

Norfolk and Norwich University Hospitals NHS Foundation Trust

Constitution – October 2012

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This version of the Constitution incorporates those provisions of the Health and Social Care Act 2012 that have come into force on or before 1 October 2012 by virtue of the First and Second Commencement Orders (SI 2012/1319 and 2012/1831)

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1. Name

The name of the foundation trust is Norfolk and Norwich University Hospitals NHS Foundation Trust (the Trust).

2. Principal purpose

2.1 The Trust is a public benefit corporation. The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.

2.2 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 purpose.

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

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

2.3.2 the promotion and protection of public health.

2.4 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.

3. Powers

3.1 The powers of the Trust are set out in the National Health Service Act (2006) subject to any restrictions in the terms of authorisation issued by the Independent Regulator of Foundation Trusts (Monitor).

3.2 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

3.3 Any of these powers may be delegated to a committee of directors or to an executive director.

4. Membership and constituencies

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

4.1 a public constituency

4.2 a staff constituency

5. Application for membership

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

6. Public Constituency

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

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

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

7. Staff Constituency

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

7.1.1 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; and

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

7.2 In addition, any individual:

7.2.1 who is registered with the Trust as a volunteer and exercises functions on behalf of the Trust may become or continue as a member of the Staff Constituency provided he has been so registered and exercising such functions continuously for a period of at least 12 months; or

7.2.2 who exercise functions for the purposes of the Trust through any of the organisations listed at Annex 2 (the "Qualifying Organisations") may become or continue as a member of the Staff Constituency providing that he has exercised such functions for a period of at least 12 months and continues to do so.

The Board of Directors may from time to time review, amend or revise, the list of Qualifying Organisations listed at Annex 2, to reflect changing circumstances or contractual relations, in accordance with the variation requirements set out at paragraph 37 below.

7.3 Those individuals who are eligible for membership of the Trust by reason of 7.1

or 7.2 above are referred to collectively as the Staff Constituency. Any dispute as to any eligibility to membership of the Staff Constituency, or any particular class within that Constituency, shall be determined by the Board of Directors.

- 7.4** The Staff Constituency shall be divided into five descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 7.5** The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

Automatic membership by default – staff

7.6 An individual who is:

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

7.6.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

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

8. Restriction on membership

- 8.1** An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 8.2** For the avoidance of doubt, 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.
- 8.3** 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 – Further Provisions.

9. Council of Governors – composition

- 9.1** The Trust is to have a Board of Governors which shall be known as the “Council of Governors” and which shall comprise both elected and appointed governors.
- 9.2** The composition of the Council of Governors is specified in Annex 3.
- 9.3** The members of the Council of Governors, other than the appointed members,

shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

9.4 Governors will be appointed by those partnership organisations identified at Annex 3 and by the University of East Anglia by virtue of the Trust's status as a teaching hospital. The number of Governors to be so appointed is listed at Annex 3.

9.5 Appointed Governors are to be appointed by the relevant organisations, as per 9.4 above, in accordance with the procedure specified at Annex 5.

10. Council of Governors – election of governors

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

10.2 The Model Rules for Elections, as may be varied from time to time, form part of this Constitution and are attached at Annex 4.

10.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this Constitution, as per paragraph 37 below. For the avoidance of doubt, the Trust cannot amend the Model Rules.

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

11. Council of Governors - tenure

11.1 Both elected and appointed governors may hold office for a period of up to 3 years.

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

11.3 An appointed governor shall cease to hold office if the appointing organisation withdraws sponsorship of their appointment.

11.4 Both elected and appointed governors shall be eligible for re-election or reappointment at the end of their terms.

12. Council of Governors – disqualification and removal

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

- 12.1.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 12.1.2** 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;
- 12.1.3** a person who within the preceding five years has:
 - (a) served any part of a period of imprisonment of not less than three months following conviction; or
 - (b) 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.
- 12.1.4** a person who through mental disorder, illness or other incapacity is incapable of managing his business and affairs.
- 12.1.5** a person who is a Governor or Director of another NHS body or any other organisation the nature of whose business is such as to give rise to potential conflicts of interest to such a degree as to prevent the person from the proper exercise of their duties as a Governor of this Trust.

Any doubt or question as to what constitutes an NHS body or a material conflict of interest for the purposes of this paragraph should be referred to the Chairman of the Trust whose decision on the matter will be final.

- 12.2** Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 12.3** Further provisions as to the circumstances in which an individual may not continue as a member of the Council of Governors are set out in Annex 5.
- 12.4** The Constitution makes provision for the removal of Governors at Annex 5.

13. Council of Governors – meetings of governors

- 13.1** The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 20 and 21 below, or in his absence the appointed Vice Chairman, appointed in accordance with the provisions of paragraph 20 below), shall preside at meetings of the Council of Governors.
- 13.2** Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

14. 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.

15. 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.

16. Council of Governors – travel expenses

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

17. Council of Governors – further provisions

Further provisions with respect to the Council of Governors are set out in Annex 8.

18. Board of Directors – composition

18.1 The Trust is to have a Board of Directors comprising of both executive and non-executive directors. At least half the members of the Board of Directors, excluding its Chairman, shall be independent non-executive directors and the Board of Directors shall comprise as follows:

- (a) an independent non-executive Chairman;
- (b) no more than five other independent non-executive directors;
- (c) five executive directors; and
- (d) a non-executive director nominated by the University of East Anglia.

18.2 Of the executive directors:

- (a) one shall be the Chief Executive, who shall be the Accounting Officer;
- (b) one shall be the finance director;
- (c) at least one shall be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984);
- (d) at least one shall be a registered nurse or a registered midwife.

18.3 Each of the directors shall be entitled to vote at meetings of the Trust Board in

accordance with the Standing Orders for the practice and procedure of the Board of Directors, as set out at Annex 7.

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

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

19.1 he is not disqualified by virtue of paragraph 24 below; and

19.2 he is a member of the Public Constituency, or in the case of the non-executive director nominated by the University of East Anglia, he exercises functions for the purposes of the University of East Anglia.

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

20.1 The Council of Governors at a meeting of the Council of Governors shall appoint or may remove the Chairman of the Trust and the other non-executive directors, having due regard to the recommendations made by the Appointments and Remuneration Committee of the Council of Governors in accordance with the Standing Orders set out at Annex 6.

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

20.3 The initial Chairman and the initial non-executive directors are to be appointed in accordance with paragraph 21 below.

20.4 Appointment of Vice-Chairman - Where the Chairman of the Trust has died or has otherwise ceased to hold office or where he has been or will be unable to perform his/her duties as Chairman owing to illness, absence from England and Wales or any other cause, for the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman, the non-executive directors of the Trust may appoint an independent non-executive director from amongst them, as per 18.1 above, to be Vice-Chairman for such a period, not exceeding the remainder of his term as non-executive director of the Trust, as they may specify on appointing him.

20.5 Powers of Vice-Chairman - references to the Chairman in the Constitution and associated documents shall, so long as there is no Chairman able to perform his/her duties, be taken to include references to the Vice-Chairman appointed under paragraph 20.4 above.

20.6 Any non-executive director appointed under 20.4 above may at any time resign from the office of Vice-Chairman by giving notice in writing to the Board Secretary and the non-executive directors of the Trust may thereupon appoint another non-executive director as Vice-Chairman in accordance with paragraph

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

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

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

21.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 19 above (other than disqualification by virtue of paragraph 24 below) do not apply to the appointment of the initial chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

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

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

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

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

22.3 The initial Chief Executive is to be appointed in accordance with paragraph 23 below.

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

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

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

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

24. Board of Directors – disqualification

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

- 24.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 24.2** 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.
- 24.3** 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.

25. Board of Directors – Standing Orders

The Trust shall have Standing Orders for the practice and procedure of the Board of Directors, as may be varied from time to time, as set out at Annex 7.

26. 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.

27. Board of Directors – remuneration and terms of office

- 27.1** The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors, having due regard to the recommendations made by the Appointments and Remuneration Committee of the Council of Governors in accordance with the Standing Orders set out at Annex 6.
- 27.2** The Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors and any other senior staff of the Trust as specified by the Board of Directors.

28. Registers

The Trust shall have:

- 28.1** a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 28.2** a register of members of the Council of Governors;
- 28.3** a register of interests of governors;
- 28.4** a register of directors; and
- 28.5** a register of interests of the directors.

29. Registers – inspection and copies

- 29.1** The Trust shall make the registers specified in paragraph 28 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 29.2** The Trust shall not make any part of its registers available for inspection by the public which shows details of any member of the Trust, if the member so requests.
- 29.3** So far as the registers are required to be made available:
 - 29.3.1** they are to be available for inspection free of charge at all reasonable times; and
 - 29.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 29.4** If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for providing such copy or extract.

30. Documents available for public inspection

- 30.1** The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
 - 30.1.1** a copy of the current Constitution;
 - 30.1.2** a copy of the current authorisation;
 - 30.1.3** a copy of the latest annual accounts and of any report of the auditor on them;

30.1.4 a copy of the latest annual report.

30.1.5 a copy of the latest information as to its forward planning as per 34.2 below; and

30.1.6 a copy of any notice given under section 52 of the National Health Service Act 2006.

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

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

31. Auditor

31.1 The Trust shall have an external auditor.

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

32. 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.

33. Accounts

33.1 The Trust shall keep proper accounts and proper records in relation to the accounts.

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

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

33.4 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.

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

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

- 34.1** The Trust shall prepare an Annual Report and send it to Monitor.
- 34.2** The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 34.3** The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 34.4** In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 34.5** Each forward plan must include information about:
- 34.5.1** 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
 - 34.5.2** the income it expects to receive from doing so;
- 34.6** Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 34.5.1, the Council of Governors must:
- 34.6.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions; and
 - 34.6.2** notify the Directors of the Trust of its determination.
- 34.7** A proposal to increase by 5% or more the proportion of the Trust's total income in any financial year attributable to activities other than the provision of goods and services for the purposes of health service in England may be implemented only if more than half of the members of the Council of Governors voting approve its implementation.

35. Meeting of Council of Governors to consider annual accounts

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

- 35.1** the annual accounts.
- 35.2** any report of the auditor on them.
- 35.3** the annual report.

36. Instruments

36.1 The Trust shall have a seal.

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

37. Amendments to the Constitution

37.1 The Trust may make amendments to this Constitution with the approval of Monitor.

37.2 No proposal for amendment of this Constitution will be put to Monitor unless it has been approved by the Board of Directors.

38. Interpretation and definitions

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 National Health Service Act 2006 as amended by the Health and Social Care Act 2012.

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

the 2006 Act is the National Health Service Act 2006.

the 2012 Act is the Health and Social Care Act 2012.

Monitor is the corporate body known as Monitor as provided by Section 61 of the 2012 Act.

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

voluntary organisation is a body, other than a public or local authority, the activities of which are not carried on for profit.

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

the **Board Secretary** is the Secretary of the Trust or any other person appointed by the Trust to perform the duties of the Secretary of the Trust from time to time

ANNEX 1 – THE PUBLIC CONSTITUENCY

(As referred to in Paragraph 6 of the Constitution)

Membership of the Public Constituency will be open to individuals who live within the area comprising the County of Norfolk and the District Council of Waveney. This area represents the residential location of 95 per cent of the patient population of the Trust.

This area is sub-divided into 7 areas consistent with the boundaries of local government elections. The minimum number of members in each area has been defined below.

PUBLIC (INC. PATIENTS)	Minimum Members	Governors
Norwich	300	3
Breckland	150	3
Broadland	150	3
South Norfolk	100	2
North Norfolk	100	2
Gt Yarmouth/Waveney	100	1
West Norfolk	100	1
Total	1,000	15

ANNEX 2 – THE STAFF CONSTITUENCY

(Referred to in Paragraph 7 of the Constitution)

STAFF	Minimum Members	Governors
Nursing and Midwifery*	300	2
Admin and Clerical**	300	1
Medical	150	1
Additional Professional, Scientific, Technical and Clinical Support	150	1
Contracted staff and Volunteers ***	100	1
Total	1,000	6

* Both registered and non-registered e.g. including Health Care Assistants

** In accordance with the classification in the Trust's Electronic Staff Record (ESR)

*** As per paragraph 7.2 of the Constitution.

The exercise of functions for the purposes of the Trust through specified Qualifying Organisations leads to eligibility for membership of the Staff Constituency, by virtue of paragraph 7.2.2 of the Constitution. Those Qualifying Organisations currently so specified by the Trust Board are:

- (i) Octagon Healthcare Limited;
- (ii) Serco Health Limited;
- (iii) NCS Limited (Norfolk County Services Limited).

ANNEX 3 – COMPOSITION OF THE COUNCIL OF GOVERNORS

ELECTED			APPOINTED	
PUBLIC* (Opt in)			PARTNER (Appointed)	
Norwich	3		Norfolk PCT	1
Breckland	3		University of East Anglia	1
Broadland	3		Norfolk County Council	1
South Norfolk	2		Other local authorities collectively: South Norfolk, North Norfolk, Breckland, Broadland, Great Yarmouth/Waveney, West Norfolk and Norwich	1
North Norfolk	2			
Gt Yarmouth/Waveney	1			
West Norfolk	1			
Total	15			
STAFF**(Opt out)				
Nursing and Midwifery	2			
Admin and Clerical	1			
Medical	1			
Additional professional scientific, technical and clinical support	1			
Contracted staff and Volunteers	1			
Total	6			
			Total	4
Sub Total	21		TOTAL	25

* As per Annex 1 (The Public Constituency)

** In accordance with the classifications in Annex 2 (The Staff Constituency)

ANNEX 4 –THE MODEL RULES FOR ELECTIONS

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 consent and particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination papers
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination papers
17. Withdrawal of candidates
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Part 1 - Interpretation

1. Interpretation

In these rules, unless the context otherwise requires -

“corporation” means the public benefit corporation subject to this Constitution (namely the Trust);

“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 board of governors;

“the regulator” means the Independent Regulator for NHS foundation Trusts;

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

“Board of Governors” shall be taken to mean Council of Governors for the purposes of this Trust.

Part 2 – Timetable for election

2. Timetable

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

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

3. Computation of time

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

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

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

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

Part 3 – Returning officer

4. Returning officer

- (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.
- (2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

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

6. Expenditure

The corporation is to pay the returning officer –

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

7. Duty of co-operation

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

Part 4 - Stages Common to Contested and Uncontested Elections

8. Notice of election

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

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the board of governors to be elected from that constituency, or class within that constituency,

9. Nomination of candidates

- (1) Each candidate must nominate themselves on a single nomination paper.
- (2) The returning officer-
 - (a) is to supply any member of the corporation with a nomination paper, and
 - (b) is to prepare a nomination paper for signature at the request of any member of the corporation,

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

10. Candidate's particulars

The nomination paper must state the candidate's -

- (a) full name,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

The nomination paper must state –

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

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

12. Declaration of eligibility

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

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

13. Signature of candidate

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

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

14. Decisions as to the validity of nomination

- (1) Where a nomination paper 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 paper is invalid,
 - (c) receives satisfactory proof that the candidate has died, or
 - (d) receives a written request by the candidate of their withdrawal from candidacy.
- (2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds -
 - (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election,
 - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
 - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
 - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
 - (e) that the paper is not signed and dated by the candidate, as required by rule 13.
- (3) The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- (4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.
- (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 paper.

15. Publication of statement of candidates

- (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- (2) The statement must show –
 - (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
 - (b) the declared interests of each candidate standing,

as given in their nomination paper.

- (3) The statement must list the candidates standing for election in alphabetical order by surname.
- (4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers

- (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.
- (2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

- (1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the board of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- (2) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the board of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- (3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be board of governors, then –
 - (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and

- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

Part 5 – Contested elections

19. Poll to be taken by ballot

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

20. The ballot paper

- (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- (2) No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter.
- (3) The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

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

- (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.
- (2) The declaration of identity is to include a declaration –
 - (a) that the voter is the person to whom the ballot paper was addressed,
 - (b) that the voter has not marked or returned any other voting paper in the election, and
 - (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.
- (3) The declaration of identity is to include space for –
 - (a) the name of the voter,
 - (b) the address of the voter,
 - (c) the voter's signature, and
 - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

- (1) The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- (2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

23. Notice of poll -The returning officer is to publish a notice of the poll stating–

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

24. Issue of voting documents by returning officer

- (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters–
 - (a) a ballot paper and ballot paper envelope,
 - (b) a declaration of identity (if required),
 - (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
 - (d) a covering envelope.
- (2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

- (1) The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- (2) The covering envelope is to have –
 - (a) the address for return of the ballot paper printed on it, and
 - (b) pre-paid postage for return to that address.
- (3) There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –
 - (a) the completed declaration of identity if required, and
 - (b) the ballot paper envelope, with the ballot paper sealed inside it.

The poll

26. Eligibility to vote

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

27. Voting by persons who require assistance

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

28. Spoilt ballot papers

- (1) If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- (2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- (3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she –
 - (a) is satisfied as to the voter’s identity, and
 - (b) has ensured that the declaration of identity, if required, has not been returned.
- (4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”) –
 - (a) the name of the voter, and
 - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
 - (c) the details of the unique identifier of the replacement ballot paper.

29. Lost ballot papers

- (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.
- (2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she –
 - (a) is satisfied as to the voter’s identity,
 - (b) has no reason to doubt that the voter did not receive the original ballot paper, and
 - (c) has ensured that the declaration of identity if required has not been returned.
- (3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –
 - (a) the name of the voter, and
 - (b) the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot paper

- (1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- (2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”) –
 - (a) the name of the voter, and
 - (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

31. Declaration of identity for replacement ballot papers (public and patient constituencies)

- (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.
- (2) The declaration of identity is to include a declaration –
 - (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
 - (b) of the particulars of that member’s qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.
- (3) The declaration of identity is to include space for –
 - (a) the name of the voter,
 - (b) the address of the voter,
 - (c) the voter’s signature, and
 - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

Procedure for receipt of envelopes

32. Receipt of voting documents

- (1) Where the returning officer receives a –
 - (a) covering envelope, or
 - (b) any other envelope containing a declaration of identity 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 33 and 34 are to apply.

- (2) The returning officer may open any ballot paper envelope for the purposes of rules 33

and 34, but must make arrangements to ensure that no person obtains or communicates information as to –

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

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

33. Validity of ballot paper

- (1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly completed, signed, and dated.
- (2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to –
 - (a) put the declaration of identity if required in a separate packet, and
 - (b) put the ballot paper aside for counting after the close of the poll.
- (3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to –
 - (a) mark the ballot paper “disqualified”,
 - (b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper,
 - (c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and
 - (d) place the document or documents in a separate packet.

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

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

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

35. Sealing of packets

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

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

Part 6 - Counting the votes

36. Interpretation of Part 6

In Part 6 of these rules –

“*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 paper –

(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 44(4) below,

“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 41 below,

“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 papers 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 paper” means a ballot paper 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 paper on which a second or subsequent preference is recorded for the candidate to whom that paper has been transferred, and

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule 42 below.

37. Arrangements for counting of the votes

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

38. The count

(1) The returning officer is to –

(a) count and record the number of ballot papers that have been returned, and

(b) count the votes according to the provisions in this Part of the rules.

(2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.

(3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

39. Rejected ballot papers

(1) Any ballot paper –

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which 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.

- (2) The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.
- (3) 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 paragraph (1).

40. First stage

- (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.
- (2) The returning officer is to then count the number of first preference votes given on ballot papers for each candidate, and is to record those numbers.
- (3) The returning officer is to also ascertain and record the number of valid ballot papers.

41. The quota

- (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.
- (2) The result, increased by one, of the division under paragraph (1) above (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”).
- (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 paragraphs (1) to (3) of rule 44 has been complied with.

42. Transfer of votes

- (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers 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 papers for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- (2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

- (3) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.
- (4) The vote on each ballot paper transferred under paragraph (3) above 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 papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- (5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers 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 papers for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- (6) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.
- (7) The vote on each ballot paper transferred under paragraph (6) shall be at –
 - (a) a transfer value calculated as set out in paragraph (4)(b) above, 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.
- (8) Each transfer of a surplus constitutes a stage in the count.
- (9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- (10) Transferable papers 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.
- (11) This rule does not apply at an election where there is only one vacancy.

43. Supplementary provisions on transfer

- (1) If, at any stage of the count, two or more candidates have surpluses, the transferable

- papers 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 papers 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 papers of the candidate on whom the lot falls shall be transferred first.
- (2) The returning officer shall, on each transfer of transferable papers under rule 42 above –
 - (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
 - (d) compare –
 - (i) the total transfer value of the transferred votes and add that difference to
 - (ii) the previously recorded total of non-transferable votes, and
 - (3) All ballot papers transferred under rule 42 or 44 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 paper or, as the case may be, all the papers in that sub-parcel.
 - (4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule 42 or 44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper 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.

44. Exclusion of candidates

- (1) If—
 - (a) all transferable papers which under the provisions of rule 42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and
 - (b) subject to rule 45 below, 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 paragraph (12) below applies, the candidates with the then lowest votes).

- (2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—
 - (a) ballot papers on which a next available preference is given, and
 - (b) ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).

- (3) The returning officer shall, in accordance with this rule and rule 43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.
- (4) The exclusion of a candidate or of two or more candidates together, constitutes a further stage of the count.
- (5) If, subject to rule 45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.
- (6) The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).
- (7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.
- (8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- (9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph (1) above.
- (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.
- (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 paragraphs (5) to (10) of rule 42 and rule 43.
- (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.

- (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.

45. Filling of last vacancies

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

46. Order of election of candidates

- (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 42(10) above.
- (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.
- (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.
- (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.

Part 7 – Final proceedings in contested and uncontested elections

47. Declaration of result for contested elections

- (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to—
 - (a) declare the 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 Norfolk and Norwich University Hospital NHS Trust
- (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 39(1), available on request.

48. Declaration of result for uncontested elections

In an uncontested election,

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

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

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll

- (1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets –
 - (a) the counted ballot papers,
 - (b) the ballot papers endorsed with “rejected in part”,
 - (c) the rejected ballot papers, and
 - (d) the statement of rejected ballot papers.
- (2) The returning officer must not open the sealed packets of –
 - (a) the disqualified documents, with the list of disqualified documents inside it,
 - (b) the declarations of identity,
 - (c) the list of spoilt ballot papers,
 - (d) the list of lost ballot papers,
 - (e) the list of eligible voters, and
 - (f) the list of tendered ballot papers.
- (3) The returning officer must endorse on each packet a description of – by of the 2006 Act, to the chairman of the NHS Trust, or
 - (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and
 - (d) the constituency, or class within a constituency, to which the election relates.

50. Delivery of documents

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

51. Forwarding of documents received after close of the poll

Where –

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to

- be resent, or
- (c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued,

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

52. Retention and public inspection of documents

- (1) The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.
- (2) With the exception of the documents listed in rule 53(1), the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.
- (3) A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

- (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –
 - (a) any rejected ballot papers, including ballot papers rejected in part,
 - (b) any disqualified documents, or the list of disqualified documents,
 - (c) any counted ballot papers,
 - (d) any declarations of identity, or
 - (e) the list of eligible voters,

by any person without the consent of the Regulator.

- (2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- (3) The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to –
 - (a) persons,
 - (b) time,
 - (c) place and mode of inspection,
 - (d) production or opening,

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

- (4) On an application to inspect any of the documents listed in paragraph (1), –
 - (a) in giving its consent, the regulator, and
 - (b) and making the documents available for inspection, the corporation,

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

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

Part 9 – Death of a candidate during a contested election

54. Countermand or abandonment of poll on death of candidate

- (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to –
 - (a) 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 papers 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 papers 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.
- (2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity

55. Election expenses

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

56. Expenses and payments by candidates

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

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

57. Election expenses incurred by other persons

- (1) No person may -
 - (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
 - (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.
- (2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

58. Publicity about election by the corporation

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

to questions, as it considers necessary.

- (2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, must be –
 - (a) objective, balanced and fair,
 - (b) equivalent in size and content for all candidates,
 - (c) compiled and distributed in consultation with all of the candidates standing for election, and
 - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- (3) Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

59. Information about candidates for inclusion with voting documents

- (1) The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.
- (2) The information must consist of –
 - (a) a statement submitted by the candidate of no more than 150 words; and
 - (b) a photograph of the candidate.

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

- (1) In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.
- (2) The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

Part 11 – Questioning elections and the consequence of irregularities

61. Application to question an election –

- (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.
- (2) An application may only be made once the outcome of the election has been declared by the returning officer.
- (3) An application may only be made to the Regulator by –
 - (a) a person who voted at the election or who claimed to have had the right to vote, or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- (4) The application must –
 - (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as the Regulator may require.

- (5) The application must be presented in writing within 21 days of the declaration of the result of the election.
- (6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
 - (a) The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
 - (b) the determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
 - (c) The regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy

- (1) The following persons –
 - (a) the returning officer,
 - (b) the returning officer’s staff,

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

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

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

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

63. Prohibition of disclosure of vote

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

64. Disqualification

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

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

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

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

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

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

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

1 REMOVAL OF A GOVERNOR

A Governor may be removed from the Council of Governors by a resolution approved by not less than two-thirds of the remaining Governors present and voting at a meeting of the Council of Governors on the grounds that:

- (a) they have committed a serious breach of the Trust's Code of Conduct for the Board of Directors and Council of Governors, or
- (b) they have acted in a manner detrimental to the interests of the Trust; or
- (c) they have failed to disclose any interest required to be disclosed; or
- (d) the Council of Governors consider that it is not in the best interests of the Trust for them to continue as a Governor; or
- (e) they have failed to attend two meetings in any Financial Year, unless the other Governors are satisfied that:
 - (i) the absences were due to reasonable causes; and
 - (ii) they will be able to start attending meetings of the Trust again within such a period as the other Governors consider reasonable.

2. PROCEDURE FOR APPOINTMENT OF 'APPOINTED GOVERNORS'

In accordance with paragraph 9.4 and Annex 3 of the Constitution, Governors will be appointed to the Council of Governors by partner organisations in accordance with the following procedure:

- (a) The Chairman of the Trust will notify the relevant organisation or organisations of an actual or anticipated vacancy on the Council of Governors to which they are entitled to appoint a Governor;
- (b) The Chairman of the Trust will make available to the relevant organisation or organisations such information as they may reasonably require with respect to the eligibility and disqualification criteria for Governors and any skills, qualifications, attributes or experience that are considered likely to prove useful in the position to be filled;
- (c) In the event that the relevant organisation or organisations fail to appoint a Governor the position shall be held vacant until such appointment is made.

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

These Standing Orders form part of the Constitution of the Norfolk and Norwich University Hospitals NHS Foundation Trust.

1. *Interpretation*

- 1.1 The Chairman of the Trust shall be the final authority on the interpretation of Standing Orders.
- 1.2 Any expression to which a meaning is given by the National Health Service Act 2006 or the Constitution shall have the same meaning in these Standing Orders and in addition:
- “Council” – The Council of Governors as constituted in accordance with the Constitution being the same body as the “Board of Governors” referred to in 2006 Act.
 - “Governor” – Member of the Council of Governors whether elected or appointed.
 - "Board of Directors" – means the Board of Directors of the Trust as constituted in accordance with the Constitution and the 2006 Act.
 - "Director" – Directors on the Board of Directors whether Non-Executive (including the Chairman) or Executive (including the Chief Executive).
 - “the Secretary” or “Board Secretary” - is the Secretary of the Trust or any other person appointed by the Trust to perform the duties of the Secretary of the Trust from time to time
 - “Vice Chairman” – means the non-executive director appointed, in accordance with Section 20.4 of the Constitution, to take on the Chairman’s duties if the Chairman is absent for any reason.

2. *The Trust*

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

3. *Meetings of the Council*

- 3.1 **Admission of the Public and the Press** - The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors but shall be required to withdraw upon the Council resolving as follows:

“That representatives of the Press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest”.

The right of attendance referred to above carries no right to ask questions or otherwise

participate in the meeting.

- 3.2 The Chairman (or other person presiding under the provisions of Standing Order 3.15) shall give such directions as he/she thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the business of the meeting shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Council resolving as follows:

“That in the interests of public order the meeting adjourn for (the period to be specified) to enable the completion of business without the presence of the public”

- 3.3 **Confidentiality** - Nothing in these Standing Orders shall require the Council to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Council.
- 3.4 Matters to be dealt with by the Council following the exclusion of representatives of the press, and other members of the public shall be confidential to the Governors.
- 3.5 Governors, Directors and Officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Council meeting, without the express permission of the Council. This prohibition shall apply equally to the content of any discussion during the Council meeting which may take place on such reports or papers.
- 3.6 **Calling Meetings** - Meetings of the Council shall be held at such times and places as the Council may determine.
- 3.7 The Chairman may call a meeting of the Council at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Governors, has been presented to him/her, or if, without so refusing, the Chairman does not call a meeting within seven days after such requisition has been presented to him/her, at the Trust's head office, such one third or more Governors may forthwith call a meeting.
- 3.8 **Notice of Meetings** - Before each meeting of the Council a notice of the meeting, specifying the business proposed to be transacted at it and signed by the Chairman or by an officer authorised by the Chairman to sign on his/her behalf 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/her at least five clear days before the meeting.
- 3.9 Want of service of the notice on any Governor shall not affect the validity of a meeting.
- 3.10 In the case of a meeting called by Governors in default of the Chairman, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the notice. Failure to serve such a notice on more than three Governors will invalidate the meeting. A notice shall be presumed to have been served one day after posting by fully paid first class post.
- 3.11 Before each meeting of the Council 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 office at least three clear days

before the meeting.

- 3.12 **Setting the Agenda** -The Council 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. Following a resolution of the Council to this effect, such matters may be listed as an Appendix to these Standing Orders.
- 3.13 A Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least 10 clear days before the meeting. The request should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chairman.
- 3.14 **Chairman of Meeting** – At any general meeting of the Council, the Chairman, if present, shall preside and shall be entitled to vote and to exercise a second or casting vote where the number of votes for and against a motion is equal.
- 3.15 For the purpose of enabling the proceedings of the Council in the absence of the Chairman, the nominated Vice Chairman shall preside in those circumstances and he/she shall exercise all the rights and obligations of the Chairman including the right to vote and to exercise a second or casting vote where the number of votes for and against a motion is equal.
- 3.16 If any matter for consideration at a meeting of the Council relates to the conduct or interests of the Chairman or to the conduct or interest of the non-executive Directors as a class, neither the Chairman nor any of the non-executive Directors shall preside over the period of the meeting during which the matter is under discussion. In such circumstances, the Governors (excluding the Chairman and the non-executive Directors) shall elect one of their number to preside during that period and that person shall exercise all the rights and obligations of the Chairman including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.
- 3.17 **Annual Public Meeting** - The Trust will publicise and hold an annual public meeting.
- 3.18 **Notices of Motion** – A member of the Council desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under Standing Order 3.20. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to Standing Order 3.10.
- 3.19 **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.
- 3.20 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Governor(s) who gives notice and also the signature of 4 other Governors. When any such motion has been disposed of by the Council, it shall not be competent for any Governor other than the Chairman to propose a motion to the same effect within 6 months; however the Chairman may do so if he/she considers it appropriate.

- 3.21 Motions -The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.22 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- An amendment to the motion.
 - The adjournment of the discussion or the meeting.
 - That the meeting proceed to the next business. (*)
 - The appointment of an ad hoc committee to deal with a specific item of business.
 - That the motion be now put. (*)
- *In the case of sub-paragraphs denoted by (*) above to ensure objectivity motions may only be put by a Governor who has not previously taken part in the debate and who is eligible to vote.
- No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.
- 3.23 **Chairman's Ruling** - 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, relevance, regularity and any other matters shall be final.
- 3.24 **Voting** – If, in the opinion of the Chairman, a vote should be required on a question at a meeting, the result shall be determined by a majority of the votes of the Governors present and voting on the question.
- 3.25 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 3.26 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 3.27 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.28 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.29 **Minutes** -The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 3.30 No discussion shall take place upon the Minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the Minutes shall be agreed and recorded at the next meeting.
- 3.31 Minutes shall be circulated in accordance with Governors' wishes. Where providing a record of a public meeting, the Minutes shall be made available to the public.
- 3.32 **Suspension of Standing Orders** - Except where this would contravene any provision of the Constitution or Authorisation or any statutory provision or any direction made by the Independent Regulator of NHS Foundation Trusts, any one or more of the Standing Orders

may be suspended at any meeting, provided that at least two-thirds of the Governors are present, including one elected Governor and one nominated Governor and that a majority of those present vote in favour of suspension.

- 3.33 A decision to suspend Standing Orders shall be recorded in the Minutes of the meeting.
- 3.34 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Governors.
- 3.35 No formal business may be transacted while Standing Orders are suspended.
- 3.36 The Audit Committee of the Board of Directors shall review every decision of the Council to suspend Standing Orders.
- 3.37 **Record of Attendance** - The names of the Governors present at the meeting shall be recorded in the minutes.
- 3.38 **Quorum** -No business shall be transacted at a meeting of the Council unless at least one-third of the whole number of the Governors are present including at least 5 elected Governors from the Public Constituency and at least one Governor not from the Public Constituency.
- 3.39 If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 5 or 6) 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.
- 3.40 **Adjournment of Meetings** - The Council may, by resolution, adjourn any meeting to some other specified date, place and time and such adjourned meeting shall be deemed a continuation of the original meeting. No business shall be transacted at any adjourned meeting which was not included in the agenda of the meeting of which it is an adjournment.
- 3.41 When any meeting is adjourned to another day, other than the following day, notice of the adjourned meeting shall be sent to each Governor specifying the business to be transacted.
- 3.42 Any resolution for the removal of a non-executive Director shall require the approval of three-quarters of the members of the Council.

4. *Appointments and Remuneration Committee*

- 4.1 The Council of Governors shall create a duly authorised Committee consisting of no less than three and no more than five of its member Governors. In addition, the Chairman of the Council of Governors shall be a member of the Committee and shall be its Chairman.
- 4.2 That Committee shall receive nominations from the Nominations Committee of the Board of Directors of shortlisted candidates for appointment of non-executive directors, including Chairman of the Board. The Committee shall then interview those candidates and shall make recommendations to the Council as to potential appointments, in accordance with the Constitution (at paragraph 20.1).

- 4.3 The Committee shall be at liberty to seek advice and assistance from persons other than Members of the Committee or of the Council in arriving at its said recommendations.
- 4.4 The Standing Orders of the Council, as far as they are applicable, shall apply with appropriate alteration to meetings of the Committee including those provisions that relate to potential conflicts of interest, such as Standing Orders 5 and 6. If any matter for consideration at a meeting of the Committee relates to the conduct or interests of the Chairman, the Chairman shall not preside over the period of the meeting during which the matter is under discussion. The remaining Committee Members (excluding the Chairman) shall elect one of their number to preside during that period and that person shall exercise all the rights and obligations of the Chairman including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.
- 4.5 The 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 subject to the provisions of the Constitution. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 4.6 **Quorum** - No business of the Committee shall be transacted at a meeting of the Committee unless at least four members of the Committee are present.

If a Governor or the Chairman has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 5 or 6) 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 any minutes of the meeting. The meeting must then proceed to the next business.

- 4.7 **Remuneration and appraisal** - On an annual basis, the Committee shall make recommendations to the Council of Governors on the levels of remuneration and allowances, and the other terms and conditions of office, of the Chairman and non-executive directors, in accordance with the Constitution at paragraph 27.1.
- 4.8 The Committee shall receive reports on behalf of the Council of Governors on the process and outcome of appraisal for the Chairman and non-executive directors.
- 4.9 **Confidentiality** - No member of the Committee shall disclose information relating to any matter dealt with by, or brought before, the Committee without its prior permission.

5. *Declarations of Interests and Register of Interests*

- 5.1 **Declaration of Interests** - The Constitution requires Governors to declare Interests which are relevant and material to the Council. All existing Governors should declare such interests. Any Governor appointed subsequently should do so on appointment.
- 5.2 Interests which should be regarded as "relevant and material" are to be interpreted in accordance with guidance issued by the Independent Regulator of NHS Foundation Trusts and include:

- (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 businesses or consultancies likely or seeking to do business with the NHS.
- (iii) Majority or controlling share holdings in organisations likely or 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 or providing services to the NHS.
- (v) Membership of any clubs, societies or organisations whose purposes include:
 - furthering the business or personal interests of their members by undeclared or informal means; or
 - campaigning on behalf of any special interest group in relation to health or social care;
- (vi) To the extent not covered above, any other commercial interest likely to give rise to an actual or reasonably perceived conflict of interest.

5.3 At the time the interests are declared, they should be recorded in the Council minutes as appropriate. Any changes in interests should be declared at the next Council meeting following the change occurring. It is the obligation of the Governor to inform the Secretary of the Trust in writing within seven days of becoming aware of the existence of a relevant or material interest. The Secretary will amend the Register upon receipt of such information within five working days.

5.4 Governors' directorships of companies in 5.2(i) above or interests in companies likely or seeking to do business with the NHS 5.2(ii) above should be published in the board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

5.5 During the course of a Council meeting, if a conflict of interest is established, the Governor concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

5.6 There is no general requirement for the interests of Governors' family or close personal relationships to be declared. However Standing Order 6 requires that the interest of Governors' family or close personal relationships, if living together as partners, in contracts should be declared.

5.7 If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman. 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 those of general practitioners should also be considered.

5.8 **Register of Interests** - The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Governors. In particular the Register will include details of all directorships and other relevant and material interests which have been declared, as defined in Standing Order 5.2.

5.9 The details of Governors' interests recorded in the Register will be kept up to date by means of an annual review of the Register by the Secretary in which any changes to interests declared during the preceding twelve months will be incorporated.

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

6. *Exclusion of Chair or Governor in Proceedings on Account of Pecuniary Interest*

6.1 Subject to the following provisions of this Standing Order, if a Governor or the Chairman has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Council at which the contract or other matter is the subject of consideration, he/she 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.

6.2 The Council may exclude the Chairman or a Governor from a meeting of the Council while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.

6.3 For the purpose of this Standing Order the Chairman or Governor shall be treated, subject to Standing Order 6.2 and Standing Order 6.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- (a) he/she, or a nominee of his/hers, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- (b) he/she is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;

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

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

- (a) of his/her membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;
- (b) of an interest in any company, body or person with which he/she is connected as mentioned in Standing Order 6.3 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

6.5 Where the Chairman or a Governor has:

- (a) an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
- (b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
- (c) if the share capital is of more than one class, the total nominal value of shares of any

one class in which he/she has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, then

this Standing Order shall not prohibit him/her from taking part in the consideration or discussion of a contract or other matter or from voting on any question with respect to it without prejudice however to his/her duty to disclose his/her interest.

- 6.6 Standing Order 6 applies to a committee or sub-committee of the Council as it applies to the Council and applies to any member of any such committee or sub-committee (whether or not he/she is also a Governor) as it applies to a Governor.

7. Standards of Business Conduct

- 7.1 **Interest of Governors in Contracts** - If it comes to the knowledge of a Governor, that a contract in which he/she has any pecuniary interest not being a contract to which he/she is himself/herself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Chief Executive of the fact that he/she is interested therein. In the case of married persons, or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that other partner.
- 7.2 A Governor must also declare to the Chief Executive any other employment or business or other relationship of his/hers, or of a member of his/her family or of someone with whom he/she has a close personal relationship, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- 7.3 **Canvassing of and Recommendations by, Governors in Relation to Appointments** - Canvassing of Governors 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.
- 7.4 Other than as provided at SO 4, a Governor 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 Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 7.5 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 7.6 **Relatives of Governors** - Candidates for any staff appointment shall when making application disclose in writing to the Trust whether they are related to any Governor. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
- 7.7 Every Governor shall disclose to the Chief Executive any relationship between himself/herself and a candidate of whose candidature that Governor is aware.
- 7.8 On election or appointment, Governors should disclose to the Trust whether they are related to any other Governor or holder of any office in the Trust.

- 7.9 Where the relationship of a Governor is disclosed, the Standing Order headed 'Exclusion of Chairman or Governor in proceedings on account of pecuniary interest' (Standing Order 6) shall apply.
- 7.10 No formal definition of relationship is made. In considering whether a disclosure is required the influence rather than immediacy of the relationship is more important. In case of doubt disclosure should be made.

8. *Dispute between the Council and the Board of Directors*

- 8.1 If conflict arises between the Board of Directors and the Council of Governors which the Chairman is unable to resolve, then the Chairman may initiate an independent review to investigate and make recommendations. Normally this will be achieved by inviting the chairman of another foundation trust to conduct the review, and the choice of individual will be agreed by both the Council and Board.

9. *Miscellaneous*

- 9.1 **Standing Orders to be given to Governors** – It is the duty of the Chief Executive to ensure that existing Governors and all new Governors are notified of and put into a position to understand their responsibilities within Standing Orders.
- 9.2 **Review of Standing Orders** – Standing Orders shall be reviewed by the Council at least once in each financial year and shall be amended if and as agreed appropriate by the Council, subject to the provisions of SO 9.3. The Trust will maintain records necessary for the appropriate delegation and control of this process. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.
- 9.3 **Variation and Amendment of Standing Orders** – These Standing Orders shall be amended only if:
- ◆ the Board of Directors has agreed; and
 - ◆ a notice of motion under Standing Order 3.18 has been given; and
 - ◆ no fewer than two thirds of the total of the Governors vote in favour of amendment; and
 - ◆ the variation proposed does not contravene a statutory provision or direction made by the Independent Regulator of NHS Foundation Trusts.

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

1 Statutory Framework

- 1.1 These Standing Orders form part of the Constitution of the Norfolk and Norwich University Hospitals NHS Foundation Trust (the Trust).
- 1.2 The Trust's Standing Orders have been compiled in accordance with the requirements and provisions of the Trust Constitution, and the National Health Service Act 2006. The Standing Orders may be varied or revoked, in accordance with SO 6.33.
- 1.3 The Trust is a public benefit corporation in accordance with the 2006 Act. It was first established as an NHS Trust by the National Health Service Trust (Establishment) Order 1994 (SI 1994 No 176) ("the Establishment Order"), as amended by the Norfolk & Norwich Health Care NHS Trust (Establishment) Amendment Order 1996 (SI 1996 No 1001) and The Norfolk & Norwich Health Care NHS Trust Change of Name and (Establishment) Amendment Order 2001 (SI 2001 No 16).
- 1.4 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.
- 1.5 The Trust's Constitution requires that it should have Standing Orders for the practice and procedures of the Board of Directors.

2. NHS Framework

- 2.1 Guidance on appropriate conduct and governance for Trust Boards is issued from time to time by Monitor.

3. Delegation of Powers

- 3.1 Under the Standing Orders relating to the Arrangements for the Exercise of Functions (SO 7) the Board exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee appointed by virtue of SO 8 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 to the Board and Delegation of Powers). That document has effect as if incorporated into the Standing Orders.

4. Interpretation

- 4.1 Save as permitted by law, at any meeting the Chairman of the Trust shall be the final authority

on the interpretation of Standing Orders (on which he should be advised by the Chief Executive and Board Secretary).

- 4.2 Any expression to which a meaning is given in the Health Service Act 2006 shall have the same meaning in this interpretation and in addition:
- 4.3 "Accounting Officer" shall be the Officer responsible and accountable for funds entrusted to the Trust. He shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.
- 4.4 "Trust" means the Norfolk and Norwich University Hospitals NHS Foundation Trust.
- 4.5 "Board" shall mean the Chairman and non-executive directors, and the executive directors appointed by the relevant committee of the Trust.
- 4.6 "Budget" shall mean a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust;
- 4.7 "Chairman" is the person appointed 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 Vice-Chairman of the Trust if a Vice-Chairman has been appointed in accordance with the Constitution.
- 4.8 "Chief Executive" shall mean the chief officer of the Trust.
- 4.9 "Committee" shall mean a committee appointed by the Trust.
- 4.10 "Committee members" shall be persons formally appointed by the Trust to sit on or to chair specific committees.
- 4.11 "Council of Governors" shall mean the body established under the Constitution to be the "Board of Governors" referred to in the National Health Service Act 2006.
- 4.12 "Director" shall mean Directors on the Board of Directors whether non-executive (including the Chairman) or executive (including the Chief Executive).
- 4.13 "Director of Resources" shall mean the chief finance officer of the Trust.
- 4.14 "Funds held on trust" shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under the National Health Service Act 2006. Such funds may or may not be charitable.
- 4.15 "Motion" means a formal proposition to be discussed and voted on during the course of a meeting.
- 4.16 "Monitor" – is the Independent Regulator of NHS Foundation Trusts, as provided by section 31 of the NHS Act 2006.
- 4.17 "Nominated officer" means an officer charged with the responsibility for discharging specific tasks within SO's and SFI's.

- 4.18 "Officer" means an employee of the Trust.
- 4.19 "Secretary" or "Board 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 from time to time
- 4.20 "SFI's" means Standing Financial Instructions
- 4.21 "SO's" means Standing Orders.
- 4.22 "Terms of Authorisation" means the Terms of the Authorisation issued by Monitor, as the Independent Regulator of NHS Foundation Trusts, under Section 35 of the National Health Service Act 2006.
- 4.23 "Vice-chairman" means the non-executive director appointed to take on the Chairman's duties if the Chairman is absent for any reason.

5. The Trust

- 5.1 All business shall be conducted in the name of the Trust.
- 5.2 All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 5.3 The Trust has the functions conferred on it by the National Health Service Act 2006 and by the Terms of Authorisation.
- 5.4 Directors acting on behalf of the Trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission .
- 5.5 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. These powers and decisions are set out in "Reservation of Powers to the Board and Delegation of Powers" and have effect as if incorporated into the Standing Orders.
- 5.6 **Composition of the Board** – the composition of the Trust Board is set out in Section 18 of the Constitution.
- 5.7 **Appointment of the Chairman and Directors**
- 5.7.1 The Chairman and non-executive directors are appointed by a general meeting of the Council of Governors.
- 5.7.2 It is for the Chairman and non-executive directors to appoint or remove the Chief Executive.
- 5.7.3 The Trust shall appoint a Nominations Committee chaired by the Chairman of the Board. The members of the Committee shall be the non-executive directors and the Chief Executive. The functions of the Nominations Committee shall be:
- (a) to appoint the executive directors of the Trust; and
 - (b) to seek and shortlist suitable candidates for appointment as Chairman of the

Board and other non-executive directors in circumstances of actual or anticipated vacancy in any of these roles and having due regard to the balance of skills, knowledge and experience of the Board and the needs of the Trust.

5.7.4 Suitable candidates shortlisted by the Nominations Committee as per 5.7.3(b) above shall be referred to the Appointments and Remuneration Committee of the Council of Governors for interview in accordance with its Standing Orders (SO 4).

5.7.5 Members of the Nominations Committee shall be disqualified from participating in its discussions on any matter and/or from voting on any resolution of the Committee by reason of the declaration of a conflict of interest.

5.8 **Terms of Office of the Chairman and Directors** - The regulations governing the period of tenure of office of the Chairman and directors and the termination or suspension of office of the Chairman and directors are contained in the Code of Governance for NHS Foundation Trusts.

6. Meetings of the Trust

6.1 **Admission of the Public and the Press** - The public and representatives of the press shall not be afforded facilities to attend formal meetings of the Board, unless otherwise determined by the Board.

6.2 **Calling Meetings** - Ordinary meetings of the Board shall be held at such times and places as the Board may determine.

6.3 The Chairman may call a meeting of the Board at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of directors, has been presented to him/her, or if, without so refusing, the Chairman does not call a meeting within seven days after such requisition has been presented to him, at the Trust Headquarters, such one third or more directors may forthwith call a meeting.

6.4 **Notice of Meetings** - Before each meeting of the Board, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his behalf shall be delivered to every director, or sent by post to the usual place of residence of such director, so as to be available to him at least three clear days before the meeting.

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

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

6.7 Failure to serve such a notice on more than three directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

6.8 **Setting the Agenda** - The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted.

- 6.9 A director desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least 10 clear days before the meeting, subject to SO 3.3. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chairman.
- 6.10 **Chairman of the Meeting** - At any meeting of the Board, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Vice-Chairman, if there is one and he/she is present, shall preside. If the Chairman and Vice-Chairman are absent such non-executive director as the directors present shall choose shall preside.
- 6.11 If the Chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the Vice-Chairman, if present, shall preside. If the Chairman and Vice-Chairman are absent, or are disqualified from participating, such non-executive director as the directors present shall choose shall preside.
- 6.12 **Annual Public Meeting** - The Trust will publicise and hold an annual public meeting.
- 6.13 **Notices of Motion** - A director of the Trust desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to SO 6.6.
- 6.14 **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.
- 6.15 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the director(s) who gives it and also the signature of 4 other directors. When any such motion has been disposed of by the Trust, it shall not be competent for any director other than the Chairman to propose a motion to the same effect within 6 months; however the Chairman may do so if he/she considers it appropriate.
- 6.16 **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 6.17 When a motion is under discussion or immediately prior to discussion it shall be open to a director to move:
- an amendment to the motion.
 - the adjournment of the discussion or the meeting.
 - that the meeting proceed to the next business. (*)
 - the appointment of an ad hoc committee to deal with a specific item of business.
 - that the motion be now put. (*)

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

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.

- 6.18 **Chairman's Ruling** - Statements of directors made at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevance, regularity and any other matters shall be observed at the meeting.
- 6.19 **Voting** - Every question at a meeting shall be determined by a majority of the votes of the directors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.
- 6.20 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the directors present so request.
- 6.21 If at least one-third of the directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each director present voted or abstained.
- 6.22 If a director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 6.23 In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.
- 6.24 An officer or other person ("the Alternate") who has been appointed formally by the Board, in accordance with paragraph 6 or 7 of Annex 8 to the Constitution, to act up for an executive director during a period of incapacity or temporarily to fill an executive director vacancy, shall be entitled to exercise the voting rights of the executive director if so agreed by the Board. An Alternate attending the Board to represent an executive director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the executive director. The status of the Alternate when attending a meeting shall be recorded in the minutes.
- 6.25 **Minutes** - The minutes of the proceedings of a meeting of the Board shall be drawn up and submitted for agreement at the next ensuing meeting.
- 6.26 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.
- 6.27 Minutes shall be circulated in accordance with the directors' wishes.
- 6.28 **Suspension of Standing Orders** - Except where this would contravene any statutory provision, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one executive director and one non-executive director, and that a majority of those present vote in favour of suspension.
- 6.29 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 6.30 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the directors.

- 6.31 No formal business may be transacted while Standing Orders are suspended.
- 6.32 The Audit Committee shall review every decision to suspend Standing Orders.
- 6.33 **Variation and Amendment of Standing Orders** - These Standing Orders shall be amended only if:
- a notice of motion under Standing Order 6.13 has been given; and
 - at least two-thirds of the directors are present; and
 - no fewer than half the total of the Trust's non-executive directors vote in favour of amendment; and
 - the variation proposed does not contravene a statutory provision or direction made by the Secretary of State or by the independent regulator of NHS foundation Trusts.
- 6.34 **Record of Attendance** - The names of the directors present at the meeting shall be recorded in the minutes.
- 6.35 **Quorum** - No business shall be transacted at a meeting of the Board unless at least one-third of the whole number of the directors are present including at least one executive director and one non-executive director.
- 6.36 An Alternate in attendance for an executive director, but without formal acting up status, as per SO 6.24 above, may not count towards the quorum.
- 6.37 If a director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 9 or 10) 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.
- 6.38 The requirement at 6.35 above for at least one executive director to form part of the quorum shall not apply where all the executive directors are excluded from a meeting by reason of the declaration of a conflict of interest (see SO 9 or 10), for example, when the Board considers the recommendations of the Remuneration Committee.
- 6.39 Similarly, the requirement at 6.35 above for at least one non-executive director to form part of the quorum shall not apply where all the non-executive directors, including the Chairman, are excluded from a meeting by reason of the declaration of a conflict of interest (see SO 9 or 10), for example, where the Board considers those provisions of the Trust's Constitution that relate to the interests of the non-executive directors as a class. In such circumstances, the Board (excluding the Chairman and the other non-executive directors) shall elect one of their number to preside during that period and that person shall exercise all the rights and obligations of the Chairman including the right to exercise a second or casting vote where the number of votes for or against a motion is equal.

7. Arrangements for the Exercise of Functions by Delegation

- 7.1 Subject to SO 3, 5.5 and 5.7 and such directions as may be given by Monitor, the Board may

make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 8.1 or 8.2 below or by a director or an officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.

- 7.2 **Emergency Powers** - The powers which the Board has retained to itself within these Standing Orders (SO 5.5) may in emergency be exercised by the Chief Executive and the Chairman after having consulted at least two non-executive directors. The exercise of such powers by the Chief Executive and the Chairman shall be reported to the next formal meeting of the Board for ratification.
- 7.3 **Delegation to Committees** - The Board shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board.
- 7.4 **Delegation to Officers** - Those functions of the Trust which have not been retained as reserved by the Board or delegated to an executive committee or sub-committee shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate officers to undertake the remaining functions for which he will still retain an accountability to the Board.
- 7.5 The Chief Executive shall prepare a Scheme of Delegation identifying his proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board as indicated above.
- 7.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Resources or other executive director to provide information and advise the Board in accordance with any statutory requirements.
- 7.7 The arrangements made by the Board as set out in the "Reservation of Powers to the Board and Delegation of Powers" shall have effect as if incorporated in these Standing Orders.

8. Committees

- 8.1 Appointment of Committees - Subject to SO 5.7, the Trust may appoint committees of the Trust, consisting wholly or partly of directors of the Trust or wholly of persons who are not directors of the Trust.
- 8.2 A committee appointed under SO 8.1 may appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include directors of the Trust or wholly of persons who are not members of the Trust committee whether or not they include directors of the Trust).
- 8.3 The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Trust.
- 8.4 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 Board), as the Board shall decide.

Such terms of reference shall have effect as if incorporated into the Standing Orders.

- 8.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised to do so by the Board.
- 8.6 The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines that persons, who are neither directors nor officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board.
- 8.7 Where the Trust 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 Trust such appointment shall be made in accordance with the regulations laid down by the Secretary of State.
- 8.8 The committees and sub-committees established by the Trust are:
- Audit Committee;
 - Remuneration Committee;
 - Clinical Governance Committee;
 - Charitable Funds Committee;
 - Nominations Committee
 - Such other ad hoc committees as may be required from time to time to discharge the Board's responsibilities.
- 8.9 **Confidentiality** - A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board or shall otherwise have concluded on that matter.
- 8.10 A Director of the Trust or a member of a committee shall not disclose any matter reported to the Board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or committee shall resolve that it is confidential.

9. Declarations of Interests and Register of Interests

- 9.1 **Declaration of Interests** - Board directors are required to declare interests which are relevant and material to the Trust.
- 9.2 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 businesses or consultancies likely or seeking to do business with the NHS.
 - (iii) Majority or controlling share holdings in organisations likely or 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 or providing services to the NHS.
 - (v) Membership of any clubs, societies or organisations whose purposes include:

- furthering the business or personal interests of their members by undeclared or informal means; or
 - campaigning on behalf of any special interest group in relation to health or social care;
- (vi) To the extent not covered above, any other commercial interest likely to give rise to an actual or reasonably perceived conflict of interest.

9.3 If board directors have any doubt about the relevance of an interest, this should be discussed with the Chairman.

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

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

9.6 During the course of a board meeting, if a conflict of interest is established, the board director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

9.7 **Register of Interests** - The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of directors. In particular the Register will include details of all directorships and other relevant and material interests which have been declared by both executive and non-executive Board directors, as defined in SO 9.2.

9.8 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.

9.9 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 the local population and to publicise arrangements for viewing it.

10. Disability of Directors in Proceedings on Account of Pecuniary Interest

10.1 Subject to the following provisions of this Standing Order, if a director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

10.2 The Trust Board may, subject to such conditions as it may think fit to impose, remove any disability imposed by this Standing Order in any case in which it appears to the Board to be appropriate in the interests of the Trust that the disability shall be removed.

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

10.4 Any remuneration, compensation or allowances payable to a director by virtue of their position as director shall not be treated as a pecuniary interest for the purpose of this Standing Order.

10.5 For the purpose of this Standing Order the Chairman or a director shall be treated, subject to SO 10.2 and SO 10.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

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

and in the case of married persons or persons living together as partners the interest of one shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

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

- (a) of his membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;
- (b) of an interest in any company, body or person with which he is connected as mentioned in SO 10.5 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

10.7 Where a director:

- (a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
- (b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
- (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

this Standing Order shall not prohibit him/her from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his/her duty to disclose his/her interest.

10.8 Standing Order 10 applies to a committee or sub-committee of the Trust as it applies to the Trust and applies to any member of any such committee or sub-committee (whether or not he is also a director of the Trust) as it applies to a director of the Trust.

11. Standards of Business Conduct

11.1 **Policy** - Staff must comply with the Trust's Code of Business Conduct. Employees are

responsible for ensuring that they are never placed in a position which may be construed or interpreted as a conflict between their private interests and their NHS duties. This primary responsibility applies to all NHS employees, whether they are responsible for committing NHS resources or not.

The Trust will make its Code of Business Conduct available to all staff and publicise the need for all staff to comply with its requirements. The Trust will provide advice and answers to questions on the policy.

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

11.3 An officer must also declare to the Chief Executive any other employment or business or other relationship of his, or of a spouse or cohabiting partner, that conflicts, or might reasonably be predicted to conflict with the interests of the Trust.

The Trust also requires interests, employment or relationships so declared by staff to be entered in a register of interests of staff held by the Chief Executive.

11.4 **Canvassing of, and Recommendations by, Directors in Relation to Appointments** - Canvassing of directors of the Trust or members of any committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.

11.5 A director of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

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

11.7 **Relatives of Directors** - Candidates for any staff appointment shall when making application disclose in writing whether they are related to any director at the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.

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

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

11.10 Where the relationship of an officer or another director to a director of the Trust is disclosed,

the Standing Order headed 'Disability of directors in proceedings on account of pecuniary interest' (SO 10) shall apply.

12. Tendering and Contract Procedure

- 12.1 **Duty to comply with Standing Orders** - The procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Orders (except where SO 6.29 (Suspension of SO's) is applied).
- 12.2 EU Directives Governing Public Procurement - Directives by the Council of the European Union (CEU) prescribe procedures for awarding all forms of contracts and shall have effect as if incorporated in these Standing Orders. OJEU tenders shall be sought at the prevailing annual limit set by the Public Contracts Regulations.
- 12.3 In making its decisions the Trust may have due regard to the NHS Executive "Capital Investment Manual". In the case of management consultancy contracts the Trust may consider the NHS Executive guidance "The Procurement and Management of Consultants within the NHS" as may be amended from time to time.
- 12.4 **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 DH); for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals.
- 12.5 Quotation requirements or formal tendering procedures may be waived by officers to whom powers have been delegated by the Chief Executive without reference to the Chief Executive where:
- (a) the estimated expenditure or income does not, or is not reasonably expected to, exceed the limit set out in the Scheme of Delegation as from time to time updated; or
 - (b) where the supply is proposed under special arrangements negotiated by the DH in which event the said special arrangements must be complied with; or
 - (c) the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender; or
 - (d) specialist expertise is required and is available from only one source; or
 - (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; or
 - (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; or
 - (g) where provided for in the Capital Investment Manual.

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.

Where it is decided that competitive tendering is not applicable and should be waived by virtue

of (c) to (f) above the fact of the waiver and the reasons should be documented and reported by the Chief Executive to the Board in a formal meeting.

- 12.6 Except where SO 12.5, or a requirement under SO 12.2, applies, the Board shall ensure that invitations to tender are sent in accordance with the limits detailed in the Scheme of Delegation, having regard to their capacity to supply the goods or materials or to undertake the services or works required.
- 12.7 Tendering procedures are set out in Annex A to these Standing Orders.
- 12.8 Where quotation requirements are waived under SO 12.5(a) or quotation requirements or formal tendering procedures are waived under SO 12.5(c) (the timescale genuinely precludes competitive tendering); quotations are required in accordance with the Scheme of Delegation.
- 12.9 Where quotations are required under SO 12.4 they should be obtained in accordance with the limits detailed in the Scheme of Delegation, and the procedure specified at Annex A, based on specifications or terms of reference prepared by, or on behalf of, the Board. Procedures should be in place to ensure multiple orders to one supplier do not breach the quotation procedures.
- 12.10 **Quotations**, where limits within the Scheme of Delegation dictate written quotations are appropriate, they should be in writing, unless the Chief Executive or his nominated officer determine that it is impractical to do so, in which case quotations may be obtained by telephone. Confirmation of telephone quotations should be obtained as soon as possible and the reasons why the telephone quotation was obtained should be set out in a permanent record.
- 12.11 All quotations should be treated as confidential and should be retained for inspection.
- 12.12 The Chief Executive or his nominated officer should evaluate the quotations and select the one that gives the best value for money. If this is not the lowest then this fact and the reasons why the lowest quotation was not chosen should be in a permanent record.
- 12.13 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 his nominated officer, possible or desirable to obtain competitive quotations;
 - (b) the goods/services are required urgently.
- 12.14 **Where tendering or competitive quotation is not required** - the Trust shall use the NHS Purchasing and Supply Agency National Contracts for procurement of all goods and services unless it can be demonstrated that better prices can be obtained by not using the NHS Purchasing and Supply Agency National Contracts.
- 12.15 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 Board may also determine from time to time that in-house services should be market tested by competitive tendering (SO 12).

- 12.16 **Private Finance** - When the Board proposes, or is required, to use finance provided by the private sector, the proposal must be specifically agreed by the Trust Board:
- (a) in the light of such professional advice as should reasonably be sought; and
 - (b) having satisfied itself that it is acting within the Terms of Authorisation.
- 12.17 **Contracts** - The Trust may only enter into contracts within its statutory powers and shall comply with:
- (a) these Standing Orders;
 - (b) the Trust's SFI's;
 - (c) EU Directives and other statutory provisions.
- 12.18 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.
- 12.19 In all contracts made by the Trust, the Board 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.
- 12.20 **Personnel and Agency or Temporary Staff Contracts** - The Chief Executive shall nominate officers with delegated authority to enter into contracts for the employment of other officers, to authorise re-grading of staff, and enter into contracts for the employment of agency staff or temporary staff.
- 12.21 The Chief Executive shall nominate officers with power to negotiate for the provision of healthcare services with purchasers of healthcare.
- 12.22 **Cancellation of Contracts** - Except where specific provision is made in model Forms of Contracts or standard Schedules of Conditions approved for use within the National Health Service and in accordance with Standing Orders 12.2 and 12.3, 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 Trust, or if the like acts shall have been done by any person employed by him or acting on his 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 him/her or acting on his/her behalf shall have committed any offence under the Prevention of Corruption Acts 1889 and 1916 and other appropriate legislation.
- 12.23 **Determination of Contracts for Failure to Deliver Goods or Material** - 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.

- 12.24 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.
- 12.25 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 Acts.

13. 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 £500;
- (d) items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract.

14 In-House Services

- 14.1 In all cases where the Trust 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 and specialist.
 - (b) In-house tender group, comprising representatives of the in-house team, a nominee of the Chief Executive and technical support.
 - (c) Evaluation group, comprising normally a specialist officer, a supplies officer and a Director of Resources representative.
- 14.2 All groups should work independently of each other, but individual officers may be a member of more than one group. No member of the in-house tender group may, however, participate in the evaluation of tenders.
- 14.3 The evaluation group shall make recommendations to the Board.
- 14.4 The Chief Executive shall nominate an officer to oversee and manage the contract.

15. Custody of Seal and Sealing of Documents

- 15.1 **Custody of Seal** - The Common Seal of the Trust shall be kept by the Board Secretary in a secure place.
- 15.2 **Sealing of Documents** - The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board or of a committee, thereof or where the Board has delegated its powers.

- 15.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Resources (or an officer nominated by him) and authorised and countersigned by the Chief Executive (or an officer nominated by him who shall not be within the originating directorate).
- 15.4 **Register of Sealing** - An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Trust at least every six months by the Board Secretary. (The report shall contain details of the seal number, the description of the document and date of sealing).

16. Signature of Documents

- 16.1 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 shall have given the necessary authority to some other person for the purpose of such proceedings.
- 16.2 The Chief Executive or nominated officers shall be authorised, by resolution of 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.

17. Miscellaneous

- 17.1 **Standing Orders to be given to Directors and Officers -**
It is the duty of the Chief Executive to ensure that existing directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and SFI's. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate of SO's.
- 17.2 **Documents having the standing of Standing Orders –**
Standing Financial Instructions and "Reservation of Powers to the Board and Delegation of Powers" shall have the effect as if incorporated into SO's.
- 17.3 **Review of Standing Orders –**
Standing Orders shall be reviewed annually by the Trust. The requirement for review extends to all documents having the effect as if incorporated in SO's. The procedure for variation or amendment of these Standing Orders is specified at SO 6.33.

Annex A TENDERING PROCEDURE

1. Invitation to Tender

- 1.1 All invitations to tender on a formal competitive basis shall state that no tender will be considered for acceptance unless submitted in either:
- (a) a plain, sealed package bearing a pre-printed label supplied by the Trust (or bearing the word `Tender' followed by the subject to which it relates and the latest date and time for the receipt of such tender); or
 - (b) in a special envelope supplied by the Trust to prospective tenderers and the tender envelopes/packages shall not bear any names or marks indicating the sender.
- 1.2 Every tender for goods, materials, manufactured articles supplied as part of a works contract and services shall embody such of the main contract conditions as may be appropriate in accordance with the contract forms described in Section 1.3 and 1.4 below.
- 1.3 Every tender for building and engineering works, except for maintenance work only where Estmancode guidance should be followed, shall embody or be in the terms of the current edition of the appropriate Joint Contracts Tribunal (JCT) or Department of the Environment (GC/Wks) standard forms of contract amended to comply with Concode. When the content of the works is primarily engineering, tenders shall embody or be in the terms of the General Conditions of Contract recommended by the Institutions of Mechanical Engineers and the Association of Consulting Engineers (Form A) or, in the case of civil engineering work, the General Conditions of Contract recommended by the Institution of Civil Engineers. The standard documents should be amended to comply with Concode and, in minor respects, to cover special features of individual projects.
- 1.4 Every tender for goods, materials, services (including consultancy services) or disposals shall embody such of the NHS Standard Contract Conditions as are applicable. Every tenderer must have given or give a written undertaking not to engage in collusive tendering or other restrictive practice.

2. Receipt, Safe Custody and Record of Formal Tenders

- 2.1 Formal competitive tenders shall be addressed to the nominated manager.
- 2.2 The date and time of receipt of each tender shall be endorsed on the unopened tender envelope/package.
- 2.3 The Chief Executive shall designate an officer or officers, not from the originating department, to receive tenders on his behalf and to be responsible for their endorsement and safe custody until the time appointed for their opening, and for the records maintained in accordance with Section 3.

3. Opening Formal Tenders

- 3.1 As soon as practicable after the date and time stated as being the latest time for the receipt of tenders they shall be opened in the presence of two senior officers designated by the Chief Executive and not from the originating department. Tenders may be opened at around the closing date/time if there is an urgent need to respond and provided the requested number of invitations have been received.
- 3.2 Every tender received shall be stamped with the date of opening and initialled by two of those present at the opening.
- 3.3 A permanent record shall be maintained and kept by the Procurement Department, to show:
- (a) the names of firms/individuals invited (these details should be submitted by the project manager for the tender);
 - (b) the names of and the number of firms/individuals from which tenders have been received;
 - (c) the total price(s) tendered where this information is easily identifiable, (multiple prices may have to be excluded, the two senior officers designated will have to decide at the time);
 - (d) closing date and time;
 - (e) date and time of opening;

and the record shall be signed by the persons present at the opening.

- 3.4 Except as in Section 3.5 below, a record shall be maintained of all price alterations on tenders, i.e. where a price has apparently been altered, and the final price shown shall be recorded. Every price alteration appearing on a tender and the record should be initialled by two of those present at the opening.
- 3.5 A report shall be made in the record if, on any one tender, price alterations are so numerous as to render the procedure Section 3.4 unreasonable.

4. Admissibility and Acceptance of Formal Tenders

- 4.1 In considering which tender to accept, if any, the designated officers shall have regard to whether value for money will be obtained by the Trust and whether the number of tenders received provides adequate competition. In cases of doubt they shall consult the Chief Executive.
- 4.2 Tenders received after the due time and date may be considered only if the Chief Executive or nominated officer decides that there are exceptional circumstances, e.g. where significant financial, technical or delivery advantages would accrue, and is satisfied that there is no reason to doubt the bona fide nature of the tenders concerned. The Chief Executive or nominated officer shall decide whether such tenders are admissible and whether re-tendering is desirable. Re-tendering may be limited to those tenders reasonably in the field of consideration in the original competition. If the tender is accepted the late arrival of the tender should be reported to the Board at its next meeting.
- 4.3 Technically late tenders (i.e. those despatched in good time but delayed through no fault of the

tenderer) may at the discretion of the Chief Executive or nominated officer be regarded as having arrived in due time.

- 4.4 Incomplete tenders (i.e. those from which information necessary for the adjudication of the tender is missing) and amended tenders (i.e. those amended by the tenderer upon his own initiative either orally or in writing after the due time for receipt) should be dealt with in the same way as late tenders under Section 4.2.
- 4.5 Where examination of tenders reveals errors, which would affect the tender figure, the tenderer is to be given details of such errors and afforded the opportunity of confirming or withdrawing his offer.
- 4.6 Necessary discussions with a tenderer of the contents of his tender, in order to elucidate technical points etc, before the award of a contract, need not disqualify the tender.
- 4.7 While decisions as to the admissibility of late, incomplete, or amended tenders are under consideration and while re-tenders are being obtained, the tender documents shall remain strictly confidential and kept in safekeeping by the Procurement Department.
- 4.8 Where only one tender/quotation is received the Trust shall, as far as practicable, ensure that the price to be paid is fair and reasonable.
- 4.9 A tender other than the lowest (if payment is to be made by the Trust), or other than the highest (if payment is to be received by the Trust) shall not be accepted unless for good and sufficient reason the Board decides otherwise and record that decision in their minutes and in the record referred to in 3.3 above.
- 4.10 Where the form of contract includes a fluctuation clause all applications for price variations must be submitted in writing by the tenderer and shall be approved by the Chief Executive or nominated officer.
- 4.11 All Tenders should be treated as confidential and should be retained for inspection and should be retained for inspection. Envelopes and packages should be regarded as part of the tender and not discarded, endorsement upon receipt is proof of compliance of tender period.
- 4.12 Both authorised officers should countersign and date the Tender Register. If no tender is received from a tenderer, then the comment “no tender received” should be made by the supplier’s name in the register and countersigned by the two officers.

5. Lists of Approved Firms

- 5.1 The Trust shall refer to the list of approved firms and individuals from whom tenders may be invited, which is maintained by the NHS Purchasing and Supply Agency. provided that:
 - (a) in the case of building, engineering and maintenance works, the Chief Executive is satisfied on their capacity, conditions of labour, etc, and that the Director of Resources is satisfied that their financial standing is adequate. The Chief Executive may delegate this requirement as appropriate under the terms of the PFI contract.
 - (b) in the case of the supply of goods, materials and related services, and consultancy services the Chief Executive or the nominated officer is satisfied as to their technical

competence etc, and that the Director of Resources is satisfied that their financial standing is adequate.

- (c) in the case of the provision of healthcare services to the Trust by a private sector provider, the Director of Resources is satisfied as to their financial standing and the Medical Director is satisfied as to their technical/medical competence.

5.2 If, in the opinion of the Chief Executive or the Director of Resources, it is impractical to use the list of approved firms/individuals (for example where specialist services or skills are required and there are insufficient suitable potential contractors on the list), the Chief Executive or Director of Resources should ensure that appropriate checks are carried out as to the technical and financial capability of firms invited to tender or quote.

6. Procedures for the receipt and opening of tenders

6.1 Submission of Tenders

- (a) The Procurement Department will supply all invitees with labels to be applied to plain envelopes for submission of their tenders. Failure to submit under the cover of this approved envelope will render the tender invalid and invitees will be informed of this requirement at the time of invitation.
- (b) The envelope will bear a pre-addressed label incorporating the delivery address, the tender title and reference number and the closing date for receipt.
- (c) At the time of invitation, invitees will be informed that there should be no marking of the tender envelope or packaging identifying the sender. Any such marking observed at the time of opening will invalidate the tender from consideration.
- (d) Tenders submitted for delivery by courier services must bear no marking to identify the sender. It will be the responsibility of the tenderer to instruct courier services in this regard and to ensure they are similarly instructed that the external packaging used in transit must bear an address label (as above). These requirements will be incorporated into instructions to tenderers at the time of invitation. Tenders that are stamped by courier services to identify the sender despite instructions to the contrary may be treated as valid tenders at the discretion of the Chief Executive or nominated officer.

6.2 Receipt of Tenders

- (a) All tenders will be delivered to the nominated department, NNUH via the Post Room. Direct delivery to the nominated department will be permitted in the event of courier deliveries however couriers requiring receipt signatures must be instructed that in no circumstances must the required receipt bear the name of the tenderer.
- (b) Personal delivery of tenders by representatives of tenderers will be acceptable provided that the representative does not identify the company he /she represents and that as above the envelope/package bears the required address label. No receipts will be given by receiving staff.
- (c) On receipt of all tender envelopes/packages:
 - * the envelope/package will be date stamped with the date of receipt in the nominated department;
 - * The time of receipt will be handwritten on the envelope or packaging alongside the date stamp and initialled by the person receiving;
 - * Envelopes/packages will be placed in a secure container/cabinet where they will be retained until the opening session.

- (d) There will be a maximum of 3 keys for the tender storage facility. These will be held by the 2 managers authorised to co-ordinate the opening of tenders and 1 by the secretarial/admin team to facilitate the prompt secure storage of tenders upon receipt.

6.3 Responsibility for Opening of Tenders

- (a) The Chief Executive will nominate a Senior Manager to be responsible for the management of the procedures involved in the opening of Tenders. A second Senior Manager will also be nominated to act as deputy in the absence of the first nominated Manager.
- (b) It will be the responsibility of whichever of the nominated SMs is available to arrange for the Tender opening session and to ensure opening normally takes place on the second working day following the closing date for submissions.
- (c) To ensure prompt and efficient opening of tenders it will be the responsibility of the nominated SM arranging the opening session to secure the assistance of an additional Senior Manager to participate in the opening session. This second person will be independent of the department inviting tenders and their evaluation / letting. A list of Senior Managers approved to participate in the opening of tenders will be agreed with the Director of Resources and those assisting at the time of opening will be selected from this list by the SM responsible for the opening session.
- (d) It will be permissible for the two nominated SMs (above) to jointly undertake the opening of tenders but in no circumstances will tenders be opened by less than two authorised managers . Each opening session must include at least one of the nominated SMs.
- (e) In exceptional circumstances the Director of Resources may authorise another Senior Manager to co-ordinate a tender opening session. This person must be independent of the tender invitation being considered, and of any subsequent evaluation or letting of the tender. Should such arrangements be necessary the manager nominated by the Director of Resources will be selected from the approved list (above).

6.4 Communications

The Procurement Manager or other authorised Manager responsible for invitation of the tender will be responsible for ensuring written notification to both of the nominated SMs at the time of invitation informing them of:

- (a) The tender title.
- (b) Date of invitation
- (c) Names of companies invited to tender.
- (d) Reference number of the tender.
- (e) Closing date for submissions
- (f) Estimated value of the tender
- (g) Location of the planned use of goods or services subject to tender.

Tenders which may be received from companies not identified on the information supplied at the time of invitation will be regarded as invalid and referred to the Director of Resources who will deal as appropriate under SFIs.

6.5 The Opening Session

The opening of tenders will be conducted by not less than 2 Senior Managers (see above) and will be arranged where possible on the second working day following the closing date. Opening will not

normally take place on the working day after the closing date in order to accommodate tenders which may be technically late.

All tenders will be removed from the secure store whilst both openers are present and will be inspected then opened individually taking account of the following requirements:

- (a) Envelopes / packaging are date stamped with date of receipt and handwritten time of receipt initialled by the person receiving the envelope/package.
- (b) Envelope/package bears no marks allowing identification of the tenderer.
- (c) Tender is identified as a submission relevant to the opening session in progress by reference to the label supplied by the Trust at the time of invitation.
- (d) Seal of the envelope/ package is intact.
- (e) Upon opening; the name of the tendering company should be cross referenced with the list of invitees to ensure valid invitation to tender has been issued.
- (f) The front page of the tender submission should be date stamped " TENDER RECEIVED ON " using the date stamp provided .
- (g) All subsequent pages of the tender document which quote the costs of the tender submission should also be date stamped as above.
- (h) All pages date stamped should also be countersigned by both openers.
- (i) All pricing information relevant to each tender should be recorded in the Tender Register (see below) signed by both openers.
- (j) Processed documents including envelopes / packaging will be preserved as a set for each tender received and returned to the Contracts Administrator with a copy of the completed Tender Register Form.

6.6 Tender Register

A new Tender Register Form will be incorporated into the Tender Opening Procedures and where possible this form will be used electronically as the vehicle for notification to the SMs of invitations to tender. Essential aspects of the form will be;

- (a) Names of the two openers (printed)
- (b) Date and time tenders opened.
- (c) Names of all companies invited to tender.
- (d) Tender title.
- (e) Tender Reference number.
- (f) Estimated value of tender.
- (g) Location to use goods / services subject to tender
- (h) Relating to each tender:
 - date / time received (as recorded on package)
 - tender price
 - signature of both openers
 - relevant comments
- (i) Tender Summary Section:
 - number of tenders received
 - number of tenders invited
 - signatures of both openers.

When completed the original copy of the Tender Register Form should be retained in the Tender Register and a photocopy given to the Contracts Administrator with original tenders and packaging

6.7 Validation of Tenders

The key rules to be followed at the time of opening. It is suggested these should be made known to tenderers at the time of invitation.

Tenders will be valid provided:

- (a) The tender is from a company on the list of invitees notified to the openers at the time of invitation of tenders.
- (b) The tender is received prior to the closing date/ time and is recorded as having been so.
- (c) The envelope/ packaging is that provided by the Trust for the purposes of the tender and bears no markings identifying the source of the tender
- (d) A tender received up to 1 working day after the date /time of closure will be acceptable provided there is proof of posting in accordance with a genuine attempt to ensure arrival on time. (e.g. First class postage not delivered on the following working day)

Tenders will not be valid if:

- (a) They are received after the opening session.
- (b) They are from companies not notified at the time of invitation.
- (c) They are received after the closing date but have no satisfactory evidence of efforts by the tenderer to comply with the closing date/time.
- (d) Packaging carries identification of the tenderer.
- (e) Package/envelope does not bear the address label supplied by the Trust

6.8 Receipt and opening of tenders submitted electronically

If the Trust wishes to do so, it may agree to the submission of tenders by electronic means but only if:

- (a) such agreement has been stated explicitly; and
- (b) processes and procedures have been established within the Trust for the receipt and opening of tenders that are submitted electronically, in a way that is consistent with those processes and procedures that apply to tenders that are submitted on paper, as described in this Section 6 (Procedures for the receipt and opening of tenders); and
- (c) those processes and procedures that are to apply to tenders that are submitted electronically have been approved by the Trust's Internal Auditors."

ANNEX 8 – FURTHER PROVISIONS

1. Disqualification from membership –

A person may not become a member of the Foundation Trust if:

- (a) within the last five years they have been involved as a perpetrator in an incident of violence or abuse:
 - (i) at any NHS hospital or facility; or
 - (ii) against any NHS employees or other persons who exercise functions for the purposes of the NHS; or
 - (iii) against registered volunteers; or
 - (iv) against patients or the public on NHS premises; or
- (b) if they are the subject of a security alert; or
- (c) have been a Vexatious Complainant (as defined in the Trust's Complaints Procedure).

2. Cessation of membership –

2.1 A member shall cease to be a member if:

- they resign by notice to the Membership Manager;
- they are expelled from membership under this Constitution;
- they cease to be entitled under this Constitution to be a member of any of the public constituencies or of any of the classes of the Staff Constituency;
- if after enquiries made in accordance with a process approved by the Council of Governors, they fail to establish that they wish to continue to be a member of the Trust.

2.2 For the avoidance of doubt entitlement to membership of the Staff Constituency:

- (a) by virtue of paragraph 7.1 of the Constitution ceases upon the cessation of the relevant employment with the Trust;
- (b) by virtue of paragraph 7.2.1 of the Constitution ceases upon the volunteer no longer being registered with the Trust as a volunteer;
- (c) by virtue of paragraph 7.2.2 of the Constitution ceases upon the cessation of exercise of relevant functions for the purposes of the Trust or upon the relevant Qualifying Organisation being removed from the list of such organisations at Annex 2 of the Constitution.

2.3 For the avoidance of doubt, entitlement to membership of the Public Constituency by virtue of paragraph 6 of the Constitution ceases upon the member no longer living in the area of the Public Constituency.

3. Expulsion from membership (and complaints about members) –

Where a complaint is made about a member of the Trust that relates to or arises from their membership of the Trust, the following procedure is to be adopted:

- (a) Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Trust.
- (b) The Chairman of the Council of Governors, assisted by the Secretary, will determine the manner in which the complaint should be managed.

- (c) Having taken such steps as he considers necessary to investigate the complaint and to hear the point of view of the members involved, the Chairman of the Council of Governors may either:
 - i dismiss the complaint and take no further action; or
 - ii arrange for the complaint to be considered at the next meeting of the Council of Governors; or
 - iii take any such other steps as he considers appropriate in response to the complaint or to attempt resolution of the complaint.
- (d) If, at his discretion, the Chairman of the Council of Governors considers the complaint to be sufficiently serious, he may suspend the membership of the member about whom a complaint has been made, pending investigation of the complaint. If the Chairman has suspended a member, he must write to the member within 5 working days to inform him of the suspension. The Chairman must also notify the Council of Governors of the decision to suspend the member, no later than the next formal meeting of the Council. Following notification of such information, at its next formal meeting, the Council must:
 - i ratify the decision to suspend pending conclusion of investigation; or
 - ii overturn the decision to suspend; or
 - iii apply any such conditions as to suspension as it considers appropriate, which may include time limitation or a date for review.
- (e) If a complaint is referred by the Chairman to be considered at a meeting of the Council of Governors, in accordance with 3(c)ii above, 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 attend the meeting to answer the complaint.
- (f) At the relevant meeting the Council of Governors may consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- (g) If the member complained of fails to attend the meeting without reasonable cause the meeting may proceed in their absence.
- (h) The Council of Governors may take such steps as it considers appropriate with respect to the complaint which may include a decision to expel the member from membership of the Foundation Trust. To effect expulsion from membership, the Council of Governors will adopt a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a formal meeting of the Council.
- (i) Upon the declaration by the Chairman of the meeting that a resolution to expel a member has been carried, the member that is the subject of that resolution will cease to be a member.

4. A person who is expelled from membership of the Trust may apply for re-admission to membership. This application is to be made in writing to the Chairman, who will arrange for the application to be considered by the next formal meeting of the Council of Governors. 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 formal meeting of the Council.

5. **Indemnification of Governors, Directors and Board Secretary –**

Providing they have acted honestly and in good faith, the Trust will indemnify members of the Council of Governors, members of the Board of Directors and the Board Secretary against the cost, including legal costs, of any personal or civil liability incurred in the execution or purported execution of their functions. The Trust may, at its expense, take out and maintain insurance to cover this indemnity as required.

6. **Acting or Interim Directors –**

The validity of any act of the Trust is not affected by any vacancy among the directors or the governors or by any defect in the appointment of any director or governor.

6.1 If:

- (a) an executive director is temporarily unable to perform his duties due to illness or some other reason (the “Absent Director”); and
- (b) the Board of Directors agrees that it is inappropriate to terminate the Absent Director’s term of office and appoint a replacement director; and
- (c) the Board of Directors agrees that the duties of the Absent Director need to be carried out;

then the Chairman (if the Absent Director is the Chief Executive) or the Chief Executive (in any other case) may appoint an acting director (the “Acting Director”) as an additional director to carry out the Absent Director’s duties temporarily.

6.2 For the purposes of paragraph 6.1 of this Annex, the maximum number of directors that may be appointed under paragraph 18 of the Constitution shall be relaxed accordingly.

6.3 The Acting Director will vacate office as soon as the Absent Director returns to office or, if earlier, the date on which the person entitled to appoint him under this paragraph notifies him that he is no longer to act as an Acting Director.

6.4 An Acting Director shall be an Executive Director for the purposes of the 2006 Act. He shall be responsible for his own acts and defaults and he shall not be deemed to be the agent of the Absent Director.

7. If:

- (a) an executive director post is vacant (“Vacant Position”); and
- (b) the Board of Directors agrees that the Vacant Position needs to be filled by an interim postholder pending appointment of a permanent postholder, then

the Chairman (if the Vacant Position is the Chief Executive) or the Chief Executive (in any other case) may appoint a director as an interim director (“Interim Director”) to fill the Vacant Position pending appointment of a permanent postholder.

7.1 The Interim Director will vacate office on the appointment of a permanent postholder or, if earlier, the date on which the person entitled to appoint him under this paragraph notifies him that he is no longer to act as an Interim Director.

7.2 An Interim Director shall be an Executive Director for the purposes of the 2006 Act.

8. **Vacancies in the Council of Governors –**

If a vacancy arises for one or more elected Governors within 12 months of the previous election for the relevant class or constituency, the Council of Governors shall have the option to take from the list of members who stood for election at that election for that class or constituency whichever member who was not elected as a governor but who secured the next most votes. This procedure shall be an uncontested election for the purposes of the Model Rules for Elections as they apply to the Trust.

- 8.1 Governors appointed in this way shall hold office for a minimum of six months from their appointment but, subject thereto, shall hold office until the earlier of the conclusion of the next election of Governors and (except where the vacancy arose through expiry of a term of office) the date on which would have expired the term of office of that Governor whose cessation of office gave rise to the vacancy.
- 8.2 Elections to the Council of Governors will be held annually and any vacancies arising in the interim may be held over until the next scheduled election date.
- 8.3 In the event that a vacancy amongst the elected governors remains unfilled following an election, that vacancy may be held over until the next scheduled election date.

Miscellaneous

9. The Trust may confer on senior staff the title "Director" as an indication of their corporate responsibility within the Trust but such persons will not be Directors of the Trust for the purposes of the National Health Service Act 2006 ("statutory directors") unless by specific motion of the Trust Board and in accordance with Section 18 of the Constitution.
10. Elections shall not be invalidated by any administrative or clerical error on the part of the Trust or any acts or omissions of the Returning Officer acting in good faith on the basis of such error.
11. The minimum age for membership of this Trust is 16 years old at the date of application for membership.