and comply with Standing Orders, Standing Financial Instructions and the Scheme of Delegation at all times.
3. The Trust shall deal with its regulator, 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 its Licence, or any financial, performance, governance and/or quality thresholds which Monitor may specify from time to time.
4. The Chairman, Chief Executive, or any other authorised person giving information to the public on behalf of the Trust, shall ensure that they follow the principles set out by the Committee on Standards in Public Life and that they adhere to the principles set out within the Independent Commission's Good Governance Standard for Public Service. They must also ensure that they adhere to the current version of NHS Foundation Trust Code of Governance as revised and issued by Monitor from time to time.

<u>CONTENTS</u>		Page
SECTION A		
INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS AND STANDING FINANCIAL INSTRUCTIONS		6
SECTION B – STANDING ORDERS		
1.	INTRODUCTION	
1.1	Statutory Framework	8
1.2	NHS Regulatory Framework	9
1.3	Delegation of Powers	9
2.	THE BOARD OF DIRECTORS: COMPOSITION OF MEMBERSHIP, TENURE AND ROLE OF MEMBERS	9
2.1	Composition of the Board of Directors	10
2.2	Tenure of Office	11
2.3	Disqualification as a Director	12
2.4	Executive Directors	13
2.5	Corporate Role of the Board and Responsibilities	13
2.6	Schedule of Matters Reserved to the Board and Scheme of Delegation	14
2.7	Lead Roles for Board Members	14
2.8	Senior Independent Director	14
3.	MEETINGS OF THE BOARD OF DIRECTORS	14
3.1	Calling Meetings	14
3.2	Notice of Meetings and the business to be transacted	14
3.3	Agenda and Supporting Papers	15
3.4	Admissibility of Papers	15
3.5	Petitions	15
3.6	Notice of Motion	16
3.7	Emergency Motions	16
3.8	Motions: Procedure at and during a meeting	16
3.9	Motion to Rescind a Resolution	18
3.10	Chairman of meeting	18
3.11	Chairman's ruling	18
3.12	Quorum	18
3.13	Voting	19
3.14	Suspension of Standing Orders	19
3.15	Variation and amendment of Standing Orders	20
3.16	Record of Attendance	20
3.17	Minutes	20
3.18	Interest of Directors in Contracts and Other Matters on account of pecuniary interests	20
3.19	Failure to Declare an Interest	21
3.20	Admission of Public and Press	21
3.21	Observers at Trust meetings	22
4.	APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES	22
4.1	Appointment of Committees	22
4.2	Confidential Proceedings	23
4.3	Applicability of Standing Orders and Standing Financial Instructions to Committees	23
4.4	Terms of Reference	24
4.5	Delegation of Powers by Committees to Sub-Committees	24
4.6	Approval of Appointments to Committees	24
4.7	Appointments for Statutory functions	24

4.8	Committees to be established by the Board	24
	Audit Committee	24
	Remuneration and Terms of Service Committee	25
	Charitable Funds Committee	25
	Other Committees	25
5.	ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION	25
	Delegation of functions to Committees, Officers or other bodies	
5.1	Emergency powers and urgent decisions	25
5.2	Delegation of Committees	26
5.3	Delegation to Officers	26
5.4	Schedule of matters reserved to the Board and Scheme of Delegation of Powers	26
5.5	Duty to report non-compliance with Standing Orders and Standing Financial Instructions	27
5.6	Overriding Standing Orders	27
5.7		27
6.	OVERLAP WITH OTHER TRUST POLICY STATEMENTS/ PROCEDURES, REGULATIONS AND STANDING FINANCIAL INSTRUCTIONS	27
	Policy statements: general principles	
6.1	Specific Policy statements	27
6.2	Standing Financial Instructions	27
6.3	Specific guidance	28
6.4	Provider Licence, Health Legislation	28
6.5		28
7.	DUTIES AND OBLIGATIONS OF BOARD MEMBERS/ DIRECTORS AND SENIOR MANAGERS UNDER THE STANDING ORDERS	28
	Declaration of Interests	28
7.1	Requirements for Declaring Interests and applicability to Board	
	Interests which are relevant and material	28
	Advice on Interests	29
	Record of Interests in Board of Directors' minutes	29
	Publication of declared interests in Annual Report	29
	Conflicts of interest which arise during the course of a meeting	30
	Register of Interests	30
7.2	Exclusion of Chairman and Members in Proceedings on Account of Pecuniary Interest	30
7.3	Definition of terms used in interpreting 'Pecuniary' interest	30
	Exclusion in proceedings of the Board of Directors	31
	Waiver of Standing Orders made by the Secretary of State for Health	32
	Standards of Business Conduct Policy	34
7.4	- Trust Policy and National Guidance	34
	- Interest of Officers in Contracts	34
	- Canvassing of, and Recommendations by, Members in relation to appointments	34
	Relatives of Members or Officers	34
	Acceptance of Gifts	35
8.	CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS	35
8.1	Custody of Seal	35
8.2	Sealing of Documents	36
8.3	Register of Sealing	36
8.4	Signature of documents	36
9.	DISPOSALS	36
10.	IN HOUSE SERVICES	37

11.	SIGNATURE OF DOCUMENTS	37
12.	MISCELLANEOUS	37
13.	RELATIONSHIP BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS	38
14.	TENDERING AND CONTRACT PROCEDURE	39
15.	APPENDICES	43
15.1	Code of Conduct for Board Nolan Principles for Public Life Committee Terms of Reference	

SECTION A – INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS AND STANDING FINANCIAL INSTRUCTIONS

- 1.1 Save as otherwise permitted by law, at any meeting, the Chairman of the NHS Foundation Trust (NHSFT) shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Chief Executive and/or Secretary to the Board).
- 1.2 Any expression to which a meaning is given in the National Health Service Act 2006 shall have the same meaning in these Standing Orders and Standing Financial Instructions and in addition:
- a. **"Accountable Officer"** means the NHS Officer responsible and accountable for funds entrusted to the Trust. The officer shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust the Accountable Officer shall be the Chief Executive.
 - b. **"Trust"** means the Dorset County Hospital NHS Foundation Trust.
 - c. **"Board of Directors or Board"** means the Chairman, Executive and Non-Executive Directors of the NHSFT collectively as a body.
 - d. **"Budget"** means 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.
 - e. **"Budget holder"** means the director or employee with delegated authority to manage finances (Income and Expenditure) for a specific area of the organisation.
 - f. **"Chairman of the Board", "Chairman of the Council" or "Chairman of the Trust"** is the 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 Vice-Chairman of the Trust if the Chairman is absent from the meeting or is otherwise unavailable.
 - g. **"Chief Executive"** means the chief officer and the accounting officer of the NHSFT.
 - h. **"Council of Governors"** means the Council of Governors of the NHSFT as described by the NHSFT's Constitution.
 - i. **"Commissioning"** means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources.
 - j. **"Committee"** means a committee or sub-committee created and appointed by the Board of Directors or Council of Governors.
 - k. **"Committee members"** means persons formally appointed by the Board or Council to sit on or to chair specific committees.
 - l. **"Constitution"** means the NHSFT's Constitution as approved by the Board of Directors and Council of Governors.
 - m. **"Contracting and procuring"** means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.
 - n. **"Director of Finance and Resources"** means the Chief Financial Officer of the Trust.

- o. **"Executive Director"** means a Member of the Board of Directors who holds an executive office of the Trust.
- p. **"Funds held on trust"** shall mean those funds which the Trust holds on date of incorporation, receives on distribution by statutory instrument or chooses subsequently to accept under powers derived under S.90 of the NHS Act 1977, as amended. Such funds may or may not be charitable.
- q. **"Monitor"** means the office or an officer of the sector regulator for health services in England.
- r. **"Nominated officer"** means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.
- s. **"Non-Executive Director"** means a Member of the Board of Directors who does not hold an executive office of the Trust and is appointed by the Council of Governors.
- t. **"Officer"** means employee of the NHSFT or any other person holding a paid appointment or office with the NHSFT.
- u. **"SFIs"** means Standing Financial Instructions.
- v. **"SOs"** means Standing Orders for the Board of Directors.
- w. **"Trust Secretary"** means a person who may be appointed to act independently of the Board to provide advice on corporate governance issues.
- x. **"Vice-Chairman"** means the non-officer member appointed by the Council of Governors to take on the Chairman's duties if the Chairman is absent for any reason.

Wherever possible, references to gender incorporate both male and female. Any references to one gender alone are made for ease of reference only and should be read to apply to either male or female persons.

SECTION B – STANDING ORDERS

1. INTRODUCTION

1.1 Statutory Framework

- a. Dorset County Hospital NHS Foundation Trust (the Trust) is a statutory body which became a public benefit corporation on 1 December 2007 following its authorisation as a NHS Foundation Trust by Monitor pursuant to the National Health Service Act 2006 (the 2006 Act).
- b. The principal place of business of the Trust is Williams Avenue, Dorchester, Dorset DT1 2JY.
- c. The Trust is governed by the 2006 and 2012 Acts, its Constitution and its Licence. The Board of Directors is required to adopt Standing Orders for the regulation of its proceedings and business.
- d. 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. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.
- e. These Standing Orders bring together all the relevant information for the Board of Directors included in the Constitution and supporting annexes and can be amended from time to time under Section 26 and Annex 7 Section 6 of the Constitution.

- f. The Trust will also be bound by such other statutes and legal provisions which govern the conduct of its affairs.

1.2 NHS Regulatory Framework

- a. In addition to the statutory requirements, Monitor, the Care Quality Commission and other healthcare regulatory bodies as may exist may issue further requirements to which the Trust must adhere.
- b. The Constitution provides for the Trust to draw up a Schedule of Decisions Reserved to the Board and a Scheme of Delegation to enable responsibility to be clearly delegated to Committees of the Board and individual Directors. The Constitution also provides for the establishment of Audit and Remuneration Committees and sets out arrangements for dealing with possible conflicts of interests of Board Directors. The Codes of Conduct makes various requirements concerning possible conflicts of interest of Board members.
- c. The Code of Practice on Openness in the NHS sets out the requirements for public access to information on the NHS. This is also subject to the Freedom of Information Act 2000.

1.3 Delegation of Powers

The Board has powers to delegate and make arrangements for delegation. The Standing Orders set out the detail of these arrangements. Under the Standing Order relating to the Arrangements for the Exercise of Functions (SO 5) the Board is given powers to "make arrangements for the exercise, on behalf of the Board, of any of their functions by a committee, sub-committee or joint committee appointed by virtue of Standing Order 4, or by an officer of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit or as the Secretary of State may direct". Delegated Powers are covered in a separate document ('Reservation of Powers and Scheme of Delegation'). This document has effect as if incorporated into the Standing Orders.

2. THE BOARD OF DIRECTORS: COMPOSITION OF MEMBERSHIP, TENURE AND ROLE OF MEMBERS

All business shall be conducted in the name of the NHSFT. The business of the NHSFT is to be managed by the Board of Directors who, subject to the Constitution, shall exercise all the powers of the NHSFT. A third party dealing in good faith with the NHSFT shall not be affected by any defect in the process by which Directors are appointed or any vacancy on the Board of Directors.

All funds received in trust shall be held in the name of the NHSFT as corporate trustee.

The powers of the NHSFT established under statute shall be exercised by the Board meeting in public session except as otherwise provided for in Standing Order 4.

The NHSFT will be subject to the general duty to consult and involve patients and the public, and to seek assurance that the appropriate consultation process has been adhered to in line with national guidance.

2.1 Composition of the Membership of the Board

The Board shall consist of Executive Directors, Non-Executive Directors and a Chairman. The Chairman and Non-Executive Directors of the Trust are appointed by the Council of Governors at a General Meeting. The Council of Governors also approves the appointment of the Chief Executive.

- a. **The role of the Chairman is to:-**
 - o Provide leadership to the Board and promote the highest standards of integrity, probity and corporate governance throughout the organisation and particularly at the level of the Board;

- Lead the Board in establishing effective decision-making processes and acting as the guardian of due process;
 - Ensure that constructive relationships based on candour, trust and mutual respect exist between Executive and Non-Executive Directors, elected and appointed members of the Council of Governors and between the Board of Directors and Council of Governors;
 - Provide general leadership of the Board of Directors and the Council of Governors, ensuring that the Board and Council work together effectively;
 - Enable all Board members to make a full contribution to the Board's affairs and ensure that the Board acts collectively;
 - Set a Board agenda that is focused on strategy and risk, performance, quality and accountability;
 - Ensure the Board has adequate support and is provided efficiently with all the necessary data on which to base informed decisions;
 - Lead Non-Executive Board members, through a formally constituted Remuneration Committee, on the appointment, appraisal and remuneration of the Chief Executive and (with the latter) other Executive Board members;
 - Appoint effective and suitable Non-Executive Board members to Committees of the Board; and,
 - Advise the Governors on the performance of Non-Executive Board members.
 - Conduct annual appraisals of the Non-Executive Directors.
 - Ensure that the Council of Governors receives training and development to enable them to effectively carry out their role.
 - Set an agenda for the Council of Governors that is focused on strategy, quality, Trust and Board performance, set out in such a way that it facilitates the Councils' contribution to strategy and to holding the Non-Executive Directors (including the Chairman) to account for the performance of the Board.
- b. **The role of a Non-Executive is to:**
- Support the Chairman, Chief Executive and Executive Directors in promoting the Trust's values;
 - Constructively challenge the proposed decisions of the Board and ensure that appropriate challenge is made in all circumstances;
 - Contribute to the development of strategy;
 - Support a positive culture throughout the Trust and adopt behaviours in the Board Room and elsewhere that exemplify the corporate culture;
 - Scrutinise the performance of the Executive management in meeting agreed goals and objectives;
 - Appoint and determine appropriate levels of remuneration for the Chief Executive (whose appointment is subject to the approval of the Council of Governors) and Executive Directors;
 - Develop an ongoing dialogue with the Council of Governors on the progress made in delivering the Trust's strategic objectives, the high level financial and operational performance of the Trust.
- c. A **Chief Executive** (who is the accountable officer), who is appointed (and removed) by the Chairman and Non-Executive Directors, and whose appointment is subject to the approval of a majority of the members of the Council of Governors present and voting at a meeting.
- d. Up to five **other Executive Directors** appointed (and removed) by a Committee consisting of the Chairman, Chief Executive and the other Non-Executive Directors. These must include a Finance Director, a registered medical practitioner or registered dentist (within the meaning of the Dentists Act 1984) and a Registered Nurse or Midwife.
- e. **All Board members** shall subscribe to the Code of Conduct and Accountability for NHS Boards 2004 (See Appendix A).
- f. The Council of Governors shall elect one of the Non-Executive Directors to be **Vice Chairman** of the Board. If the Chairman is unable to discharge his/her office as Chairman of the Trust, the Vice Chairman of the Board shall be acting Chairman of the Trust. The Board, in consultation with the Governors, may appoint one of the

Non-Executive Directors to act as the **Senior Independent Director** (SID). The SID may be the same person as the Vice Chairman but need not be.

- g. The Trust shall have a **Secretary** who may be an employee. The Secretary may not be a Council Member, or the Chief Executive, or the Finance Director. The Secretary shall be accountable to the Chief Executive and their functions shall be as listed in the Constitution.

2.2 Tenure of Office

- a. The tenure of office for Directors shall be:-

Chairman – as determined by the Council of Governors.

Non-Executive Directors – as determined by the Council of Governors.

Chief Executive and Director of Finance – for the period of their employment in those posts.

Other Executive Directors – for the period of their employment in those posts.

- b. Any re-appointment of a Non-Executive Director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with procedures approved by the Board.
- c. The Chairman or a Non-Executive Director may resign his/her office at any time during the period for which they were appointed by giving notice in writing to the Council of Governors.
- d. Where a Non-Executive Director is appointed to be the Chairman of the Trust, his/her tenure of office as a Non-Executive Director shall terminate when his/her appointment as Chairman takes effect and time served as a Non-Executive Director shall not count towards time served as Chairman.

2.3 Disqualification as a Director

A person may not become or continue as a Director of the Trust if:-

- a. He/she is not deemed a “fit and proper person” in accordance with Monitor’s provider licence.
- b. He/she is a member of the Council of Governors;
- c. He/she has been adjudged bankrupt or his/her estate has been sequestrated and in either case he/she has not been discharged;
- d. He/she has made a composition or arrangement with, or granted a Trust deed for, his/her creditors and has not been discharged in respect of it;
- e. He/she has within the preceding five years been convicted in the British Isles of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;
- f. He/she is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- g. In the case of a Non-Executive Director, he/she is no longer a member of one of the public constituencies;
- h. He/she is a person whose tenure of office as a Chairman or as a member or Director of a health service body has been terminated on the grounds that his/her appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

- i. He/she has had his/her name removed, by a direction under section 46 of the 1977 Act, from any list prepared under Part II of that Act, and has not subsequently had his/her name included on such a list;
- j. He/she has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- k. In the case of a Non-Executive Director, he/she has refused to fulfil any training or appraisal requirement established by the Board; or
- l. He/she has failed to sign and deliver to the Trust Secretary a statement in the form required by the Board confirming acceptance of the Code of Conduct for NHS Managers.
- m. For cessation of disqualification, see Appendix B.

2.4 Executive Directors

- a. Executive Directors are usually employees of the Trust. However a person holding a post in a university or a person seconded to work for the Trust may also be appointed as an Executive Director.
- b. Executive Directors, including the Chief Executive, may be removed from the Board in line with due process if, in the view of the appointing body, it is not in the interests of the Trust for them to continue as a Director. If any Executive Director is suspended from his post with the Trust he will also be suspended from being a Director for the period of his suspension.
- c. Two people who job-share may be appointed as Executive Directors of the Trust but shall count as one Director for the purpose of SO 1. Both may attend meetings of the Trust but they have one vote between them and count as one person for the purpose of a quorum, whether either or both attend. In the event of disagreement between the two Directors no vote may be cast.

2.5 Corporate Role of the Board and Responsibilities

- a. The Board is held accountable by Monitor on behalf of the Secretary of State for the following key functions:-
 - o To formulate strategy;
 - o To ensure accountability by holding the organisation to account for the delivery of the strategy and through seeking assurance that systems of control are robust and reliable;
 - o Shaping a positive culture for the Board and the organisation;
 - o To, individually and collectively, act with a view to promoting the success of the Trust so as to maximise the benefits for the members of the corporation as a whole and for the public;
 - o To maintain and improve quality of care;
 - o To ensure compliance with all applicable laws, regulation and statutory guidance.
 - o To work in partnership with patients, carers, local health organisations, local government authorities and others to provide safe, effective, accessible, and well-governed services for patients.
- b. All business shall be conducted in the name of the Trust.
- c. All funds received in trust shall be held in the name of the Trust as corporate trustee.
- d. The powers of the Trust established under statute shall be exercised by the Board meeting in public session except as otherwise provided for in Standing Order No. 3.
- e. The Board shall define and regularly review the functions it exercises on behalf of the Secretary of State.

2.6 Reservation of Powers and Scheme of Delegation

The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in the document entitled 'Reservation of Powers and Scheme of Delegation' and shall have effect as if incorporated into the Standing Orders. Those powers which it has delegated to officers and other bodies are contained in the Scheme of Delegation.

2.7 Lead Roles for Board Members

The Chairman will ensure that the designation of Lead Roles or appointments of Board members as required by the Department of Health or as set out in any statutory or other guidance will be made in accordance with that guidance or statutory requirement (e.g. appointing a Lead Board Member with responsibilities for Infection Control, Medical Revalidation, Information Risk, the Caldicott Guardian function, etc.).

2.8 Senior Independent Director

The Senior Independent Director shall perform the role set out in "The NHS Foundation Trust Code of Governance" (2010, revised 2013 and 2014) issued by Monitor. The Senior Independent Director shall be available to members and Governors who have concerns that they do not feel they can raise with the Chairman or any Executive Director of the NHSFT. Recourse to the Senior Independent Director shall not replace the right to instigate the dispute resolution procedure as set out in the Constitution.

3. MEETINGS OF THE BOARD OF DIRECTORS

3.1. Calling meetings

- a. Ordinary meetings of the Board shall be held at regular intervals at such times and places as the Chairman may determine.
- b. The Chairman of the Trust may call a meeting of the Board at any time.
- c. One third or more members of the Board may requisition a meeting in writing. If the Chairman refuses, or fails, to call a meeting within seven days of a requisition being presented, the members signing the requisition may forthwith call a meeting.

3.2. Notice of Meetings and the Business to be transacted

- a. Before each meeting of the Board a written notice specifying the business proposed to be transacted shall be delivered to every member, or sent by post to the usual place of residence of each member, or sent by email, so as to be available to members at least 3 clear days before the meeting. Want of service of such a notice on any member shall not affect the validity of a meeting.
- b. In the case of a meeting called by members in default of the Chairman calling the meeting, the notice shall be signed by those members.
- c. No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under Standing Order 3.6.
- d. A member desiring a matter to be included on an agenda shall make his/her request to the Chairman at least 15 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 15 days before a meeting may be included on the agenda at the discretion of the Chairman.
- e. Before each meeting of the Board 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 and/or on the Trust's website at least 3 clear days before the meeting, (required by the Public Bodies (Admission to Meetings) Act 1960 Section 1 (4) (a)).

3.3. Agenda and Supporting Papers

The Agenda will be sent to members a minimum of 5 days (including Saturdays and Sundays) before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched (electronically or in hard copy) no later than 3 clear days before the meeting, save in emergency.

3.4. Admissibility of papers

Board papers must:-

- a. be written using the appropriate template and contain clear recommendations for consideration by the Board; and
- b. be submitted to the Trust Secretary (or his/her nominee) for dispatch a minimum of 3 clear days before the date of the Board meeting, to facilitate the timely distribution of papers.

The Trust Secretary has the delegated authority of the Board to remove an item from the agenda if it is not received in time or to a suitable standard or is not on the agenda for the meeting and does not have Chairman's approval for late inclusion on the agenda (SO 3.2 c and d).

3.5. Petitions

For the purposes of these Standing Orders, a petition is defined as "a document embodying a formal written request for some form of action or the consideration of some matter by the Board". Where a petition has been received by the Trust the Chairman shall include the petition as an item for the agenda of the next meeting.

3.6. Notice of Motion

- a. Subject to the provision of Standing Orders 3.8 'Motions: Procedure at and during a meeting' and 3.9 'Motions to rescind a resolution', a member of the Board wishing to move a motion shall send a written notice to the Chief Executive who will ensure that it is brought to the immediate attention of the Chairman.
- b. The notice shall be delivered at least 15 clear days before the meeting. The Chief Executive shall include in the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

3.7. Emergency Motions

Subject to the agreement of the Chairman, and subject also to the provision of Standing Order 3.8 'Motions: Procedure at and during a meeting', 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 the item shall be final.

3.8. Motions: Procedure at and during a meeting

a. 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.

b. Contents of motions

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

- the receipt 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.
- c. Amendments to motions**
- i. A motion for amendment shall not be discussed unless it has been proposed and seconded.
 - ii. Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board.
 - iii. 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.
- d. Rights of reply to motions**
- i. 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.
 - ii. 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.
- e. Withdrawing a motion**
- A motion, or an amendment to a motion, may be withdrawn.
- f. Motions once under debate**
- i. When a motion is under debate, no motion may be moved other than:-
 - an amendment to the motion;
 - the adjournment of the discussion, or the meeting;
 - that the meeting proceed to the next business;
 - that the question should be now put;
 - the appointment of an 'ad hoc' committee to deal with a specific item of business;
 - that a member/director be not further heard;
 - a motion under Section 1 (2) or Section 1 (8) of the Public Bodies (Admissions to Meetings) Act 1960 resolving to exclude the public, including the press (see Standing Order 3.20).
 - ii. In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a member of the Board who has not taken part in the debate and who is eligible to vote.
 - iii. If a motion to proceed to the next business or that the question be now put, is carried, the Chairman should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

3.9. Motion to Rescind a Resolution

- a. Notice of motion to 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 member who gives it and also the signature of three other members, and 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.
- b. When any such motion has been dealt with by the Board it shall not be competent for any director/member other than the Chairman to propose a motion to the same effect within six months. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

3.10. Chairman of meeting

- a. At any meeting of the Board the Chairman, if present, shall preside. If the Chairman is absent from the meeting, the Vice-Chairman (if the Council of Governors has appointed one), if present, shall preside.
- b. If the Chairman and Vice-Chairman are absent, such member (who is not also an Officer Member of the Trust) as the members present shall choose shall preside.

3.11. Chairman's ruling

The decision of the Chairman of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

3.12. Quorum

- a. No business shall be transacted at a meeting unless at least one-half of the whole number of the Chairman and members (including at least one member who is also an Officer Member of the Trust and one member who is not) is present.
- b. An Officer in attendance for an Executive Director (Officer Member) but without formal acting up status may not count towards the quorum.
- c. If the Chairman or member has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see SO No.7) that person 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.

3.13. Voting

- a. Save as provided in Standing Orders 3.14 – Suspension of Standing Orders and 3.15 – Variation and Amendment of Standing Orders, every question put to a vote at a meeting shall be determined by a majority of the votes of members present and voting on the question. In the case of an equal vote, the person presiding (i.e. the Chairman of the meeting, shall have a second, and casting vote.
- b. At the discretion of the Chairman, all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chairman directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.
- c. If at least one third of the members present so request, the voting on any question may be recorded so as to show how each member present voted or did not vote (except when conducted by paper ballot).
- d. If a member so requests, their vote shall be recorded by name.

- e. In no circumstances may an absent member vote by proxy. Absence is defined as being absent at the time of the vote.
- f. A manager who has been formally appointed to act up for an Officer Member during a period of incapacity or temporarily to fill an Executive Director vacancy shall be entitled to exercise the voting rights of the Officer Member.
- g. A manager attending the Board meeting to represent an Officer Member during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Officer Member. An Officer's status when attending a meeting shall be recorded in the minutes.
- h. For the voting rules relating to joint members see Standing Order 2.4.

3.14. Suspension of Standing Orders

- a. Except where this would contravene any statutory provision or any direction made by the Secretary of State or the rules relating to the Quorum (SO 3.12), any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Board are present (including at least one member who is an Officer Member of the Trust and one member who is not) and that at least two-thirds of those members present signify their agreement to such suspension. The reason for the suspension shall be recorded in the Board's minutes.
- b. A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairman and members of the Board.
- c. No formal business may be transacted while Standing Orders are suspended.
- d. The Audit Committee shall review every decision to suspend Standing Orders.

3.15. Variation and amendment of Standing Orders

These Standing Orders shall not be varied except in the following circumstances:

- o upon a notice of motion under Standing Order 3.6;
- o upon a recommendation of the Chairman or Chief Executive included on the agenda for the meeting;
- o that two thirds of the Board members are present at the meeting where the variation or amendment is being discussed, and that at least half of the Board's Non-Officer members vote in favour of the amendment;
- o providing that any variation or amendment does not contravene a statutory provision or direction made by the Secretary of State.

3.16. Record of Attendance

The names of the Chairman and Directors/members/officers present at the meeting shall be recorded in the minutes of the meeting.

3.17. Minutes

- a. The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting, following which they shall be signed by the person presiding at it.
- b. No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate.

3.18. Interest of Directors in Contracts and Other Matters on account of pecuniary interests

- a. Any Director who has a material interest in a matter as defined below shall declare such interest to the Board of Directors and:

- i. shall not be present except with the permission of the Board of Directors in any discussion of the matter, and
 - ii. shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- b. Any Director who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Directors.
- c. A material interest is:
 - i. any directorship of a company;
 - ii. any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) held by a Director in any firm or company or business which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust;
 - iii. any interest in an organisation providing health and social care services to the National Health Service;
 - iv. a position of authority in a charity or voluntary organisation in the field of health and social care; any affiliation to a special interest group campaigning on health or social care issues

3.19. Failure to Declare an Interest

If a Director of the Board fails to declare an interest, or is found to have used their position or knowledge for private advantage, disciplinary action will be taken by the Board, which could lead to removal.

3.20. Admission of public and the press

a. Admission and exclusion on grounds of confidentiality of business to be transacted

Members of the Council of Governors, the public and representatives of the press may attend all meetings of the Trust, but shall be required to withdraw upon the Board agreeing the following resolution:

- o 'that representatives of the Council of Governors, the press and other members of the public be excluded from the remainder of this meeting, having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest', Section 1 (2), Public Bodies (Admission to Meetings) Act 1960
- o Guidance should be sought from the Trust Secretary and/or the Trust's Freedom of Information Lead to ensure correct procedure is followed on matters to be included in the exclusion.

b. General disturbances

The Chairman (or Vice-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 Trust's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board agreeing the following resolution:

- That in the interests of public order, the meeting adjourn for (the period to be specified) to enable the Board to complete its business without the presence of the public'. Section 1(8) Public Bodies (Admissions to Meetings) Act 1960.
- c. **Business proposed to be transacted when the press and public have been excluded from a meeting**

Matters to be dealt with by the Board following the exclusion of representatives of the press, and other members of the public, as provided in (a) and (b) above, shall be confidential to the members of the Board.

Members and Officers or any employee or Governor of the Trust in attendance shall not reveal or disclose the contents of papers or minutes marked 'Commercial in Confidence' outside of the Trust without the express permission of the Board. This prohibition shall apply equally to the content of any discussion during the Board meeting which may take place on such reports or papers.

- d. **Use of Mechanical or Electrical Equipment for Recording or Transmission of Meetings**

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.

3.21. 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's meetings and may change, alter or vary these terms and conditions as it deems fit.

4. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

4.1. Appointment of Committees

- i. The National Health Service Act 2006 states that the Board will establish a Remuneration and Terms of Service Committee and Audit Committee. Membership of these Committees will consist of a minimum of three Non-Executive Directors. The Remuneration and Terms of Service Committee and Audit Committee are formal Committees of the Board and will have a Non-Executive Director as Chair. Executive Directors and other staff may be appointed to serve on these committees.
- ii. The Board may appoint further committees (including a committee of the whole Board) to exercise functions on its behalf. Such committees may consist wholly or partly of Directors or wholly of persons who are not Directors. Where functions are being carried out by committees or sub-committees, their members, including those who are not Directors, are acting on behalf of and with delegated authority from the Board, and this should be reflected in the Committee's Terms of Reference.
- iii. A Committee appointed under SO 4.1 may appoint sub-committees consisting wholly or partly of members of the Committee.
- iv. Each such committee or sub-committee shall have such terms of reference or powers as approved by the Board. Such terms of reference shall have effect as if incorporated into Standing Orders.
- v. Committees may not delegate their powers to a sub-committee unless expressly authorised by the Board.
- vi. The appointment of Directors to committees and sub-committees of the Board comes to an end on the termination of their terms of office as Directors.

- vii. Standing Order 3.18 relating to pecuniary interests, applies to members of committees and sub-committees of the Trust whether or not they are Directors of the Trust itself.
- viii. Executive Directors may not be appointed to any committee or sub-committee set up to carry out the functions of "managers" under the Mental Health Act 1983. Most important of these is the hearing of appeals by detained patients under section 23 (3) (c) Schedule 9 of the 1990 Act.

4.2. Confidential Proceedings

A Director or Officer or Governor of the Trust shall not disclose a matter considered by the Board or a Committee in confidence without permission until the Board or Committee has considered the matter in public or has resolved to make the matter public.

4.3. Applicability of Standing Orders and Standing Financial Instructions to Committees

The Standing Orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall as appropriate apply to meetings and any committees established by the Trust. In which case the term "Chairman" is to be read as a reference to the Chairman of other committee as the context permits, and the term "member" is to be read as a reference to a member of other committee also as the context permits. (There is no requirement to hold meetings of committees established by the Board in public.)

4.4. Terms of Reference

Each committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board) as the Board shall decide and shall be in accordance with any legislation and regulation or direction issued by the Secretary of State. Such terms of reference shall have effect as if incorporated into the Standing Orders.

4.5. Delegation of powers by Committees to Sub-Committees

Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board.

4.6. Approval of Appointments to Committees

The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines, and regulations permit, that persons, who are neither members nor officers, shall be appointed to a committee, the terms of such appointment shall be within the powers of the Board as defined by the Secretary of State. The Board shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.

4.7. Appointments for Statutory functions

Where the Board is required to appoint persons to a committee and/or to undertake statutory functions as required by the Secretary of State, and where such appointments are to operate independently of the Board, such appointment shall be made in accordance with the regulations and directions made by the Secretary of State.

4.8. Committees established by the Board

The committees established by the Board are:

a. Audit Committee

In line with the requirements of the NHS Audit Committee Handbook, NHS Codes of Conduct and Accountability, the Higgs report, and Monitor's Code of Governance, an Audit Committee will be established and constituted to provide the Board with an

independent and objective review on its financial systems, financial information, clinical audit programme, systems and processes for clinical and quality governance, and compliance with laws, governance practice, and regulations governing the NHS. The Terms of Reference will be approved by the Board and reviewed on a periodic basis.

b. Remuneration and Terms of Service Committee

In line with the requirements of the NHS Codes of Conduct and Accountability, the Higgs report, and Monitor's Code of Governance, a Remuneration and Terms of Service Committee will be established and constituted.

The committee will be comprised exclusively of Non-Executive Directors, a minimum of three, who are independent of management.

The purpose of the Committee will be to advise the Board about appropriate remuneration and terms 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.

c. 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 Charity Commission.

The provisions of this Standing Order must be read in conjunction with Standing Financial Instructions 17.

d. Other Committees

The Board may also establish such other committees as required to discharge the Trust's responsibilities.

5. ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION

5.1. Delegation of Functions to Committees, Officers or other bodies

- a. Subject to such directions as may be given by the Secretary of State, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions by a committee, sub-committee appointed by virtue of Standing Order 4, or by an officer of the Trust, or by another body as defined in Standing Order 5.2 below, in each case subject to such restrictions and conditions as the Trust thinks fit.
- b. Where a function is delegated by these Regulations to another Trust, then that Trust or health service body exercises the function in its own right; the receiving Trust has responsibility to ensure that the proper delegation of the function is in place. In other situations, i.e. delegation to committees, sub-committees or officers, the Trust delegating the function retains full responsibility.

5.2. Emergency Powers and Urgent Decisions

The powers which the Board has reserved to itself within these Standing Orders (see Standing Order 2.6) may in emergency or for an urgent decision be exercised jointly by the Chief Executive and the Chairman after having consulted at least two non-officer members. The exercise of such powers by the Chief Executive and Chairman shall be reported to the next formal meeting of the Board in public session for formal ratification.

5.3. Delegation to Committees

- a. The Board shall agree from time to time to the delegation of executive powers to be exercised by other committees, or sub-committees, or joint-committees, which it has formally constituted in accordance with directions issued by the Secretary of State. The constitution and terms of reference of these committees, or sub-committees, or joint committees, and their specific executive powers shall be approved by the Board in respect of its sub-committees.
- b. When the Board is not meeting as the Board in public session it shall operate as a committee and may only exercise such powers as may have been delegated to it by the Board in public session.

5.4. Delegation to Officers

- a. Those functions of the Trust which have not been retained as reserved by the Board or delegated to other committee or sub-committee or joint-committee 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.
- b. The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board.
- c. Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance and Resources to provide information and advise the Board in accordance with statutory or Department of Health requirements. Outside these statutory requirements, the Director of Finance and Resources shall be accountable to the Chief Executive for operational matters.

5.5. Reservation of Powers and Scheme of Delegation

The arrangements made by the Board as set out in the "Reservation of Powers and Scheme of Delegation" shall have effect as if incorporated in these Standing Orders.

5.6. Duty to report non-compliance with Standing Orders and Standing Financial Instructions

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 members of the Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

5.7. Over-riding Standing Orders

Should there be a need to over-ride these Standing Orders, the permission of the Chief Executive will be sought, who will in turn consult with the Chairman wherever possible. Full details and any justification for this non-compliance together with the circumstances around the non-compliance, shall be reported by the relevant Executive Director to the next formal meeting of the Board of Directors. All staff have a duty to disclose any potential or impending non-compliance to their Executive Director, who has a duty to report to the Chief Executive as soon as possible.

6. OVERLAP WITH OTHER TRUST POLICY STATEMENTS/ PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS

6.1. Policy statements: general principles

The Board or one of its Committees will from time to time approve Policy statements/ procedures which will apply to all or specific groups of staff employed by the NHSFT. The decisions to approve such policies and procedures will be recorded in an

appropriate Board or Committee minute and will be deemed where appropriate to be an integral part of the Trust's Standing Orders and Standing Financial Instructions.

6.2. Specific Policy statements

Notwithstanding the application of SO 6.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following Policy statements:

- a. the Trust's Standards of Business Conduct Policy;
- b. the Staff Disciplinary Policy and Appeals Procedures adopted by the Trust, both of which shall have effect as if incorporated in these Standing Orders.

6.3. Standing Financial Instructions

Standing Financial Instructions adopted by the Board in accordance with all financial regulations, directions and guidance issued by Monitor and any other relevant body shall have effect as if incorporated in these Standing Orders.

6.4. Specific guidance

Notwithstanding the application of SO 6.1 above, these Standing Orders and the Standing Financial Instructions must be read in conjunction with any directions and guidance issued by Monitor and any other relevant body and in accordance with the following:

- o DH Caldicott Guardian Manual 2010
- o Human Rights Act 1998;
- o Freedom of Information Act 2000;
- o Equality Act 2010;
- o Information Governance Toolkit v12, July 2014

6.5. Provider Licence/ Health Legislation

In the event of and to the extent of any conflict or inconsistency between these SOs and the Provider Licence, the Provider Licence shall prevail.

In the event of and to the extent of any conflict or inconsistency between these SOs and the provisions of the National Health Service Act 2006 and/or Health and Social Care Act 2012, the provisions of the National Health Service Act 2006 and/or Health and Social Care Act 2012 shall prevail.

7. DUTIES AND OBLIGATIONS OF BOARD MEMBERS/DIRECTORS AND SENIOR MANAGERS UNDER THESE STANDING ORDERS

7.1. Declaration of Interests

a. Requirements for Declaring Interests and applicability to Board Members

The NHS Code of Accountability requires Board Members to declare interests which are relevant and material to the NHS Board of which they are a member. All existing Board members should declare such interests. Any Board members appointed subsequently should do so on appointment.

b. Interests which are relevant and material

Interests which should be regarded as "relevant and material" are:

- i. Directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies);
- ii. Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- iii. Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;

- iv. A position of Authority in a charity or voluntary organisation in the field of health and social care;
- v. Any connection with a voluntary or other organisation contracting for NHS services;
- vi. Research funding/grants that may be received by an individual or their department;
- vii. Interests in pooled funds that are under separate management.

Any member of the Board 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 7.3 below and elsewhere) has any pecuniary interest, direct or indirect, the Board member shall declare his/her interest by giving notice in writing of such fact to the Trust as soon as practicable.

c. Advice on Interests

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

International Accounting Standard No 24 (issued by the International 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.

d. Recording of Interests in Board minutes

At the time Board members' interests are declared, they should be recorded in the Board minutes.

Any changes in interests should be declared at the next Board meeting following the change occurring and recorded in the minutes of that meeting.

e. Publication of declared interests in Annual Report

Board members' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

f. Conflicts of interest which arise during the course of a meeting

During the course of a Board meeting, if a conflict of interest is established, the Board member concerned should withdraw from the meeting and play no part in the relevant discussion or decision. (See overlap with SO 7.3)

7.2. Register of Interests

- a. The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board or Committee members. In particular the Register will include details of all directorships and other relevant and material interests (as defined in SO 7.1.2) which have been declared by both executive and non-executive Board members.
- b. These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.
- c. The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of local residents and to publicise arrangements for viewing it.

7.3. Exclusion of Chairman and Members in proceedings on account of pecuniary interest

a. Definition of terms used in interpreting 'Pecuniary' interest

For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order:

- i. "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);
- ii. "contract" shall include any proposed contract or other course of dealing.
- iii. "Pecuniary interest"

Subject to the exceptions set out in this Standing Order, a person shall be treated as having an indirect pecuniary interest in a contract if:-

- o he/she, or a nominee of his/her, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or
- o he/she is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.

- iv. Exception to Pecuniary interests

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

- o neither he/she or any person connected with him/her has any beneficial interest in the securities of a company of which he/she or such person appears as a member, or
- o any interest that he/she or any person connected with him/her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him/her in relation to considering or voting on that contract, or
- o those securities of any company in which he/she (or any person connected with him/her) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less. Provided however, that where this applies, the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 7.1.

b. Exclusion in proceedings of the Board

- i. Subject to the following provisions of this Standing Order, if the Chairman or a member of the Board has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract or other matter is the subject of consideration, they 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.
- ii. The Secretary of State may, subject to such conditions as he/she may think fit to impose, remove any disability imposed by this Standing Order in any case in which it appears to him/her in the interests of the National Health Service that the disability should be removed. (See SO 7.3.c on the 'Waiver' which has been approved by the Secretary of State for Health).
- iii. The Board may exclude the Chairman or a member of the Board 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.

- iv. Any remuneration, compensation or allowance payable to the Chairman or a Member by virtue of paragraph 11 of Schedule 5A to the National Health Service Act 1977 (pay and allowances) shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- v. This Standing Order applies to a committee or sub-committee and to a joint committee or sub-committee as it applies to the Trust and applies to a member of any such committee or sub-committee (whether or not he/she is also a member of the Trust) as it applies to a member of the Trust.

c. Waiver of Standing Orders made by the Secretary of State for Health

i. Power of the Secretary of State to make waivers

Under regulation 11(2) of the NHS (Membership and Procedure Regulations SI 1999/2024 (“the Regulations”), there is a power for the Secretary of State to issue waivers if it appears to the Secretary of State in the interests of the health service that the disability in regulation 11 (which prevents a chairman or a member from taking part in the consideration or discussion of, or voting on any question with respect to, a matter in which he has a pecuniary interest) is removed. A waiver has been agreed in line with sub-sections (2) to (4) below.

ii. Definition of ‘Chairman’ for the purpose of interpreting this waiver

For the purposes of paragraph 7.3.iii. (below), the “relevant chairman” is:

- at a meeting of the Board, the Chairman of that Trust;
- at a meeting of a Committee:-
 - in a case where the member in question is the Chairman of that Committee, the Chairman of the Trust;
 - in the case of any other member, the Chairman of that Committee.

iii. Application of waiver

A waiver will apply in relation to the disability to participate in the proceedings of the Trust on account of a pecuniary interest.

It will apply to:-

A member of the Dorset County Hospital NHS Foundation Trust (“the Trust”), who is a healthcare professional, within the meaning of regulation 5(5) of the Regulations, and who is providing or performing, or assisting in the provision or performance, of –

- services under the National Health Service Act 1977; or
- services in connection with a pilot scheme under the National Health Service Act 1977;

for the benefit of persons for whom the Trust is responsible.

Where the ‘pecuniary interest’ of the member in the matter which is the subject of consideration at a meeting at which he is present:-

- arises by reason only of the member’s role as such a professional providing or performing, or assisting in the provision or performance of, those services to those persons;
- has been declared by the relevant Chairman as an interest which cannot reasonably be regarded as an interest more substantial than that of the majority of other persons who:-

are members of the same profession as the member in question,

are providing or performing, or assisting in the provision or performance of, such of those services as he provides or performs, or assists in the provision or performance of, for the benefit of persons for whom the Trust is responsible.

iv. Conditions which apply to the waiver and the removal of having a pecuniary interest

The removal is subject to the following conditions:

- the member must disclose his/her interest as soon as practicable after the commencement of the meeting and this must be recorded in the minutes;
- the relevant Chairman must consult the Chief Executive before making a declaration in relation to the member in question pursuant to paragraph 7.3.iii above, except where that member is the Chief Executive;
- in the case of a meeting of the Board; the member may take part in the consideration or discussion of the matter which must be subjected to a vote and the outcome recorded; but may not vote on any question with respect to it.
- in the case of a meeting of the Committee; the member may take part in the consideration or discussion of the matter which must be subjected to a vote and the outcome recorded; may vote on any question with respect to it; but the resolution which is subject to the vote must comprise a recommendation to, and be referred for approval by, the Board.

7.4. Standards of Business Conduct

a. Trust Policy and National Guidance

- i. Directors and Officers should comply with the NHS Foundation Trust Code of Governance 2010 (revised 2013 and 2014) and/or subsequent iterations of the same document, the Code of Conduct for NHS Managers and any guidance and directions issued by Monitor. This section of these Standing Orders should be read in conjunction with these documents.
- ii. All Trust staff and members of must comply with the Trust's Standards of Business Conduct Policy.

b. Interest of Officers in Contracts

- i. Any officer or employee of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her (as defined in SO 7.3) has any pecuniary interest, direct or indirect, the Officer shall declare their interest by giving notice in writing of such fact to the Chief Executive or Trust Secretary as soon as practicable.
- ii. An Officer should also declare to the Chief Executive any other employment or business or other relationship of his/her, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- iii. The Trust will require interests, employment or relationships so declared to be entered in a register of interests of staff.

c. Canvassing of and Recommendations by Members in Relation to Appointments

- i. Canvassing of members of the Trust or 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.

- ii. Members 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 member from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

d. Relatives of Members or Officers

- i. Candidates for any staff appointment under the Trust shall, when making an application, disclose in writing to the Trust whether they are related to any member or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- ii. The Chairman and every member and officer of the Trust shall disclose to the Board any relationship between himself and a candidate of whose candidature that member or officer is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made.
- iii. On appointment, members (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 member or holder of any office under the Trust.
- iv. Where the relationship to a member of the Trust is disclosed, the Standing Order headed 'Disability of Chairman and members in proceedings on account of pecuniary interest' (SO 7) shall apply.

e. Acceptance of Gifts (See Standards of Business Conduct Policy)

Staff should not accept gifts in any form, whether from patients, patients' relatives or from potential suppliers, other than as provided below.

- i. It is in order for staff to accept small tokens to a value of £25 but their senior officer must be informed and a record made and sent to the Trust Secretary for inclusion in the Register of Gifts and Hospitality.
- ii. Under no circumstances should staff solicit gifts of any kind.
- iii. Money should never be accepted as a personal gift and should be refused. If, however, an individual offers to make a gift of money to the Trust, he/she should be referred to the Trust Secretary.
- iv. Any charitable donations of sums of money, cheques or gift vouchers given to a member of staff must be passed to the Service Unit's Operations Manager for onward transmission to the Special Trustees. A receipt should be issued and letter of thanks sent.
- v. Where the donor specifies how the money is to be spent, his/her wishes must be followed.

8. CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS

8.1 Custody of Seal

The common seal of the Trust shall be kept by the Chief Executive or a nominated Manager by him/her in a secure place.

8.2 Sealing of Documents

Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two senior managers duly authorised by the Chief Executive, and not also from the originating department, and shall be attested by them.

8.3 Register of Sealing

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

8.4 Signature of documents

- a. Where any document will be a necessary step in legal proceedings on behalf of the Trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any Executive Director.
- b. In land transactions, the signing of certain supporting documents will be delegated to Managers and set out clearly in the Scheme of Delegation 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).
- c. The Chief Executive or nominated officers shall be authorised by the Board, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board or committee or sub-committee to which the Board has delegated appropriate authority.
- d. For clinical negligence claims the authorised signatory for the claim is the Director of Nursing and Quality, acting on behalf of the Trust's solicitors.

9. DISPOSALS

Competitive tendering or quotation procedures shall not apply to the disposal of:

- a. any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in a reserve) by the Chief Executive or his nominated officer;
- b. obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust;
- c. items to be disposed of with an estimated sale value of less than £5,000;
- d. items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;
- e. land or buildings concerning which Department of Health or other statutory body guidance has been issued but subject to compliance with such guidance.

10. IN-HOUSE SERVICES

- 10.1 In all cases where the Board of Directors determines that in-house services should be subject to competitive tendering the following groups shall be set up:
 - a. Specification group, comprising the Chief Executive or nominated officer/s and specialist.
 - b. In-house tender group, comprising a nominee of the Chief Executive and technical support.
 - c. Evaluation team, comprising normally a specialist officer, a supplies officer and the Director of Finance and Resources or his nominated representative. For services having a likely annual expenditure exceeding £100,000, a non-officer member should be a member of the evaluation team.
- 10.2 All groups should work independently of each other. No officer is able to sit on both the in-house tender group and the evaluation group.
- 10.3 The evaluation team shall make recommendations to the Executive Directors' Meeting and / or the Board of Directors, in accordance with the Trust's detailed scheme of delegation.

11. SIGNATURE OF DOCUMENTS

- 11.1 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, unless any

enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.

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

12. MISCELLANEOUS

- 12.1 **Standing Orders to be given to Board Members and Officers** – It is the duty of the Chief Executive to ensure that existing Board Members and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and Standing Financial Instructions. The current versions of Standing Orders, Standing Financial Instructions and the Scheme of Delegation will be available to staff at all times via the Trust's intranet.
- 12.2 **Documents having the standing of Standing Orders** – Standing Financial Instructions and Reservation of Powers and Scheme of Delegation shall have effect as if incorporated into Standing Orders.
- 12.3 **Review of Standing Orders** – Standing Orders shall be reviewed as required by the Audit Committee and Board of Directors. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.
- 12.4 **Dispute Resolution** – Where there is a dispute between the Board of Directors and the Council of Governors, the procedure set out in the Constitution as at the date of the dispute should be referred to and followed.
- 12.5 **Corporate Documents** – Specific to the setting up of the Trust shall be held in a secure place by the Chief Executive.
- 12.6 **Indemnity Insurance** – Members of the Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust and the Trust shall have the power to purchase suitable insurance to cover such costs.

13. RELATIONSHIP BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS

- 13.1 The Council of Governors will hold the Non-Executive Directors individually and collectively to account for the performance of the Board. The Council of Governors will work closely with the Board of Directors in order to comply with the requirements of the National Health Service Act 2006, the Health and Social Care Act 2012 and the Provider Licence in all respects and in particular in relation to matters set out in the Constitution including those referred to in SOs 13.2 and 13.3 below.
- 13.2 The members of the Board of Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to Monitor.
- 13.3 The members of the Board of Directors are to present to the Council of Governors at a general meeting the Annual Accounts, any report of the auditor on them, the Annual Report and the Quality Report.
- 13.4 The annual reports are to give:
- information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its Public Constituency is representative of those eligible for such membership; and
 - any other information Monitor requires as specified in the Annual Reporting Manual published by Monitor each year.

- 13.5 The Council of Governors may request that a matter which relates to the annual accounts or forward planning for the Trust is included on the agenda for a meeting of the Board of Directors.
- 13.6 If the Council of Governors so desires such a matter as described within SO 13.5 to be included on an agenda, they shall make their request in writing to the Chairman at least 10 clear days before the meeting of the Board and provide the information stipulated at SO 3.4. The Chairman shall decide whether the matter is appropriate to be included on the agenda. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chairman.

14. TENDERING AND CONTRACT PROCEDURE

14.1 All goods and services obtained by the Trust should be subject to either competitive quotations or competitive tendering subject to the financial limits specified in the Scheme of Delegation.

14.2 The procedure for entering into contracts by or on behalf of the Trust shall comply with these Standing Orders, and where appropriate European Union Directives on public sector purchasing promulgated by the Department of Health (under HSG(95)38) prescribing procedures for awarding all forms of contracts, shall have effect as if incorporated in these Standing Orders.

14.3 The Trust shall comply as far as is practicable with the requirements of the Department of Health "Capital Investment Manual" and "Estatecode" in respect of capital investment and estate and property transactions until such time as guidance is issued by Monitor. In relation to investment decisions, the Trust will follow Monitor's guidance on 'Risk Evaluation for Investment Decisions' (REID), and reporting limits set out in the Compliance Framework. In the case of management consultancy contracts the Trust shall comply as far as is practicable with Department of Health guidance "The Procurement and Management of Consultants within the NHS".

14.4 Formal Competitive Tendering – The Trust shall ensure that competitive tenders are invited for the supply of goods, materials and manufactured articles and for the rendering of services including all forms of management consultancy services (other than specialised services sought from or provided by the Department of Health); for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals.

14.5 **Competitive quotations** should be sought for all expenditure in excess of the limit specified in the Detailed Scheme of Delegation, and where 14.6 c applies.

14.6 Formal tendering and quotation procedures may be waived by officers to whom powers have been delegated by the Chief Executive **without reference** to the Chief Executive (**except in (b) to (g) below**) where:

- a. The estimated expenditure or income does not, or is not reasonably expected to, exceed the specified amount, (this figure to be reviewed annually); or
- b. where the supply is proposed under special arrangements negotiated by the Department of Health in which event the said special arrangements must be complied with;
- c. the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender;
- d. specialist expertise is required and is available from only one source;
- e. the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate;
- f. there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering;

g. Where provided for in the Capital Investment Manual;

h. Where the supply of goods or services is covered by an NHS Framework Agreement and the price is certain (i.e. quoted).

14.7 Unless one of the above applies, the limited application of the single tender rules should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.

14.8 Where it is decided that competitive tendering is not applicable and should be waived by virtue of (b) to (g) above the fact of the waiver and the reasons should be documented on a Single Tender or Quotation Action form (STA/SQA) and reported by the Chief Executive to the Executive Operational Committee. All such waivers (STA/SQA's) should also be reported at the next available meeting of the Audit Committee.

14.9 The Trust shall use NHS SupplyChain or contracts or frameworks let by other collaborative organisations for procurement of all goods and services unless the Chief Executive or nominated officers deem it inappropriate.

14.10 There are a number of instances when formal tenders or quotes need not be sought as follows:-

a. Agency/Consultancy Staff – where the good/service purchased are staffing expertise or agency staff or expenditure in relation to training or training courses.

b. Part order or call-off order from tendered contract

c. Specialist training course

d. Specialist research

14.11 The Trust shall ensure that invitations to tender are sent to a sufficient number of firms/individuals to provide fair and adequate competition as appropriate, and in no case less than three firms/individuals, having regard to their capacity to supply the goods or materials or to undertake the services or works required.

14.12 The Trust shall ensure that normally the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists compiled. As an alternative to maintaining its own list the Trust may, where appropriate approve a list prepared by or for another body. Where in the opinion of the Chief Finance Officer it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive for approval.

14.13 Where quotations are required under Standing Order 14.5 they should be obtained from at least three firms/individuals based on specifications or terms of reference prepared by, or on behalf of, the Trust.

14.14 Both tenders and quotations should be requested electronically using the Trust's e-tendering system

14.15 All tenders and quotations should be treated as confidential and should be retained for inspection.

14.16 The Chief Executive or the nominated officer (via the scheme of delegation) should select the tender or quotation which gives the best quality and value for money. If this is not the lowest then this fact and the reasons why the lowest offer was not chosen should be stated in a permanent record.

14.17 Non-competitive quotations in writing may be obtained for the following purposes:

a. the supply of goods/services of a special character for which it is not, in the opinion of the Chief Executive or the nominated officer,

b. possible or desirable to obtain competitive quotations; the goods/services are required urgently.

14.18 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house. The Trust may also determine from time to time that in-house services should be market tested by competitive tendering (Standing Order 10).

14.19 **Private Finance/Procure 21** The Trust may consider using PFI/Procure 21 when considering a capital procurement. When the Board proposes that PFI/Procure 21 be considered:

- a. The Chief Executive shall demonstrate that the scheme represents value for money and genuinely transfers risk to the private sector.
- b. The proposal must be specifically agreed by the Board.
- c. Trust competitive tendering/quotations procedures should apply where necessary.

14.20 **Contracts** – The Board of Directors may only enter into contracts on behalf of the Trust within the statutory powers delegated to it and shall comply with:

- a. these Standing Orders;
- b. the Trust's Standing Financial Instructions;
- c. EU Directives and other statutory provisions;
- d. any relevant and mandatory directions including Monitor's guidance on Risk Evaluation for Investment Decisions, the Department of Health's Capital Investment Manual, Estatecode and guidance on the Procurement and Management of Consultants;
- e. such of the NHS Standard Contract Conditions as are applicable. Where appropriate, contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited.

14.21 In all contracts made by the Trust, the Board of Directors shall endeavour to obtain best value for money. The Chief Executive shall nominate an officer who shall oversee and manage each contract on behalf of the Trust.

14.22 **Personnel and Agency or Temporary Staff Contracts** – The Chief Executive shall nominate officers with delegated authority to enter into contracts of employment, regarding staff, agency staff or temporary staff service contracts.

14.23 **Legally Binding Contracts (LBC) for the provision of Healthcare** – Legally binding contracts for the supply of healthcare services shall be drawn up in accordance with Legal Advice, best practice and where possible use the model contract for Acute NHSFTs. These legally binding contracts will be administered by the Trust.

14.24 **Cancellation of Contracts** – Except where specific provision is made in model Forms of Contracts or standard Schedules of Conditions approved for use within the NHS, there shall be inserted in every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Trust, or for showing or forbearing to show favour or disfavour to any person in relation to the contracts or any other contract with the NHSFT, or if the like acts shall have been done by any person employed by them or acting on their behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Trust the contractor or any person employed by them or acting on their behalf shall have committed any offence under the Prevention of Corruption Acts 1889 and 1916 and other appropriate legislation.

14.25 **Determination of Contracts for Failure to Deliver Goods or Materials** – There shall be inserted in every written contract for the supply of goods or materials a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Trust may without prejudice determine the contract either wholly or to the extent of such default and purchase other goods, or material of similar description to make good (a) such default, or (b) in the event of the contract being wholly determined the goods or materials remaining to be delivered. The clause shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have

been payable to the contractor in respect of the goods or materials shall be recoverable from the contractor.

14.26 **Contracts involving Funds Held on Trust** – shall do so individually to a specific named fund. Such contracts involving charitable funds shall comply with the requirements of the Charities Act.

ANNEX 8 – FURTHER PROVISIONS

(Note 30)

Disqualification from membership

1. A person may not become a member of the Trust if within the last five years:
 - a. they have received a Red Card under the Trust's Procedure for Care of Patients who are violent or abusive, or
 - b. they have been involved in a serious incident of violence at any of the Trust's hospitals or facilities or against any of the Trust's employees or registered volunteers.
2. A person may not become a member of the Trust if they are under 16 years of age. Between the ages of 16 and 18, members will not be able to stand for election to the Council of Governors.
3. A person may not become or remain a member of the Public Constituency if they are eligible to become a member of the Staff Constituency.
4. A person may not be a member of more than one constituency.
5. A person may not become or remain a member of the Trust if they have been refused membership of another NHS Foundation Trust unless this relates to ineligibility due to non-residency within the other Foundation Trust's Public Constituency area.
6. A person may not become or remain a member of the Trust if they have been declared by the Council of Governors or one of its sub-committees to be a vexatious complainant or where they fail to abide by the Trust's principles.
7. Where the Trust is on notice that a member may be disqualified from membership, or may no longer be eligible to be a member they shall give the member 14 days written notice to show cause why his name should not be removed from the register of members. On receipt of any such information supplied by the member, the Secretary may, if he considers it appropriate, remove the member from the register of members. In the event of any dispute the Secretary shall refer the matter to the Council of Governors to determine.
8. All members of the Trust shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a member.

Termination of membership

A member shall cease to be a member if:

1. he dies;
2. he resigns by notice to the Secretary;
3. he is expelled under this Constitution.
4. if it appears to the Secretary that he no longer wishes to be a member of the Trust, and after enquiries made in accordance with a process approved by the Council of Governors (see below), he fails to establish that he wishes to continue to be a member of the Trust.
5. the member no longer lives in the Public Constituency as detailed in Annex 1.
6. the member is no longer part of the Staff Constituency as outlined at clause 9 of the Constitution. Providing the member lives in the Public Constituency as detailed in Annex 1 they may apply for Public membership.

Membership Expulsion procedure

A member may be expelled by a resolution of the Council of Governors. The following procedure is to be adopted:

1. Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Trust.
2. If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member of the Council of Governors' point of view is heard and may either:
 - a. dismiss the complaint and take no further action; or
 - b. arrange for a resolution to expel the member complained of, such resolution to be considered at the next meeting of the Council of Governors.
3. If a resolution to expel a member is to be considered at a meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
4. At the meeting, the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
5. If the member complained of fails to attend the meeting without due cause, the meeting may proceed in their absence

A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.

No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a meeting of the Council.

Voting at Public Member Elections

A person may not vote at a public election for an elected Governor unless within the specified period he has made a declaration in the specified form setting out the particulars of his qualification to vote as a member of the constituency for which the election is being held. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

Dispute Resolution

Where this Constitution provides for any dispute to be referred for resolution under the Dispute Resolution Procedure the following procedure shall apply.

- All disputes shall wherever possible be resolved at the level and in the forum in which they first arise. If this does not secure a resolution of the dispute it may then be referred to the Chairman and Chief Executive of the Trust for their joint consideration and they shall use their reasonable endeavours to facilitate the resolution of a matter with the aggrieved party.
- If the Chairman and Chief Executive of the Trust are unable to facilitate a resolution, then they shall together with the aggrieved party consider whether the matter should then be referred to independent mediation.
- If the option of independent mediation is rejected or proves unsuccessful in facilitating a resolution, the parties must rely on such other remedies as are available to them.

Nothing in this procedure shall preclude any party from referring any dispute to a Court of Competent Jurisdiction in England and Wales.