

AUTHORISATION

of

SHEFFIELD HEALTH & SOCIAL CARE NHS FOUNDATION TRUST

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



Signature:

William May

1 July 2008

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PART 1 Authorisation

1. Monitor ("Monitor"), the Independent Regulator of NHS Foundation Trusts, in exercise of the powers conferred by section 35 of the National Health Service 2006 ("**the Act**") and all other powers exercisable by Monitor, hereby authorises Sheffield Care Trust to become an NHS Foundation Trust ("**the Trust**"), subject to the Conditions set out in Part 3 hereof.
2. This Authorisation shall come into force on 1 July 2008.
3. Subject to the provisions of sections 54 and 55 of the Act, this Authorisation shall be of unlimited duration.
4. This Authorisation is not assignable.
5. Monitor may vary the Conditions of this Authorisation.

PART 2 Interpretation and construction

1. Words and expressions used in the Authorisation shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them.
2. Any reference to an enactment shall include any re-enactment thereof or amendment thereto.
3. Words and expressions defined in the Act shall have the same meaning when used in this Authorisation.
4. Unless otherwise specified, any reference to a numbered Condition (with or without a suffix letter) or Schedule is a reference to the Condition or Schedule bearing that number in this Authorisation.
5. In construing the provisions of this Authorisation, the heading or title of any Part, Condition or Schedule shall be disregarded.
6. Where any obligation of the Trust is required to be performed by a specified date or within a specified period, and where the Trust has failed so to perform, such obligation shall continue to be binding and enforceable after the specified date or after the expiry of the specified period.
7. In this Authorisation:
 - “ancillary services” means services which support the provision of the mandatory goods and services listed in Schedule 2.
 - “property” is land and buildings owned or leased by the Trust.
 - “the Board of Directors” means the Board of Directors of the Trust.
 - “the provision of goods and services for purposes related to the provision of health care” includes the provision of social care services.
 - “high security psychiatric services” has the same meaning as in section 4 of the Act.

PART 3 Conditions

1. Principal Purpose

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

2. General duty

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

3. Constitution

- (1) The Trust shall secure that its constitution is in accordance with any regulations made under section 59 of the Act (conduct of elections).
- (2) The Trust may make amendments to its constitution with the approval of Monitor.
- (3) The constitution, incorporating any amendments which may be made thereto, is annexed at Schedule 1.

4. Compliance and enforcement

- (1) The Trust shall comply with:
 - any requirements imposed on it under the Act or any other enactment;
 - the Conditions of this Authorisation;
 - the terms of its constitution;
 - if applicable, directions issued by the Secretary of State with respect to safety and security in connection with the provision of high security psychiatric services; and
 - the terms of its contracts with bodies which commission the Trust to provide goods and services (including education and training, accommodation and other facilities) for the purposes of the health service in England.
- (2) The Trust shall comply with any guidance issued by Monitor, unless Monitor has agreed with the Trust that, in the particular circumstances, the Trust is not required to comply.
- (3) A failure to comply may result in Monitor taking enforcement action under sections 52, 53 or 54 of the Act.

5. Governance

- (1) The Trust shall ensure the existence of appropriate arrangements to provide representative and comprehensive governance in accordance with the Act and to maintain the organisational capacity necessary to deliver the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2 and the mandatory education and training referred to in Condition 7(2) and listed in Schedule 3.
- (2) The Trust shall comply with the principles of best practice applicable to corporate governance in the NHS/health sector, with any relevant code of practice and with any guidance which may be issued by Monitor.

6. Health care and other standards

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

7. Mandatory Services

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

the Trust and one or more of the commissioning bodies, or on the understanding that the Trust and the relevant commissioning body or bodies will conclude a legally binding contract or contracts for the provision of said education and training in the volumes or amounts specified within 12 months of the date on which this authorisation comes into force.

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

8. Authorised Services

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

- (6) Monitor reserves the right to refuse to authorise research in circumstances where Monitor is not satisfied that the Board of Directors has a proper basis for the written confirmation referred to in Condition 8(5).
- (7) The Trust is authorised to make facilities and staff available for the purposes of education, training or research carried on by others.
- (8) Any activities undertaken by the Trust, other than the provision of goods and services for purposes related to the provision of health care, shall be subject to any restrictions which may be imposed by Monitor in terms of section 43(3) of the Act.

9. Protection of property

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

10. Private health care

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

11. Limit on borrowing

- (1) The total amount of the Trust's borrowing is subject to the limit set out in Schedule 5.
- (2) The limit is subject to annual review by Monitor.

12. Financial viability

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

13. Dividend payments on Public Dividend Capital

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

14. Information

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

15. Entry and inspection of premises

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

16. Fees

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

17. Representative membership

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

18. Co-operation with other bodies

- (1) The Trust shall co-operate with Primary Care Trusts, Strategic Health Authorities, Special Health Authorities, the Commission for Health Care Audit and Inspection, NHS foundation trusts, other NHS trusts and other health authorities and organisations in accordance with the Act and any future guidance to be published by Monitor.
- (2) The Trust shall co-operate with the Commission for Social Care Inspection, the Mental Health Act Commissioners, the National Oversight Group for High Security Hospitals and such other bodies (as may be specified in any future guidance to be published by Monitor) which have a remit covering activities related to the provision of mental healthcare services.
- (3) The Trust shall co-operate with local authorities in the exercise of its own functions and in the exercise by the local authorities of their respective functions.

19. Emergency planning

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

20. Information technology

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

21. Audit committee

- (1) The Trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.
- (2) The Board of Directors shall satisfy itself that at least one member of the audit committee has recent and relevant financial experience.

22. Audit

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

23. Public interest reporting

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

24. Notification

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

25. Information given to Parliament and to Members of Parliament

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

**AUTHORISATION OF SHEFFIELD HEALTH & SOCIAL CARE NHS FOUNDATION
TRUST**

Schedule 1

The Constitution (and Annexures)

**CONSTITUTION OF SHEFFIELD HEALTH & SOCIAL CARE NHS
FOUNDATION TRUST**

CONSTITUTION

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INTERPRETATIONS 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.

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

References in this Constitution to legislation include all amendments, replacements or re-enactments made and references to paragraph numbers are references to paragraphs of this constitution unless the context provides otherwise.

References to legislation include all regulations, statutory guidance or directions.

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

If there is a conflict between the provisions of this Constitution and the provisions of any document referred to herein or the law then the provisions of this Constitution shall prevail unless the law requires otherwise.

References to paragraphs are to paragraphs in this Constitution.

All Annexes referred to in this Constitution form part of it.

In this Constitution:

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| “2006 Act” | means the National Health Service Act 2006; |
| “Accounting Officer” | means the person who from time to time discharges the functions specified in paragraph 25 of Schedule 7 to the 2006 Act; |
| “Applicant NHS Trust” | means Sheffield Care Trust, an NHS Trust designated as a Care Trust by the Secretary of State for Health under Section 77 of the 2006 Act; |
| “Annual Members’ Meeting” | means the annual meeting of all the Members; |
| “Appointed Governors” | means the PCT Governor, the Local Authority Governors, and the Partnership Governors; |
| “Area of the Trust” | means the area consisting of all the areas specified in Annex 1 as an area for a Public Constituency; |
| “Board of Directors” or “Board” | means the Board of Directors of the Trust as constituted in accordance with this Constitution and referred to in paragraph 19 of the Constitution and “Board” shall be construed accordingly; |
| "Carer" | means an individual who provides care to a Service User and who has attended any of the Trust's hospitals within the period of five years immediately before the date of that individual's application to become a Member of the Service Users and Carers Constituency, other than an individual providing care in pursuance of a contract (including a contract of employment) or as a volunteer for a voluntary organisation; |

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| “Chairman” | means the chairman of the Trust appointed in accordance with paragraph 21 and 22 of this Constitution; |
| “Chief Executive” | means the Chief Executive (and Accounting Officer) of the Trust appointed in accordance with paragraph 24 and 25 of this Constitution; |
| "Class" | means a class of Members of a Constituency as defined, constituted or identified in accordance with this Constitution; |
| "Company Secretary" | means the company secretary of the Trust jointly appointed or removed by the Chairman and the Chief Executive to provide the duties of a company secretary as set out in Annex 8 of this Constitution; |
| “Constituencies” | means the Public Constituencies, the Staff Constituency and the Service Users and Carers' Constituency; |
| “Constitution” | means this Constitution of Sheffield Health and Social Care NHS Foundation Trust; |
| “Council of Governors” | means the Council of Governors of the Trust as constituted in accordance with this Constitution and which has the same meaning as the "Board of Governors" in the 2006 Act; |
| "Director" | means a director on the Board of Directors; |
| “Elected Governor” | means a Public Governor, Staff Governor and Service Users and Carers' Governor respectively; |
| “Election Scheme” | means the election scheme and rules set out in Annex 5 and which are to be used in connection with the election of the Elected Governors; |
| “Executive Director” | means an Executive Director of the Trust; |
| “Finance Director” | means the person who from time to time is appointed by the Trust to discharge the usual functions of its Chief Finance Officer; |
| “Financial Year” | means: <ul style="list-style-type: none"> (a) the period beginning with the date on which the Trust is authorised and ending with the next 31st March; and (b) each successive period of twelve months beginning with 1st April; |
| “Governor” | means a Governor on the Council of Governors and being either an Elected Governor or an Appointed Governor; |
| "Health Service Body" | means a NHS Foundation Trust, a Strategic Health Authority, a Special Health Authority, a former Health Authority, an NHS Trust, a Primary Care Trust, the Secretary of State and any other body named as a health service body in Section 9(4) of the 2006 Act; |
| “Independent Regulator” or "Monitor" | means the regulator for the purposes of Part 2 of the 2006 Act; |

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| “Initial Elected Governors” | mean those Elected Governors who are elected as Governors at the Initial Elections; |
| "Initial Elections" | means the first elections held by the Trust pursuant to this Constitution which shall for the avoidance of doubt include any election held pursuant to those powers contained in Section 33 (4) of the 2006 Act; |
| “Local Authority” | means the Council specified in Annex 4, which is a Council for an area which includes the whole or part of the Area of the Trust; |
| “Local Authority Governor” | means a member of the Council of Governors appointed by a Local Authority in accordance with the provisions of this Constitution and as specified in Annex 4; |
| "Member" | means a member of the Trust as determined in accordance with paragraph 5 and Annex 9 of this Constitution; |
| “Membership” | means membership of the Trust through being a Member of one of its Constituencies; |
| “Members’ Meetings” | means a meeting of the Members; |
| “Model Election Rules” | means the model form rules for the conduct of elections published from time to time by the Department of Health and as currently set out in Annex 5; |
| “NHS Foundation Trust Code of Governance” | means the Code of Governance published by the Independent Regulator on the 29 September 2006 or such similar or further guidance as the Independent Regulator may publish from time to time; |
| “Non-Executive Director” | means a Non-Executive Director of the Trust; |
| "Nominations and Remunerations Committee" | means the nominations and remunerations committee established by the Council of Governors in accordance with Annex 7, paragraph 10; |
| “Partnership Governor” | means a member of the Council of Governors appointed by a Partnership Organisation specified in Annex 4; |
| “Partnership Organisation” | means those organisations designated as partnership organisations for the purposes of this Constitution specified in Annex 4; |
| “Primary Care Trust Governor” | means a member of the Council of Governors appointed in accordance with the provisions of this Constitution by a Primary Care Trust specified in Annex 4; |
| “the Primary Care Trust” | means the Primary Care Trust specified in Annex 4; |
| “Public Governor” | means a Member of the Council of Governors elected by the Members of a Public Constituency; |
| “Public Constituencies” | means a public constituency of the Trust as defined in Annex 1; |
| “Reserve Chairman” | means the person appointed in accordance with paragraph 14.3 to preside at meetings of the Council of Governors in the |

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| | circumstances set out in paragraph 14.1; |
| "Service Users" | an individual who has attended any of the Trust's hospitals as a patient within the period of five years immediately before the date of that individual's application to become a Member of the Trust; |
| "Service Users and Carers' Governor" | means a member of the Council of Governors elected by the Members of the Service Users and Carers; Constituency; |
| "Service Users' and Carers' Classes" | means the Classes of the Service Users and Carers' Constituency as specified in Annex 3; |
| "Service Users' and Carers' Constituency" | means that part of the Trust's membership which consists of Service Users and Carers' referred to in the 2006 Act as the patients' constituency; |
| "Social Care Functions" | means such of those health related functions, referred to in Regulation 6 of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 as amended; |
| "Staff Classes" | means the Classes of the Staff Constituency as specified in Annex 2; |
| "Staff Constituency" | means that part of the Trust's membership consisting of the staff of the Trust and other persons as more particularly provided for in paragraph 7 of this Constitution and which is divided into the Staff Classes as specified in Annex 2; |
| "Staff Governor" | means a member of the Council of Governors elected by a Staff Class; |
| "Terms of Authorisation" | means the terms of the Trust's Authorisation issued by the Independent Regulator under Section 35 of the 2006 Act; |
| "the Trust" | means Sheffield Health & Social Care NHS Foundation Trust; |
| "Vice Chairman" | means the Vice Chairman of the Trust; |
| "Voluntary Organisation" | means a body, other than a public or local authority, the activities of which are not carried on for profit. |

1. **NAME**

1.1 The name of the foundation trust shall be Sheffield Health & Social Care NHS Foundation Trust (the "Trust").

2. **PRINCIPAL PURPOSE**

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

2.2 Without prejudice to the Trust's principle purpose, the further purpose of the Trust shall be to provide goods and services for purposes related to the provision of healthcare in accordance with its statutory powers and duties, and its Terms of Authorisation.

2.3 For the purposes of this Constitution "the provision of goods and services for the purposes related to the provision of healthcare" includes the provision of social care services.

2.4 The Trust may also carry on actions other than those mentioned above subject to any restrictions contained in the Terms of Authorisation. Those actions shall be for the purpose of making additional income available in order to carry out the Trust's principle purpose better.

2.5 The Trust may carry out research in connection with the provision of healthcare and make facilities and staff available for the purposes of education; training or research carried out by others.

3. **POWERS**

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

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 OF CONSTITUENCIES**

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

4.1.1 a Public Constituency;

4.1.2 a Staff Constituency; and

4.1.3 a Service User and Carers' Constituency.

5. **APPLICATION FOR MEMBERSHIP**

5.1 An individual who is eligible to become a Member of the Trust may do so on application to the Trust, save as provided for in paragraph 9.

5.2 Applications for Membership shall be dealt with by the Trust in accordance with the provisions of Annex 9.

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 any Public Constituency are referred to collectively as the Public Constituency.
- 6.3 The minimum number of Members in each area for a Public Constituency is specified in Annex 1.
- 6.4 Further provisions relating to Membership of the Public Constituency are set out in Annex 9.

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; or
 - 7.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 7.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as Members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months, including (but not limited to):
 - 7.2.1 contractors or the staff of contractors who work full time at the Trust providing services to the Trust and/or who can demonstrate that a significant part of their work is to provide services to the Trust, and are acknowledged in writing by the Trust as so doing of the purposes of this paragraph;
 - 7.2.2 staff employed by the Local Authority who are deployed to work with the Trust to provide relevant Social Care Functions;
 - 7.2.3 academic staff under an honorary contract with the Trust to provide patient care and/or services to the Trust and who are acknowledged in writing by the Trust as being under such contract for the purpose of this paragraph.
- 7.3 Those individuals who are eligible for Membership of the Trust by reason of the previous provisions of this paragraph 7 are referred to collectively as the Staff Constituency.
- 7.4 The Staff Constituency shall be divided into eight 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 Staff Class within the Staff Constituency.
- 7.5 The minimum number of members in each Staff 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 Staff Class within the Staff Constituency,

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

- 7.7 The process by which an individual shall be invited to become a member of the Staff Constituency shall be in accordance with the provisions of Annex 9.

8. SERVICE USERS AND CARERS' CONSTITUENCY

- 8.1 An individual:

8.1.1 whose name is recorded as a service user in the Trust's patient administration system or other record maintained by the Trust for the purpose of identifying service users' of the Trust, and who has within the period specified below, attended a Trust member of staff as a service user; or

8.1.2 who has within the period specified below attended the Trust as a carer of a service user,

may become or continue as a Member of the Trust.

- 8.2 The period referred to above in paragraph 8.1 shall be the period of 5 years immediately preceding the date of an application by the Service User or Carer to become a Member of the Trust.

- 8.3 Those individuals who are eligible for Membership of the Trust by reason of the previous provisions are referred to collectively as the Service Users and Carers' Constituency.

- 8.4 The Service Users and Carers' Constituency shall be divided into 3 descriptions of individuals who are eligible for membership of the Service Users and Carers' Constituency, each description of individuals being specified in Annex 3 and being referred to as a Class within the Service Users and Carers' Constituency.

- 8.5 An individual providing care in pursuance of a contract (including a contract of employment) with a Voluntary Organisation, or as a volunteer for Voluntary Organisation, does not come within the category of those who qualify for Members of the Service Users and Carers' Constituency.

- 8.6 The minimum number of Members in each Class of the Service Users and Carers' Constituency is specified in Annex 3.

- 8.7 Where an individual is eligible for admission to both the Public Constituency and the Service Users' and Carers Constituency the individual may specify which Constituency he wishes to belong to either in the individual's application or subsequently in writing (but once such a specification has been made, the individual shall not be entitled to subsequently change Constituencies, unless the individual shall cease to be entitled to be a Member of the Constituency of which the individual has chosen to be a Member).

- 8.8 If such an individual does not specify in accordance with paragraph 8.7 above, or the specification is unclear, the individual will be allocated to the Public Constituency, until such time as the individual shall make a clear specification.

- 8.9 Where an individual is eligible for admission to more than one Class in the Service Users and Carers' Constituency the individual may select to which they wish to belong to in either the individuals application or subsequently in writing but once the

individual has made such a specification, that person shall not be entitled to subsequently change Classes unless the individual ceases to be a member of the Class selected.

- 8.10 If such an individual does not specify in accordance with paragraph 8.9 above, or the specification is unclear, the individual will be allocated to such class as the Company Secretary shall decide as a matter of the individual's absolute discretion until such time as the individual makes a clear specification.

9. RESTRICTION ON MEMBERSHIP

- 9.1 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.
- 9.2 An individual who satisfies the criteria for Membership of the Staff Constituency may not become or continue as a Member of any constituency other than the Staff Constituency.
- 9.3 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 9 – Further Provisions.

10. COUNCIL OF GOVERNORS - COMPOSITION

- 10.1 The Trust shall have a Council of Governors, which shall comprise both Elected and Appointed Governors.
- 10.2 The composition of the Council of Governors shall be as specified in Annex 4.
- 10.3 The Members of the Council of Governors, other than the Appointed Governors shall be chosen by election by their constituency or, where there are Classes within a constituency, by their Class within that constituency.
- 10.4 The number of Governors to be elected by each Constituency, or, where appropriate, by each Class of each Constituency, is specified in Annex 4.

11. COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS

- 11.1 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.
- 11.2 The Model Rules for Elections, as may be varied from time to time, form part of this Constitution and are attached at Annex 5.
- 11.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this Constitution. For the avoidance of doubt, the Trust cannot amend the Model Rules for Elections.
- 11.4 An election, if contested, shall be by secret ballot.

12. COUNCIL OF GOVERNORS - TENURE

- 12.1 Subject to the transitional provisions contained at paragraph 2 of Annex 6 in relation to the Initial Elected Governors, an Elected Governor shall hold office for a period of 3 years.
- 12.2 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.
- 12.3 An Elected Governor shall be eligible for re-election at the end of his term, subject to the provisions of paragraph 1 of Annex 6.

- 12.4 An Appointed Governor shall hold office for a period of three years, subject to the provisions of paragraph 1 of Annex 6.
- 12.5 Further provision relating to a Governor's tenure of office are set out in Annex 6.
13. **COUNCIL OF GOVERNOR – DISQUALIFICATION AND REMOVAL**
- 13.1 The following may not become or continue as a member of the Council of Governors:
- 13.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 13.1.2 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;
- 13.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 13.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 13.3 Further provisions as to the circumstances in which an individual may not become or may be removed as a member of the Council of Governors are set out in Annex 6.
14. **COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS**
- 14.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 21 or paragraph 22 below) or, in his absence the Vice Chairman appointed in accordance with the provisions of paragraph 23 below, shall preside at meetings of the Council of Governors save that if the Chairman and Vice-Chairman are unable to preside whether for reasons of absence, conflict of interest or otherwise the Reserve Chairman shall preside.
- 14.2 Meetings of the Council of Governors shall be open to members of the public save that members of the public may be excluded from a meeting on the grounds more particularly provided for in Annex 6.
- 14.3 The Reserve Chairman shall be a Public Governor or Service User and Carer Governor and shall be appointed by the Council of Governors in general meeting. The provisions of paragraph 2.8 to 2.9 of Annex 7 shall also apply.
15. **COUNCIL OF GOVERNORS – STANDING ORDERS**
- 15.1 The standing orders for the practice and procedure of the Council of Governors as may be varied from time to time, are at Annex 7
16. **COUNCIL OF GOVERNORS – CONFLICTS OF INTEREST OF GOVERNORS**
- 16.1 If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governors shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it.
- 16.2 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.
17. **COUNCIL OF GOVERNORS – TRAVEL EXPENSES**

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

18. COUNCIL OF GOVERNORS – FURTHER PROVISIONS

18.1 The Council of Governors may appoint a Nominations and Remuneration Committee consisting of all or some of its members to assist in carrying out those functions set out in paragraphs 21 and 29.1 of the Constitution their recommendations should be reported back to the Council of Governors; and

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

19. BOARD OF DIRECTORS - COMPOSITION

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

19.2 The Board of Directors shall comprise:

19.2.1 a non-executive Chairman;

19.2.2 up to five other Non-Executive Directors; and

19.2.3 up to five Executive Directors,

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

19.4 The Chief Executive shall be the Accounting Officer.

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

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

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

19.8 The Board of Directors shall at all times be constituted so that the number of Non-Executive Directors (excluding the Chairman) equals or exceeds the number of Executive Directors.

20. BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR

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

20.1 he is a Member of the Public Constituency, or

20.2 he is a Member of the Service Users, and Carers' Constituency, and

20.3 he is not disqualified by virtue of paragraph 26 below.

21. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIRMAN AND OTHER NON-EXECUTIVE DIRECTORS

21.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other Non-Executive Directors.

21.2 The removal of the Chairman or any other Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

21.3 The initial Chairman and the initial Non-Executive Directors shall be appointed in accordance with paragraph 22 below.

22. **BOARD OF DIRECTORS – APPOINTMENT OF INITIAL CHAIRMAN AND INITIAL OTHER NON-EXECUTIVE DIRECTORS**

- 22.1 The Chairman of the Applicant NHS Trust shall be appointed as the initial Chairman of the Trust if he wishes to be appointed.
- 22.2 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.
- 22.3 The criteria for qualification for appointment as a Non-Executive Director set out in paragraph 20 above (other than disqualification by virtue of paragraph 26 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.
- 22.4 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.

23. **BOARD OF DIRECTORS – APPOINTMENT OF VICE CHAIRMAN**

- 23.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a Vice Chairman.

24. **BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS**

- 24.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 24.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 24.3 The initial Chief Executive is to be appointed in accordance with paragraph 25 below.
- 24.4 A committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

25. **BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF INITIAL CHIEF EXECUTIVE**

- 25.1 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.
- 25.2 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.

26. **BOARD OF DIRECTORS - DISQUALIFICATION**

- 26.1 The following may not become or continue as a member of the Board of Directors:
 - 26.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 26.1.2 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;
 - 26.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;

26.1.4 a person who falls within the further grounds for disqualification set out in Annex 9.

27. BOARD OF DIRECTORS – STANDING ORDERS

27.1 The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 8.

28. BOARD OF DIRECTORS – CONFLICTS OF INTEREST OF DIRECTORS

28.1 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.

28.2 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.

29. BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE

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

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

30. REGISTERS

30.1 The Trust shall have:

30.1.1 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;

30.1.2 a register of members of the Council of Governors;

30.1.3 a register of interests of Governors;

30.1.4 a register of Directors; and

30.1.5 a register of interests of the Directors.

30.2 The process of admission to and removal from the registers shall be as set out in Annex 9.

31. REGISTERS – INSPECTION AND COPIES

31.1 The Trust shall make the registers specified in paragraph 30 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

31.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of:

31.2.1 any member of the Service Users and Carers' Constituency; and

31.2.2 any other member of the Trust, if he so requests.

- 31.3 So far as the registers are required to be made available:
- 31.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 31.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 31.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

32. **DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION**

- 32.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 32.1.1 a copy of the current Constitution;
 - 32.1.2 a copy of the current Terms of Authorisation;
 - 32.1.3 a copy of the latest annual accounts and of any report of the auditor on them;
 - 32.1.4 a copy of the latest annual report;
 - 32.1.5 a copy of the latest information as to its forward planning; and
 - 32.1.6 a copy of any notice given under section 52 of the 2006 Act.
- 32.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 32.3 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.

33. **AUDITOR**

- 33.1 The Trust shall have an auditor.
- 33.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

34. **AUDIT AND ASSURANCE COMMITTEE**

- 34.1 The Trust shall establish a committee of Non-Executive Directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

35. **ACCOUNTS**

- 35.1 The Trust shall keep accounts in such form as the Independent Regulator may with the approval of HM Treasury direct.
- 35.2 The accounts are to be audited by the Trust's auditor.
- 35.3 The Trust shall prepare in respect of each Financial Year annual accounts in such form as the Independent Regulator may with the approval of the HM Treasury direct.
- 35.4 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

36. **ANNUAL REPORT AND FORWARD PLANS**

- 36.1 The Trust shall prepare an Annual Report and send it to the Independent Regulator.
- 36.2 The Trust shall give information as to its forward planning in respect of each Financial Year to the Independent Regulator.
- 36.3 The document containing the information with respect to forward planning referred to at paragraphs 32.1.5 and 36.2 above shall be prepared by the Directors.
- 36.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.

37. **MEETING OF COUNCIL OF GOVERNORS TO CONSIDER ANNUAL ACCOUNTS AND REPORTS**

- 37.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
 - 37.1.1 the annual accounts;
 - 37.1.2 any report of the auditor on them;
 - 37.1.3 the annual report.

38. **INSTRUMENTS**

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

CORE CONSTITUTION

ANNEX 1

The Public Constituency

THE PUBLIC CONSTITUENCY

Table 1

| Name of the Public Constituency | Area of the Public Constituency (as defined by electoral wards) | Minimum number of Members | Number of Governors to be elected |
|---------------------------------|--|---------------------------|-----------------------------------|
| Sheffield North East | West Ecclesfield, East Ecclesfield, Southey, Firth Park, Burngreave, and Shiregreen and Brightside | 150 | 2 |
| Sheffield North West | Stocksbridge and Upper Don, Stannington, Hillsborough, Walkley, Broomhill and Central | 150 | 2 |
| Sheffield South East | Darnall, Manor Castle, Arbourthorne, Richmond, Birley, Mosborough, Beighton and Woodhouse | 150 | 2 |
| Sheffield South West | Gleadless Valley, Dore and Totley, Fulwood, Graves Park, Nether Edge, Eccleshall, Beauchief and Greenhill, and Crookes | 150 | 2 |

CORE CONSTITUTION

ANNEX 2

The Staff Constituency

THE STAFF CONSTITUENCY

Table 1

| Classes within the Staff Constituency | Individuals eligible for Membership of that Class | Minimum number of Members | Number of Governors to be elected |
|--|---|---------------------------|-----------------------------------|
| Nursing Staff Class | Those individuals defined in paragraph 1 below | 300 | 1 |
| Medical and Clinical Staff Class | Those individuals defined in paragraph 2 below | 80 | 1 |
| Social Worker Staff Class | Those individuals defined in paragraph 3 below | 20 | 1 |
| Allied Health Professions Staff Class | Those individuals defined in paragraph 4 below | 50 | 1 |
| Psychology Staff Class | Those individuals defined in paragraph 5 below | 40 | 1 |
| Support Workers Staff Class | Those individuals defined in paragraph 6 below | 500 | 1 |
| Clinical Support Staff Class | Those individuals defined in paragraph 7 below | 300 | 1 |
| Central Support Staff Class | Those individuals defined in paragraph 8 below | 200 | 1 |

1. NURSING STAFF CLASS

1.1 The members of the Nursing Staff Class are those individuals who are Members of the Staff Constituency who:

1.1.1 are registered with the Nursing and Midwifery Council and who are otherwise fully authorised and licensed to practice in England and Wales or as otherwise designated by the Trust from time to time as eligible to be Members of this Staff Class for the purposes of this paragraph, having regard to the usual definitions applicable at that time for persons carrying out the profession of registered nurse; and

1.1.2 who are employed by the Trust in that capacity at the date of their invitation under paragraph 7 of the Constitution to become a Member in accordance

with the provisions of Annex 9 and at all times thereafter remain employed by the Trust in that capacity.

2. MEDICAL AND CLINICAL STAFF CLASS

2.1 The Members of the Medical and Clinical Staff Class are individuals who are Members of the Staff Constituency who:

2.1.1 are fully registered persons within the meaning of the consolidated Medical Act 1983 and the Dentists Act 1984 (as the case may be) who are otherwise fully authorised and licensed to practice in England and Wales; or

2.1.2 who are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class for the purposes of this paragraph; or

2.1.3 who are qualified pharmacists; and

who are employed by the Trust in that capacity at the date of their invitation under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 9 and at all times thereafter remain employed by the Trust in that capacity.

3. SOCIAL WORKER STAFF CLASS

3.1 The Members of the Social Worker Staff Class are individuals who are Members of the Staff Constituency who:

3.1.1 are qualified social workers registered with the General Social Care Council and employed or engaged by their employing authority and deployed to work with the Trust to provide relevant social care; or

3.1.2 who are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class for the purposes of this paragraph; and

3.1.3 are designated by the Trust in that capacity at the date of their invitation under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 9 and at all times thereafter remain designated by the Trust in that capacity.

4. ALLIED HEALTH PROFESSIONS STAFF CLASS

4.1 The Members of the Allied Health Profession's Staff Class are individuals who are Members of the Staff Constituency:

4.1.1 whose regulatory body falls within the remit of the Council for the Regulation of Healthcare Professions established by Section 25 of the NHS Reform Healthcare Professions Act 2002 (but excluding Staff who fall within paragraph 1 or 2 above); or

4.1.2 who are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class for the purposes of this paragraph; and

4.1.3 who are employed by the Trust in that capacity at the date of their invitation under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 9 and at all times thereafter remain employed by the Trust in that capacity

5. PSYCHOLOGY STAFF CLASS

5.1 The Members of the Psychology Staff Class are individuals who are Members of the Staff Constituency who:

- 5.1.1 are registered with the British Psychological Society and who abide by its Code of Ethics and Conduct and maintain appropriate standards of training and practice; or
- 5.1.2 who are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class for the purposes of this paragraph; and
- 5.1.3 who are employed by the Trust in that capacity at the date of their invitation under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 9 and at all times thereafter remain employed by the Trust in that capacity

6. SUPPORT WORKERS STAFF CLASS

- 6.1 The Members of the Support Workers Staff Class are individuals who are Members of the Staff Constituency who:
 - 6.1.1 do not come within paragraphs 1, 2, 3, 4 or 5 above (due to not being registered with a professional body) but who can demonstrate that a significant part of their work is to provide care to Service Users (eg nursing assistants); or
 - 6.1.2 who are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class for the purposes of this paragraph; and
 - 6.1.3 who are employed by the Trust in that capacity at the date of their invitation under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 9 and at all times thereafter remain employed by the Trust in that capacity.

7. CLINICAL SUPPORT STAFF CLASS

- 7.1 The Members of the Support Staff Class are individuals:
 - 7.1.1 who are members of the Staff Constituency who do not come within paragraphs 1, 2, 3, 4, 5 or 6 above and who work as part of a care team; or
 - 7.1.2 are designated by the Trust from time to time as eligible to be a Member of this Staff Class and who are not eligible to be members of another Staff Class for the purpose of this paragraph having regard to the usual definition applicable at that time; and
 - 7.1.3 who are employed or designated by the Trust at that invitation under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 9 and at all times thereafter remain employed or designated by the Trust in that capacity.

8. CENTRAL SUPPORT STAFF CLASS

- 8.1 The Members of the Support Central Department Staff Class are individuals who are members of the Staff Constituency who do not come with paragraph 1, 2, 3, 4, 5, 6 or 7 above and are designated by the Trust from time to time as eligible to be a Member of this Staff Class and who are not eligible to be members of another Staff Class for the purpose of this paragraph having regard to the usual definition applicable at that time; and
- 8.2 who are employed or designated by the Trust at that invitation under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 9 and at all times thereafter remain employed or designated by the Trust in that capacity.

9. MINIMUM NUMBERS AND NUMBERS OF GOVERNORS

9.1 The minimum number of Members in each Staff Class shall be as set out in column 3 of Table 1 to this Annex and the number of Governors to be elected by each such Staff Class is given in the corresponding entry in Column four of that Table.

10. CONTINUOUS EMPLOYMENT

10.1 For the purposes of paragraph 7 of the Constitution, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the Trust or has continuously exercised functions for the purposes of the Trust.

CORE CONSTITUTION

ANNEX 3

The Service Users and Carers' Constituency

Annex 3 The Service Users and Carers' Constituency

Table 1

| Classes within the Service Users and Carers' Constituency | Individuals eligible for Membership of that Class | Minimum number of Members | Number of Governors to be elected |
|--|---|----------------------------------|--|
| Service User Class | An individual who has attended any of the Trust's hospitals as a patient within the period of five years immediately before the date of that individual's application to become a Member of the Trust. | 150 | 10 |
| Carer Class | An individual who provides care to a Service User and who has attended any of the Trust's hospitals within the period of five years immediately before the date of that individual's application to become a Member of the Service Users and Carers Constituency, other than an individual providing care in pursuance of a contract (including a contract of employment) or as a volunteer for a voluntary organisation. | 100 | 4 |
| Young Service User or Carer Class | A Service User or Carer between the age of 12 and 35 years old. | 20 | 2 |

CORE CONSTITUTION

ANNEX 4

Composition of Council of Governors

COMPOSITION OF COUNCIL OF GOVERNORS

1. INTRODUCTION

- 1.1 The Council of Governors shall comprise Governors who are:
 - 1.1.1 elected by the respective Constituencies in accordance with the provisions of this Constitution; or
 - 1.1.2 appointed in accordance with paragraph 2 below.
- 1.2 The Council of Governors shall at all times be constituted so that more than half the Council of Governors shall consist of Governors who are elected by Members of the Public Constituency and the Service Users and Carers' Constituency.

2. BODIES ENTITLED TO APPOINT A MEMBER OF THE COUNCIL OF GOVERNORS

- 2.1 The following bodies in this paragraph 2 shall be entitled to appoint a Governor or Governors (as the case may be) to the Council of Governors as provided for in this paragraph 2.

Primary Care Trust

- 2.2 Sheffield Primary Care Trust shall be entitled to appoint a Governor in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude the said Primary Care Trust from appointing its Governors provided the appointment is duly made in accordance with the Primary Care Trust's own internal processes.
- 2.3 If the Primary Care Trust named in paragraph 2.2 above declines or fails to appoint a Governor within three months of being requested to do so by the Trust, the Trust shall in its absolute discretion be entitled to extend an invitation to any of those other Primary Care Trusts to whom it provides goods and services to appoint a Governor in substitution for the Primary Care Trust which has failed or declined to do so. The Trust shall give notice of that invitation to the Independent Regulator.
- 2.4 If the invitation referred to in paragraph 2.3 above is accepted by a Primary Care Trust, that Primary Care Trust shall appoint a Governor and any Primary Care Trust which has previously failed to appoint a Governor shall cease to be entitled to do so, subject to the provisions of paragraph 2.8 below.
- 2.5 Subject to paragraph 2.7 below, if the invitation is not accepted within a reasonable period or such period as may have been specified in the invitation the Trust shall extend an invitation to any other such Primary Care Trust until the invitation, is accepted and a Governor is appointed.
- 2.6 The Trust shall give notice forthwith to the Independent Regulator of all invitations the Trust may extend under the preceding paragraph and of any acceptances.
- 2.7 Any Governor appointed under paragraphs 2.4 and 2.5 above shall serve on the Council of Governors for the period stipulated in Annex 6. At the end of that period the Trust shall in its absolute discretion decide whether to permit that Primary Care Trust which had first failed or declined to appoint a Governor to do so for the next period of office or to invite that Primary Care Trust which had appointed a Governor in substitution to do so.
- 2.8 Notwithstanding the foregoing provisions of this paragraph, the Trust shall in its absolute discretion be entitled:

- 2.8.1 to give not less than six months notice to the Primary Care Trust referred to in paragraph 2.2 above (or any substituted Primary Care Trust appointed under paragraphs 2.4 and 2.5 above) terminating their right to appoint a Governor and upon the expiration of that notice period or such other date as the Trust and the relevant Primary Care Trust may agree that Primary Care Trust's right to appoint a Governor shall be terminated and the period of office of the Governor appointed by that Primary Care Trust shall also come to an end on that date; and
- 2.8.2 to appoint another Primary Care Trust for which the Trust provides goods and services to replace that Primary Care Trust to which notice has been given under paragraph 2.8 (i) above save that these provisions shall at all times be operated so as to ensure that the number of Primary Care Trusts entitled to appoint a Governor remains as provided for in paragraph 2.2 above.

Qualifying Local Authority

- 2.9 Sheffield City Council, shall be entitled to appoint three Governors in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude the said local authority from appointing its Governors.
- 2.10 If the local authority named in paragraph 2.9 above declines or fails to appoint a Governor within three months of being requested to do so by the Trust, the Trust shall consult each local authority whose area includes the whole or part of the area of the Trust and the Trust in its absolute discretion may extend an invitation to any of those local authorities to appoint a Governor in substitution for the local authority which has failed or declined to do so.
- 2.11 A Governor appointed under paragraph 2.10 shall then serve on the Council of Governors for the period stipulated in Annex 6. At the end of that period the Trust shall in its absolute discretion decide whether to permit that local authority which had failed or declined to appoint a Governor to appoint a Governor for the next period of office (provided it remains eligible to do so) or to invite the local authority which had appointed a Governor in substitution to do so.

Partnership Organisations

- 2.12 The Trust shall nominate those organisations to be designated as Partnership Organisations for the purposes of this Constitution. The organisations so nominated as Partnership Organisations are:
 - 2.12.1 Sheffield Care Trust Joint Consultation Forum
 - 2.12.2 Sheffield Hallam University
 - 2.12.3 Sheffield University
 - 2.12.4 Voluntary Action Sheffield
 - 2.12.5 Sheffield African Caribbean Mental Health Association
 - 2.12.6 Sheffield Pakistani Muslim Centre
- 2.13 Each of the above organisations shall be entitled to appoint one Governor each in accordance with a process to be agreed by it with the Trust.
- 2.14 An organisation appointed as a Partnership Organisation under paragraph 2.13 shall be entitled to appoint one Governor from a date and in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude that Partnership Organisation from appointing its Governor provided the appointment is duly made in accordance with its own internal processes.

3. COMPOSITION OF THE COUNCIL OF GOVERNORS

| | Electing/Appointing Body | Number of Governors | Total |
|-----------|---|---------------------|-----------|
| 1. | Public Constituency | | |
| | 1.1 Sheffield North East | 2 | 8 |
| | 1.2 Sheffield North West | 2 | |
| | 1.3 Sheffield South East | 2 | |
| | 1.4 Sheffield South West | 2 | |
| 2. | Staff Constituency | | |
| | 2.1 Nursing Staff Class | 1 | 8 |
| | 2.2 Social Worker Staff Class | 1 | |
| | 2.3 Medical and Clinical Staff Class | 1 | |
| | 2.4 Allied Health Professions Staff Class | 1 | |
| | 2.5 Psychology Staff Class | 1 | |
| | 2.6 Support Worker Class | 1 | |
| | 2.7 Support Clinical Staff Class | 1 | |
| | 2.8 Support Central Department Staff Class | 1 | |
| 3. | Service Users and Carers' Constituency | | |
| | 3.1 Service Users Class | 10 | 16 |
| | 3.2 Carers Class | 4 | |
| | 3.3 Young Service User and Carer Class | 2 | |
| 4. | Appointed Governors | | |
| | 4.1 Sheffield Primary Care Trust | 1 | 4 |
| | 4.2 Sheffield City Council | 3 | |
| 5. | Further Organisations | | |
| | 5.1 Sheffield Care Trust Joint Consultative Forum | 1 | 7 |
| | 5.2 Sheffield Hallam University | 1 | |
| | 5.3 Sheffield University | 1 | |
| | 5.4 Voluntary Action Sheffield | 2 | |
| | 5.5 Sheffield African Caribbean Mental Health Association | 1 | |
| | 5.6 Sheffield Pakistani Muslim Centre | 1 | |
| | Total number of Governors | 43 | 43 |

4. FURTHER PROVISION

- 4.1 Further provisions relating to the composition of the Council of Governors is at Annex 6.

CORE CONSTITUTION

ANNEX 5

The Model Rules for Elections

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-

Part I - Interpretation

1. INTERPRETATION

- 1.1 In these rules, unless the context otherwise requires -
- 1.2 “corporation” means the public benefit corporation subject to this constitution;
- 1.3 “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;
- 1.4 “the regulator” means the Independent Regulator for NHS foundation trusts; and
- 1.5 “the 2006 Act” means the National Health Service Act 2006.
- 1.6 Other expressions used in these rules and in Schedule 7 to the National Health Service Act 2006 have the same meaning in these rules as in that Schedule.

Part 2— Timetable for election

2. TIMETABLE

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

| Proceeding | Time |
|--|--|
| Publication of notice of election | Not later than the fortieth day before the day of the close of the poll. |
| Final day for delivery of nomination 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 5.00 p.m. on the final day of the election. |

3. COMPUTATION OF TIME

- 3.1 In computing any period of time for the purposes of the timetable -
- 3.1.1 a Saturday or Sunday;
- 3.1.2 Christmas day, Good Friday, or a bank holiday, or
- 3.1.3 a day appointed for public thanksgiving or morning,
- shall be disregarded, and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll, nor shall the returning Officer be obliged to proceed with the counting of votes on such a day.
- 3.2 In this rule, “bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

Part 3— Returning Officer

4. RETURNING OFFICER
 - 4.1 Subject to rule 64, the returning Officer for an election is to be appointed by the corporation.
 - 4.2 Where two or more elections are to be held concurrently, the same returning Officer may be appointed for all those elections.
5. STAFF
 - 5.1 Subject to rule 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
 - 6.1 The corporation is to pay the returning Officer:
 - 6.1.1 any expenses incurred by that Officer in the exercise of his or her functions under these rules,
 - 6.1.2 such remuneration and other expenses as the corporation may determine.
7. DUTY OF CO-OPERATION
 - 7.1 The corporation is to co-operate with the returning Officer in the exercise of his or her functions under these rules.

Part 4 - Stages Common to Contested and Uncontested Elections

8. NOTICE OF ELECTION
 - 8.1 The returning Officer is to publish a notice of the election stating:
 - 8.1.1 the constituency, or Class within a constituency, for which the election is being held,
 - 8.1.2 the number of members of the Board of Governors to be elected from that constituency, or Class within that constituency,
 - 8.1.3 the details of any nomination committee that has been established by the corporation,
 - 8.1.4 the address and times at which nomination papers may be obtained;
 - 8.1.5 the address for return of nomination papers and the date and time by which they must be received by the returning Officer,
 - 8.1.6 the date and time by which any notice of withdrawal must be received by the returning Officer
 - 8.1.7 the contact details of the returning Officer, and
 - 8.1.8 the date and time of the close of the poll in the event of a contest.
9. NOMINATION OF CANDIDATES
 - 9.1 Each candidate must nominate themselves on a single nomination paper.
 - 9.2 The returning Officer-
 - 9.2.1 is to supply any member of the corporation with a nomination paper, and

9.2.2 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

10.1 The nomination paper must state the candidate's

10.1.1 full name,

10.1.2 contact address in full, and

10.1.3 constituency, or Class within a constituency, of which the candidate is a member.

11. DECLARATION OF INTERESTS

11.1 The nomination paper must state:

11.1.1 any financial interest that the candidate has in the corporation, and

11.1.2 whether the candidate is a member of a political party, and if so, which party?

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

12. DECLARATION OF ELIGIBILITY

12.1 The nomination paper must include a declaration made by the candidate:

12.1.1 that he or she is not prevented from being a member of the Board of Governors by paragraph 8 of Schedule 7 of the National Health Service Act 2006 or by any provision of the constitution; and,

12.1.2 for a member of the public or service users and carers' constituency, of the particulars of his or her qualification to vote as a member of that constituency, or Class within that constituency, for which the election is being held.

13. SIGNATURE OF CANDIDATE

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

13.1.1 they wish to stand as a candidate,

13.1.2 their declaration of interests, as required under rule 11 is true and correct, and

13.1.3 their declaration of eligibility, as required under rule 12 is true and correct.

14. DECISIONS AS TO THE VALIDITY OF NOMINATION

14.1 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:

14.1.1 decides that the candidate is not eligible to stand,

14.1.2 decides that the nomination paper is invalid,

14.1.3 receives satisfactory proof that the candidate has died, or

14.1.4 receives a written request by the candidate of their withdrawal from candidacy.

- 14.2 The returning Officer is entitled to decide that a nomination paper is invalid only on one of the following grounds -
 - 14.2.1 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,
 - 14.2.2 that the paper does not contain the candidate's particulars, as required by rule 10;
 - 14.2.3 that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
 - 14.2.4 that the paper does not include a declaration of eligibility as required by rule 12, or
 - 14.2.5 that the paper is not signed and dated by the candidate, as required by rule 13.
- 14.3 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.
- 14.4 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.
- 14.5 The returning Officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.
- 15. PUBLICATION OF STATEMENT OF CANDIDATES
 - 15.1 The returning Officer is to prepare and publish a statement showing the candidates who are standing for election.
 - 15.2 The statement must show:
 - 15.2.1 the name, contact address, and constituency or Class within a constituency of each candidate standing, and
 - 15.2.2 the declared interests of each candidate standingas given in their nomination paper.
 - 15.3 The statement must list the candidates standing for election in alphabetical order by surname.
 - 15.4 The returning Officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.
- 16. INSPECTION OF STATEMENT OF NOMINATED CANDIDATES AND NOMINATION PAPERS
 - 16.1 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.
 - 16.2 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

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

18. METHOD OF ELECTION

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

Part 5— Contested elections

19. POLL TO BE TAKEN BY BALLOT

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

20. THE BALLOT PAPER

- 20.1 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.
- 20.2 Every ballot paper must specify:
- 20.2.1 the name of the corporation,
- 20.2.2 the constituency, or Class within a constituency, for which the election is being held,
- 20.2.3 the number of members of the Board of Governors to be elected from that constituency, or Class within that constituency,
- 20.2.4 the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- 20.2.5 instructions on how to vote,
- 20.2.6 if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- 20.2.7 the contact details of the returning Officer.

- 20.3 Each ballot paper must have a unique identifier.
- 20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.
- 21. THE DECLARATION OF IDENTITY (PUBLIC AND SERVICE USERS AND CARERS' CONSTITUENCIES)
 - 21.1 In respect of an election for a Public or Service Users & Carers constituency a declaration of identity must be issued with each ballot paper.
 - 21.2 The declaration of identity is to include a declaration:
 - 21.2.1 that the voter is the person to whom the ballot paper was addressed,
 - 21.2.2 that the voter has not marked or returned any other voting paper in the election, and
 - 21.2.3 for a member of the Public or Service Users & Carers 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.
 - 21.3 The declaration of identity is to include space for:
 - 21.3.1 the name of the voter,
 - 21.3.2 the address of the voter,
 - 21.3.3 the voter's signature, and
 - 21.3.4 the date that the declaration was made by the voter.
 - 21.4 The voter must be required to return the declaration of identity together with the ballot paper.
 - 21.5 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
 - 22.1 The corporation is to provide the returning Officer with a list of the members of the constituency or Class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
 - 22.2 The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.
- 23. NOTICE OF POLL
 - 23.1 The returning Officer is to publish a notice of the poll stating:
 - 23.1.1 the name of the corporation,
 - 23.1.2 the constituency, or Class within a constituency, for which the election is being held,
 - 23.1.3 the number of members of the Board of Governors to be elected from that constituency, or Class with that constituency,

- 23.1.4 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,
- 23.1.5 that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- 23.1.6 the address for return of the ballot papers, and the date and time of the close of the poll,
- 23.1.7 the address and final dates for applications for replacement ballot papers, and
- 23.1.8 the contact details of the returning Officer.

24. ISSUE OF VOTING DOCUMENTS BY RETURNING OFFICER

- 24.1 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:
 - 24.1.1 a ballot paper and ballot paper envelope,
 - 24.1.2 a declaration of identity (if required),
 - 24.1.3 information about each candidate standing for election, pursuant to rule 59 of these rules, and
 - 24.1.4 a covering envelope.
- 24.2 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

- 25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- 25.2 The covering envelope is to have:
 - 25.2.1 the address for return of the ballot paper printed on it, and
 - 25.2.2 pre-paid postage for return to that address.
- 25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning Officer —
 - 25.3.1 the completed declaration of identity if required, and
 - 25.3.2 the ballot paper envelope, with the ballot paper sealed inside it.

The poll

26. ELIGIBILITY TO VOTE

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

27. VOTING BY PERSONS WHO REQUIRE ASSISTANCE

- 27.1 The returning Officer is to put in place arrangements to enable requests for assistance to vote to be made.

- 27.2 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

- 28.1 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.
- 28.2 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.
- 28.3 The returning Officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
- 28.3.1 is satisfied as to the voter’s identity, and
 - 28.3.2 has ensured that the declaration of identity, if required, has not been returned.
- 28.4 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”) —
- 28.4.1 the name of the voter, and
 - 28.4.2 the details of the unique identifier of the spoilt ballot paper (if that Officer was able to obtain it), and
 - 28.4.3 the details of the unique identifier of the replacement ballot paper.

29. LOST BALLOT PAPERS

- 29.1 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.
- 29.2 The returning Officer may not issue a replacement ballot paper for a lost ballot paper unless he or she:
- 29.2.1 is satisfied as to the voter’s identity,
 - 29.2.2 has no reason to doubt that the voter did not receive the original ballot paper, and
 - 29.2.3 has ensured that the declaration of identity if required has not been returned.
- 29.3 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”) —
- 29.3.1 the name of the voter, and
 - 29.3.2 the details of the unique identifier of the replacement ballot paper.

30. ISSUE OF REPLACEMENT BALLOT PAPER

- 30.1 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.

- 30.2 After issuing a replacement ballot paper under this rule, the returning Officer shall enter in a list (“the list of tendered ballot papers”) —
 - 30.2.1 the name of the voter, and
 - 30.2.2 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 SERVICE USERS & CARERS' CONSTITUENCIES)**
 - 31.1 In respect of an election for a Public or Service Users & Carers constituency or a Class of any such constituency a declaration of identity must be issued with each replacement ballot paper.
 - 31.2 The declaration of identity is to include a declaration
 - 31.2.1 that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
 - 31.2.2 of the particulars of that member's qualification to vote as a member of the public or service users and carers' constituency, or Class within a constituency, for which the election is being held.
 - 31.3 The declaration of identity is to include space for:
 - 31.3.1 the name of the voter,
 - 31.3.2 the address of the voter,
 - 31.3.3 the voter's signature, and
 - 31.3.4 the date that the declaration was made by the voter.
 - 31.4 The voter must be required to return the declaration of identity together with the ballot paper.
 - 31.5 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**
 - 32.1 Where the returning Officer receives a:
 - 32.1.1 covering envelope, or
 - 32.1.2 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.
 - 32.2 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
 - 32.2.1 the candidate for whom a voter has voted, or
 - 32.2.2 the unique identifier on a ballot paper.
 - 32.3 The returning Officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

33. VALIDITY OF BALLOT PAPER

- 33.1 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.
- 33.2 Where the returning Officer is satisfied that paragraph 33.1 has been fulfilled, he or she is to
 - 33.2.1 put the declaration of identity if required in a separate packet, and
 - 33.2.2 put the ballot paper aside for counting after the close of the poll.
- 33.3 Where the returning Officer is not satisfied that paragraph 33.1 has been fulfilled, he or she is to
 - 33.3.1 mark the ballot paper “disqualified”,
 - 33.3.2 if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper,
 - 33.3.3 record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and
 - 33.3.4 place the document or documents in a separate packet.

34. DECLARATION OF IDENTITY BUT NO BALLOT PAPER (PUBLIC AND SERVICE USERS AND CARERS' CONSTITUENCIES)

- 34.1 Where the returning Officer receives a declaration of identity if required but no ballot paper, the returning Officer is to
 - 34.1.1 mark the declaration of identity “disqualified”,
 - 34.1.2 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
 - 34.1.3 place the declaration of identity in a separate packet.

35. SEALING OF PACKETS

- 35.1 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
 - 35.1.1 the disqualified documents, together with the list of disqualified documents inside it,
 - 35.1.2 the declarations of identity if required,
 - 35.1.3 the list of spoilt ballot papers,
 - 35.1.4 the list of lost ballot papers,
 - 35.1.5 the list of eligible voters, and
 - 35.1.6 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 — <ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (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” | <ul style="list-style-type: none"> (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 42.4 or 42.7 below.

37. ARRANGEMENTS FOR COUNTING OF THE VOTES

37.1 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

38.1 The returning Officer is to

38.1.1 count and record the number of ballot papers that have been returned, and

38.1.2 count the votes according to the provisions in this Part of the rules.

38.2 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.

38.3 The returning Officer is to proceed continuously with counting the votes as far as is practicable.

39. REJECTED BALLOT PAPERS

39.1 Any ballot paper

39.1.1 which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

39.1.2 on which votes are given for more candidates than the voter is entitled to vote,

39.1.3 on which anything is written or marked by which the voter can be identified except the unique identifier, or

39.1.4 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.

39.2 The returning Officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted..

39.3 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 39.1.1 to 39.1.4 of paragraph 39.1.

40. FIRST STAGE

40.1 The returning Officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

40.2 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.

40.3 The returning Officer is to also ascertain and record the number of valid ballot papers.

41. THE QUOTA

- 41.1 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.
- 41.2 The result, increased by one, of the division under paragraph 41.1 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”).
- 41.3 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 44.1 to 44.3 of rule 44 has been complied with.

42. TRANSFER OF VOTES

- 42.1 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
 - 42.1.1 according to next available preference given on those papers for any continuing candidate, or
 - 42.1.2 where no such preference is given, as the sub-parcel of non-transferable votes.
- 42.2 The returning Officer is to count the number of ballot papers in each parcel referred to in paragraph 42.1 above.
- 42.3 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 42.1.1 to the candidate for whom the next available preference is given on those papers.
- 42.4 The vote on each ballot paper transferred under paragraph 42.3 above shall be at a value (“the transfer value”) which
 - 42.4.1 reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
 - 42.4.2 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).
- 42.5 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:
 - 42.5.1 according to the next available preference given on those papers for any continuing candidate, or
 - 42.5.2 where no such preference is given, as the sub-parcel of non-transferable votes.
- 42.6 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 42.5.1 to the candidate for whom the next available preference is given on those papers.
- 42.7 The vote on each ballot paper transferred under paragraph 42.6 shall be at a transfer value calculated as set out in paragraph 42.4.2 above, or at the value at which that vote was received by the candidate from whom it is now being transferred whichever is the less.

- 42.8 Each transfer of a surplus constitutes a stage in the count.
- 42.9 Subject to paragraph 42.10, 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.
- 42.10 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:
 - 42.10.1 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
 - 42.10.2 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.
- 42.11 This rule does not apply at an election where there is only one vacancy.

43. SUPPLEMENTARY PROVISIONS ON TRANSFER

- 43.1 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—
 - 43.1.1 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
 - 43.1.2 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.
- 43.2 The returning Officer shall, on each transfer of transferable papers under rule 42 above:
 - 43.2.1 record the total value of the votes transferred to each candidate,
 - 43.2.2 add that value to the previous total of votes recorded for each candidate and record the new total,
 - 43.2.3 record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
- 43.3 compare
 - 43.3.1 the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - 43.3.2 the recorded total of valid first preference votes.
- 43.4 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.
- 43.5 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

44.1 If:

44.1.1 all transferable papers which under the provisions of rule 42 above (including that rule as applied by paragraph 44.11 below) and this rule are required to be transferred, have been transferred, and

44.1.2 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 44.12 below applies, the candidates with the then lowest votes).

44.2 The returning Officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph 44.1 above into two sub-parcels so that they are grouped as:

44.2.1 ballot papers on which a next available preference is given, and

44.2.2 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).

44.3 The returning Officer shall, in accordance with this rule and rule 43 above, transfer each sub-parcel of ballot papers referred to in paragraph 44.2.1 above to the candidate for whom the next available preference is given on those papers.

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

44.5 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 44.1 above into sub-parcels according to their transfer value.

44.6 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).

44.7 The vote on each transferable paper transferred under paragraph 44.6 above shall be at the value at which that vote was received by the candidate excluded under paragraph 44.1 above.

44.8 Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.

44.9 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 44.1 above.

44.10 The returning Officer shall after each stage of the count completed under this rule record:

44.10.1 the total value of votes, or

44.10.2 the total transfer value of votes transferred to each candidate,

44.10.3 add that total to the previous total of votes recorded for each candidate and record the new total,

44.10.4 record the value of non-transferable votes and add that value to the previous non-transferable votes total, and

44.11 compare

44.11.1 the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with

44.11.2 the recorded total of valid first preference votes.

44.12 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 42.5 to 42.10 and 43.5 to 43.10 above.

44.13 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.

44.14 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:

44.14.1 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

44.14.2 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

45.1 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.

45.2 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.

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

46. ORDER OF ELECTION OF CANDIDATES

46.1 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.

46.2 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.

46.3 (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.

- 46.4 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

- 47.1 In a contested election, when the result of the poll has been ascertained, the returning Officer is to

47.1.1 declare the candidates who are deemed to be elected under Part 6 of these rules as elected,

47.1.2 give notice of the name of each candidate who he or she has declared elected

47.1.3 where the election is held under a proposed constitution pursuant to powers conferred on the Sheffield Care Trust by section 33(4) of the National Health Service Act 2006, to the chairman of the NHS Trust, or

47.1.4 in any other case, to the chairman of the corporation; and

47.1.5 give public notice of the name of each candidate whom he or she has declared elected.

- 47.2 The returning Officer is to make

47.2.1 the number of first preference votes for each candidate whether elected or not,

47.2.2 any transfer of votes,

47.2.3 the total number of votes for each candidate at each stage of the count at which such transfer took place,

47.2.4 the order in which the successful candidates were elected, and

47.2.5 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

- 48.1 In an uncontested election, the returning Officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election —

48.1.1 declare the candidate or candidates remaining validly nominated to be elected,

48.1.2 give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation, and

48.1.3 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

- 49.1 On completion of the counting at a contested election, the returning Officer is to seal up the following documents in separate packets

49.1.1 the counted ballot papers,

49.1.2 the ballot papers endorsed with “rejected in part”,

- 49.1.3 the rejected ballot papers, and
- 49.1.4 the statement of rejected ballot papers.
- 49.2 The returning Officer must not open the sealed packets of —
 - 49.2.1 the disqualified documents, with the list of disqualified documents inside it,
 - 49.2.2 the declarations of identity,
 - 49.2.3 the list of spoiled ballot papers,
 - 49.2.4 the list of lost ballot papers,
 - 49.2.5 the list of eligible voters, and
 - 49.2.6 the list of tendered ballot papers.
- 49.3 The returning Officer must endorse on each packet a description of —
 - 49.3.1 its contents,
 - 49.3.2 the date of the publication of notice of the election,
 - 49.3.3 the name of the corporation to which the election relates, and
 - 49.3.4 the constituency, or Class within a constituency, to which the election relates.
- 49.4 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.
- 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
 - 51.1 Where:
 - 51.1.1 any voting documents are received by the returning Officer after the close of the poll, or
 - 51.1.2 any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
 - 51.1.3 any applications for replacement ballot papers are made too late to enable new ballot papers to be issued,
 - 51.1.4 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
 - 52.1 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.
 - 52.2 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.
 - 52.3 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

53.1 The corporation may not allow the inspection of, or the opening of any sealed packet containing:

53.1.1 any rejected ballot papers, including ballot papers rejected in part,

53.1.2 any disqualified documents, or the list of disqualified documents,

53.1.3 any counted ballot papers,

53.1.4 any declarations of identity, or

53.1.5 the list of eligible voters,

53.1.6 by any person without the consent of the Regulator.

53.2 A person may apply to the Regulator to inspect any of the documents listed in 53.1, 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.

53.3 The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to

53.3.1 persons,

53.3.2 time,

53.3.3 place and mode of inspection,

53.3.4 production or opening,

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

53.5 On an application to inspect any of the documents listed in paragraph 53.1,

53.5.1 in giving its consent, the Regulator, and

53.5.2 and making the documents available for inspection, the corporation,

53.6 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

53.6.1 that his or her vote was given, and

53.6.2 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

54.1 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:

54.1.1 publish a notice stating that the candidate has died, and

54.1.2 proceed with the counting of the votes as if that candidate had been excluded from the count so that

- (a) 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
- (b) 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.

54.1.3 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 49.1.1.

Part 10— Election expenses and publicity

55. ELECTION EXPENSES

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

56. EXPENSES AND PAYMENTS BY CANDIDATES

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

- 56.1.1 personal expenses,
- 56.1.2 travelling expenses, and expenses incurred while living away from home, and
- 56.1.3 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

- 57.1 No person may -
 - 57.1.1 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
 - 57.1.2 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.
- 57.2 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

- 58.1 The corporation may
 - 58.1.1 compile and distribute such information about the candidates, and
 - 58.1.2 organise and hold such meetings to enable the candidates to speak and respond to questions as it considers necessary.
- 58.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, must be
 - 58.2.1 objective, balanced and fair,
 - 58.2.2 equivalent in size and content for all candidates,
 - 58.2.3 compiled and distributed in consultation with all of the candidates standing for election, and

58.2.4 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.

58.3 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 IINCLUSION WITH VOTING DOCUMENTS

59.1 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.

59.2 The information must consist of a statement submitted by the candidate of no more than 250 words.

60. MEANING OF "FOR THE PURPOSES OF AN ELECTION"

60.1 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.

60.2 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

61.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the Regulator.

61.2 An application may only be made once the outcome of the election has been declared by the returning Officer.

61.3 An application may only be made to the Regulator by -

61.3.1 a person who voted at the election or who claimed to have had the right to vote, or

61.3.2 a candidate, or a person claiming to have had a right to be elected at the election.

61.4 The application must

61.4.1 describe the alleged breach of the rules or electoral irregularity, and

61.4.2 be in such a form as the Regulator may require.

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

61.6 If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

61.6.1 The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.

61.6.2 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.

61.6.3 The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12— Miscellaneous

62. SECRECY

62.1 The following persons

62.1.1 the returning Officer,

62.1.2 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

62.1.3 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,

62.1.4 the unique identifier on any ballot paper,

62.1.5 the candidate(s) for whom any member has voted.

62.2 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.

62.3 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

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

64. DISQUALIFICATION

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

64.1.1 a member of the corporation,

64.1.2 an employee of the corporation,

64.1.3 a director of the corporation, or

64.1.4 employed by or on behalf of a person who has been nominated for election.

65. DELAY IN POSTAL SERVICE THROUGH INDUSTRIAL ACTION OR UNFORSEEN EVENT

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

65.1.1 the delivery of the documents in rule 24, or

65.1.2 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.

CORE CONSTITUTION

ANNEX 6

Additional Provisions - Council for Governors

ADDITIONAL PROVISIONS: COUNCIL OF GOVERNORS

1. TERMS OF OFFICE

1.1 Subject to the transitional provisions contained in paragraph 2 below in relation to the Initial Election of Governors, a Governor shall be:

1.1.1 elected or appointed for a term of three years;

1.1.2 eligible for re-election or re-appointment at the end of that term but may not serve as a Governor for more than a total of nine years;

1.2 shall cease to hold office if:

1.2.1 he ceases to be a Member of a Trust Constituency or, in the case of an Appointed Governor, if the body which appointed him withdraws its appointment at any time;

1.2.2 his term of office is terminated in accordance with paragraph 3 below and/or he is disqualified from or is otherwise ineligible to hold office as a Governor;
or

1.2.3 he resigns by notice in writing to the Trust.

2. TRANSITIONAL PROVISIONS

2.1 Notwithstanding the provisions of paragraph 1 above and of paragraph 12.1 of the Constitution, the Initial Elected Governors shall hold office for those terms set out in Table 1 below.

2.2 Where a constituency or Class of a constituency is entitled to elect more than one Governor at the Initial Elections, the Candidate(s) who secures the highest number of votes shall serve for the longest period and the candidate(s) who secures the lowest number of votes shall serve for the shortest period.

Table 1

| Appointing Body | | Number of Governors who shall serve for 24 months | Number of Governors who shall serve for 36 months |
|-----------------|---|---|---|
| | Constituency | 24 Months | 36 Months |
| 1 | All Public Constituencies | 4 | 4 |
| 2 | All Classes of the Staff Constituency | - | 8 |
| 3 | All Classes of the Service Users and Carers' Constituency | 7 | 9 |

3. REMOVAL AND DISQUALIFICATION

3.1 A Governor shall not be eligible to become or continue in office as a Governor if:

3.1.1 is less than 16 years of age at the date he is nominated for election or appointment

- 3.1.2 he ceases to be eligible to be a Member, save in the case of Appointed Governors;
- 3.1.3 in the case of an Appointed Governor, the appointing organisation withdraws its appointment of him;
- 3.1.4 any of the grounds contained in paragraph 13 of the Constitution apply to him;
- 3.1.5 he has within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a Health Service Body and/or any public sector body;
- 3.1.6 he is a person whose term of office as the Chairman or as a Member or Director of a Health Service Body and/or public sector body has been terminated on the grounds that his continuance in office is no longer in the best interests of the health service or public sector, for non-attendance at meetings or for non-disclosure of a pecuniary interest;
- 3.1.7 he has had his name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 2 of that Act and has not subsequently had his name included in such a list;
- 3.1.8 he has failed to make, or has falsely made, any declaration as required to be made under Section 60 of the 2006 Act;
- 3.1.9 he is subject to a direction made under Section 142 of the Education Act 2002;
- 3.1.10 he has been placed on the registers of Schedule 1 Offenders pursuant to the Sex Offenders Act 1977 and/or the Children and Young Person's Act 1937 and his conviction is not spent under the Rehabilitation of Offenders Act 1974;
- 3.1.11 the Independent Regulator has exercised its powers to remove him as a Governor of the Trust or has suspended him from office or has disqualified him from holding office as a Governor of the Trust for a specified period or the Independent Regulator has exercised any of those powers in relation to him on any other occasion whether in relation to the Trust or some other NHS Foundation Trust;
- 3.1.12 he has received a written warning from the Trust for verbal and/or physical abuse towards Trust staff, service users, their carers, visitors or a member of the Trust;
- 3.1.13 he is a vexatious or persistent litigant or complainant with regard to the Trust's affairs;
- 3.1.14 his term of office is terminated pursuant to paragraph 4 below;
- 3.1.15 he is a member of a Staff Class and any professional registration relevant to his eligibility to be a member of that Staff Class has been suspended for a continuous period of more than six months;
- 3.1.16 he has been expelled for whatever reason from another NHS Foundation Trust;
- 3.1.17 if he was at any time eligible to be a member of the Staff Constituency during the period he is or was a member of a Public Constituency;
- 3.1.18 information revealed by a Criminal Records Bureau check is such that it would be inappropriate, in the reasonable opinion of the Chief Executive, for him to become or continue as a Governor on the grounds that this would

adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;

3.1.19 he is a member of the Sheffield Local Authority Overview and Scrutiny Committee; or

3.1.20 he is a partner or spouse or otherwise related to an existing Director.

3.2 Where a person has been elected or appointed to be a Governor and he becomes disqualified from that appointment he shall notify the Trust in writing of such disqualification as soon as practicable and in any event within fourteen days of first becoming aware of those matters which rendered him disqualified.

3.3 If it comes to the notice of the Trust that a Governor is disqualified, the Trust shall immediately declare him disqualified and shall give him notice in writing to that effect as soon as practicable.

3.4 Upon the giving of notice under paragraphs 3.2 and 3.3 above, that person's tenure of office as a Governor shall thereupon be terminated and he shall cease to be a Governor and his name shall be removed from the Register of Governors.

4. TERMINATION OF TENURE

4.1 A Governor's term of office shall be terminated:

4.1.1 by the Governor giving notice in writing to the Company Secretary of his resignation from office at any time during that term of office;

4.1.2 by the Trust if any grounds exist under paragraph 3 above;

4.1.3 by the Council of Governors if he has failed to attend 2 successive meetings of the Council of Governors unless the Council of Governors is satisfied:

(a) the absence was due to reasonable cause; and

(b) that the Governor will resume attendance at meetings of the Council of Governors within such period as it considers reasonable.

4.2 If the Council of Governors resolves to terminate his term of office for reasonable cause on the grounds that in the reasonable opinion of three quarters of the Governors present and voting at a meeting of the Council of Governors convened for that purpose that his continuing as a Governor would or would be likely to:

4.2.1 prejudice the ability of the Trust to fulfil its principal purpose or of its purposes under this Constitution or otherwise to discharge its duties and functions; or

4.2.2 prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or

4.2.3 adversely affect public confidence in the goods and services provided by the Trust; or

4.2.4 otherwise brings the Trust into disrepute or is detrimental to the interest of the Trust; or

4.2.5 it would not be in the best interests of the Trust for that person to continue in office as a Governor; or

4.2.6 the Governor is a vexatious or persistent litigant or complainant with regard to the Trust's affairs and his continuance in office would not be in the best interests of the Trust.

- 4.2.7 he has failed or refused to undertake and/or satisfactorily complete any training which the Council of Governors has required him to undertake in his capacity as a Governor.
- 4.2.8 he has in his conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the Trust; or
- 4.2.9 he has committed a material breach of any code of conduct applicable to Governors of the Trust.
- 4.3 Upon a Governor resigning under paragraph 4.1.1 above or upon the Council of Governors resolving to terminate a Governor's tenure of office in accordance with the above provisions, that Governor shall cease to be a Governor and his name shall be forthwith removed from the Register of Governors.
- 4.4 The Standing Orders adopted by the Council of Governors may contain provisions governing its procedure for termination under these provisions and for a Governor to appeal against the decision terminating his tenure of office.
- 4.5 A Governor who resigns or whose tenure of office is terminated under this paragraph 4 shall not be eligible to stand for re-election for a period of three years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of whichever is the later.

5. VACANCIES

- 5.1 Where a Governor's term of office terminates for one of the reasons set out in paragraphs 3 or 4, Elected Governors shall be replaced in accordance with paragraphs 5.2 and 5.4 below and, in the case of Appointed Governors, the Trust shall invite the relevant appointing body to appoint a new Governor to hold office for the remainder of the term of office within 30 days of the vacancy having arisen.
- 5.2 Where an Elected Governor ceases to hold office during his term of office the Trust shall offer the candidate who secured the second highest number of votes in the last election for the Constituency (or Class of Constituency, as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office of Governor for the unexpired balance of the former Governor's term of office. If that candidate does not accept that invitation it shall be offered to the candidate who secured the next highest number of votes in the last said election until the vacancy is filled.
- 5.3 If no reserve Candidate is available or willing to fill the vacancy, an election will then be held in accordance with the Election Scheme save that if an election is due to be held within 6 months of the vacancy having arisen the office will stand vacant until the next scheduled election unless by so doing this causes the aggregate number of Governors who are Public Governors and Service Users and Carers' Governors to be less than half the total membership of the Council of Governors. In that event an election will be held in accordance with the Election Scheme as soon as reasonably practicable.
- 5.4 The Returning Officer under the Election Scheme shall maintain a record of votes cast at each election under the Election Scheme for the above purposes and the Returning Officer shall conduct or shall oversee the conduction of the process set out in paragraphs 5.2 and 5.3 above.
- 5.5 No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.

6. ROLE

- 6.1 The Council of Governors and each Governor shall act in the best interests of the Trust at all times and with proper regard to the provisions of the NHS Foundation Trust Code of Governance.

- 6.2 Subject to the requirement specified in paragraph 6.1, each Governor shall exercise his own skill and judgement in his conduct of the Trust's affairs and shall in his stewardship of the Trust's affairs bring as appropriate the perspective of the constituency or organisation by which he was elected or appointed, as the case may be.
- 6.3 Subject to the further provisions of this Constitution and without in any way derogating from them, the Council of Governors shall;
- 6.3.1 assist the Board of Directors in setting the strategic direction of the Trust and targets for the Trust's performance and in monitoring the Trust's performance in terms of achieving those strategic aims and targets which have been set; and
- 6.3.2 monitor the activities of the Trust with the view to ensuring that they are being conducted in a manner consistent with its Terms of Authorisation and the terms of this Constitution.

7. MEETINGS

- 7.1 The Council of Governors shall hold not less than three general meetings each Financial Year.
- 7.2 All such meetings shall be open to the public unless the Council of Governors resolves that the public be excluded from the meeting, whether for the whole or part of the proceedings on the grounds that publicity would be prejudicial to the public interest or the interests of the Trust by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business to be transacted or the proceedings. The Chairman may also exclude any member of the public from a meeting of the Council of Governors if he is interfering with or preventing the proper conduct of the meeting.
- 7.3 The Council of Governors may appoint committees or sub-committees consisting of its members to advise and assist it in the discharge of its functions.
- 7.4 The Council of Governors may request the attendance of some or all of the members of the Board of Directors at its meetings and the Board of Directors may attend and may give such reports and information to the Council of Governors as the Board of Directors considers appropriate and subject always to the other provisions of this Constitution.
- 7.5 Further provisions relating to the Council of Governor meetings are set out in the Council of Governors Standing Orders at Annex 7 of this Constitution.

8. DECLARATIONS

- 8.1 A Member of a Public Constituency standing for election as Governor must make a declaration for the purposes of Section 60(2) of the 2006 Act in the form specified below stating the particulars of his qualification to vote as a Member and that he is not prevented from being a Member of the Council of Governors by virtue of any provisions of this Constitution. It is an offence to knowingly or recklessly make a statement or declaration which is false in material particular.
- 8.2 The specified form of declaration shall be set out on the Nomination Form referred to in the Model Rules for Elections at Annex 5 and shall state as follows:

"I, the above named candidate, consent to my nomination and agree to stand for election. I confirm that, to the best of my knowledge, the information provided on (or with) this form is accurate. I also agree to abide by the Sheffield Health and Social Care NHS Foundation Trust Code of Conduct and the NHS core principles.

I declare that I am resident at the address given and that to the best of my knowledge I am eligible to stand for election to the Council of Governors for the seat named

overleaf. I declare that I am not debarred from standing by any of the provisions detailed in Section 1 of the guidance notes and the Exclusion and Disqualification criteria also detailed in the guidance notes supplied with this nominations paper. I understand if any declaration on this form is later found to be false I will, if elected, lose my seat on the Council of Governors and may have my membership withdrawn."

8.3 A Governor elected to the Council of Governors by the Public Constituency or a class of the Service Users and Carers' Constituency or the Staff Constituency may not for the purposes of section 60(3) of the 2006 Act vote at a meeting of the Council of Governors unless within the period since his election he has made a declaration in the form specified in paragraph 8.4 below stating which constituency he is a Member of and that he is not prevented from being a member of the Council of Governors by paragraph 8 of schedule 7 to the 2006 Act or by virtue of any provisions of this Constitution.

8.4 The specified form of declaration referred to in paragraph 8.3 above shall state as follows:

"I declare that I am a Member of the [*insert Class*] of the [Public Constituency], [Service Users and Carers' Constituency] or the [Staff Constituency] [*delete as applicable*] and am eligible to vote at a meeting of the Council of Governors and that I am not debarred from voting by any of the provisions in paragraph 8 of schedule 7 of the 2006 Act or by virtue of any provisions of this Constitution."

CORE CONSTITUTION

ANNEX 7

Standing Orders - Council of Governors

Sheffield Care Trust

Standing Orders

Council of Governors

FOREWORD

This document provides a regulatory and business framework for the conduct of the Council of Governors.

INTRODUCTION

Statutory Framework

The Sheffield Health & Social Care NHS Foundation Trust (“the Trust”) is a Public Benefit Corporation that was established by the granting of Terms of Authorisation by the Independent Regulator of NHS Foundation Trusts (Monitor).

The statutory functions conferred on the Trust are set out in the National Health Service Act 2006 and in the Trust’s Terms of Authorisation issued by Monitor.

As a Public Benefit Corporation 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.

NHS Framework

Paragraph 15 of the Constitution, requires the Council of Governors to adopt its own Standing Orders for its practice and procedure.

1. INTERPRETATION
 - 1.1 In these Standing Orders, the provisions relating to Interpretation in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.
2. THE COUNCIL OF GOVERNORS
 - 2.1 Roles and Responsibilities of Governors:
 - 2.1.1 Appointment and removal of the Chairman and Non-Executive Directors (Constitution paragraph 21)
 - 2.1.2 Approve the appointment of the Chief Executive (Constitution paragraphs 24)
 - 2.1.3 To decide the remuneration and allowances and other terms of offices of the Non-Executive Directors (Constitution paragraph 29.1)
 - 2.1.4 Appoint and remove the Auditor (Constitution paragraph 33)
 - 2.1.5 Receive the Annual Report & Accounts (Constitution paragraph 37)
 - 2.1.6 Monitor the activities of the Trust with a view to seeking to ensure as far as possible, that they are being conducted in a manner consistent with its Terms of Authorisation and the terms of its Constitution
 - 2.1.7 Oversee and advise the Board of Directors regarding future Trust plans and priorities
 - 2.1.8 Oversee the development of the Trust as an effective social enterprise through focus on the wider public interest and promoting social cohesion in seeking to ensure that the Council of Governors reflects all the interests of the membership community
 - 2.1.9 To respond, as appropriate, when consulted by the Board of Directors
 - 2.1.10 To consider resolution to remove a Governor from the Council of Governors in accordance with Annex 6, paragraph 4
 - 2.1.11 To seek to ensure that the interests of the community served by the Trust are appropriately represented when taking into account the Membership Strategy.
 - 2.2 **Composition of the Council of Governors** – The composition of the Council of Governors shall be as set out in Annex 4 of the Constitution.
 - 2.3 **Appointment of the Chairman and Non-Executive Directors** – The Chairman and Non-Executive Directors are appointed by the Council of Governors in accordance with paragraph 21 of the Constitution.
 - 2.4 **Terms of Office of the Chairman and Non-Executive Directors** – The provisions governing the period of tenure of office of the Chairman and the Non-Executive Directors are contained in paragraph 29 of the Constitution.
 - 2.5 **Appointment of Vice-Chairman of the Council of Governors** – The Council of Governors shall appoint one of the Non-Executive Directors as Vice-Chairman in accordance with paragraph 23 of the Constitution.
 - 2.6 Any Director so appointed may at any time resign from the office of Vice-Chairman by giving notice in writing to the Company Secretary to the Trust and the Governors of the Trust may thereupon appoint another Vice-Chairman in accordance with paragraph 23 of the Constitution.

- 2.7 The Vice-Chairman may preside at meetings of the Council of Governors in the following circumstances:
- 2.7.1 When there is a need for someone to have the authority to chair any meeting of the Council of Governors when the Chairman is not present.
 - 2.7.2 Not used.
 - 2.7.3 When the remuneration, allowance and other terms and conditions of the Chairman are being considered.
 - 2.7.4 When the appointment of the Chairman is being considered, should the current Chairman be a candidate for re-appointment.
 - 2.7.5 On occasions when the Chairman declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Council of Governors.

2.8 Appointment of the Reserve Chairman of the Council of Governors

- 2.8.1 The Council of Governors shall in general meeting appoint a Public Constituency or Service Users and Carers Constituency Governor to be the Reserve Chairman of the Council of Governors to preside at meetings in the absence of the Chairman and Vice Chairman or where they are both precluded from so presiding for conflict of interest or other reason.
- 2.8.2 Any Governor appointed in accordance with Standing Order 2.8.1 above may at any time resign from the office of Reserve Chairman by giving notice in writing to the Secretary to the Trust and the Governors of the Trust may thereupon appoint another Reserve Chairman.

2.9 Role of Reserve Chairman

The Reserve Chairman may preside at meetings of the Council of Governors in the following circumstances:-

- 2.9.1 when there is a need for someone to have the authority to chair any meeting of the Council of Governors when the Chairman and Vice Chairman are not present;
- 2.9.2 on those occasions when the Council of Governors is considering matters relating to Non-Executive Directors, and it would be inappropriate for the Chairman or Vice Chairman to preside;
- 2.9.3 when the remuneration, allowances and other terms and conditions of the Chairman or Vice Chairman (as the case may be) are being considered;
- 2.9.4 when the appointment of the Chairman is being considered, should the current Chairman be a candidate for reappointment and the Vice Chairman is absent or otherwise precluded from presiding; or
- 2.9.5 on occasions when the Chairman and Vice Chairman declare a pecuniary interest that prevents them from taking part in the consideration or discussion of a matter before the Council of Governors.

3. MEETINGS OF THE COUNCIL OF GOVERNORS

3.1 Calling Meetings

- 3.1.1 Save in the case of emergencies or the need to conduct urgent business, the Company Secretary shall give at least fourteen days written notice of the date

and place of every meeting of the Council of Governors to all Governors. Notice will also be published on the Trust's website.

- 3.1.2 The Company Secretary shall ensure that within the meeting cycle of the Council of Governors, general meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.
- 3.2 **Admission of the Public** – The provisions for the admission of the public to meetings of the Council of Governors are detailed at paragraph 14 and Annex 6 of the Constitution.
- 3.3 **Chairman of Meetings** – The Chairman of the Trust, or in his absence, the Vice Chairman, is to preside at meetings of the Council of Governors. If the Chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the Vice Chairman shall preside.
- 3.4 **Setting the Agenda** – The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted.
- 3.5 **Agenda** – A Governor desiring a matter to be included on an agenda shall specify the question or issue to be included in request in writing to the Chairman or Company Secretary at least three clear business days before Notice of the meeting is given. Requests made less than three days before the Notice is given may be included on the agenda at the discretion of the Chairman.
- 3.6 **Notices of Motion** – A Governor desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chairman or Company Secretary, 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 in accordance with Standing Order 3.5, subject to the Chairman's discretion.
- 3.7 **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.
- 3.8 **Motion to Rescind a Resolution** – Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall be in writing, be in accordance of Standing Order 3.6 and shall bear the signature of the Governor who gives it and also the signature of four other Governors. When any such motion has been disposed of by the Council of Governors, it shall not be competent for any Governor other than the Chairman to propose a motion to the same effect within six months, however the Chairman may do so if he considers it appropriate.
- 3.9 **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.
- 3.10 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- 3.10.1 An amendment to the motion.
- 3.10.2 The adjournment of the discussion or the meeting.
- 3.10.3 That the meeting proceed to the next business.
- 3.10.4 That the motion be now put.

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.

- 3.11 **Chairman's Ruling** – Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

Save as permitted by law, at any meeting the person presiding shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive).

- 3.12 **Voting** – Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chairman so determines or if a Governor requests, a question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a casting vote.

- 3.13 All questions put to the vote shall, at the discretion of the person presiding, be determined by oral expression or by a show of hands. A paper ballot may also be used in a majority of the Governors present so request.

- 3.14 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.

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

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

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

- 3.18 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.

- 3.19 Minutes of meetings will be taken and circulated in accordance with Governors' wishes.

- 3.20 **Suspension of Standing Orders** – Except where this would contravene any statutory provision, the Terms of Authorisation or any provision of the Constitution, any one or more of the Standing Orders may be suspended at any meeting provided that at least two thirds of the Council of Governors are present, including one Public Governor, one Staff Governor and one Patients and Carers' Governor, and that a majority of those present vote in favour of suspension.

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

- 3.22 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Governors.

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

- 3.24 **Variation and Amendment of Standing Orders** – these Standing Orders shall be amended only if:

- 3.24.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and
 - 3.24.2 unless presented by the Chairman or the Chief Executive, a notice of motion under Standing Order 3.6 has been given;
 - 3.24.3 at least two thirds of the Governors are present, including one Staff Governor, one Public Governor and one Service Users and Carers Governor; and
 - 3.24.4 no fewer than half the Governors vote in favour of amendment.; and
- subject always to the fact that no change shall be made without the prior consent of the Independent Regulator having first been obtained.

3.25 **Record of Attendance** – the names of the Governors present at the meeting shall be recorded in the minutes.

3.26 **Quorum** – The Council of Governors shall be deemed quorate if:-

- 3.26.1 at least one third of the total membership of the Council of Governors is present; and
- 3.26.2 of those at least eight (8) Service Users and Carers' and Public Governors (including at least one Public Governor, and at least two Governors from the Service User and Carers' Constituency), one Staff Governor and one Appointed Governor are present in person.

3.27 A Governor who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Governor will count towards the quorum of the meeting. If a Governor has declared a pecuniary interest in any matter, the Governor must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing or 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.

3.28 Subject to Standing Orders in relation to interests, any Director or their nominated representatives shall have the right to attend meetings of the Council of Governors and, subject to the overall control of the Chairman, to speak to any item under consideration.

4. COMMITTEES

4.1 Except as required by the Constitution, the Council of Governors shall exercise its functions in general meeting and shall not delegate the exercise of any function or any power in relation to any function to a committee.

5. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

5.1 **Declaration of Interests** – in accordance with paragraph 16 of the Constitution, Governors are required to declare formally any direct or indirect pecuniary interest and any other interest which is relevant and material to the business of the Trust. The responsibility for declaring an interest is solely that of the Governor concerned.

5.2 A Governor must declare to the Company Secretary:

- 5.2.1 any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, and

- 5.2.2 any interests which are relevant and material to the business of the Trust.
- 5.3 Such a declaration shall be made by completing and signing a form, as prescribed by the Company Secretary from time to time setting out any interests required to be declared in accordance with the Constitution or these Standing Orders and delivering it to the Company Secretary within 28 days of a Governor's election or appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. The Company Secretary shall amend the Register of Interests upon receipt of notification within three working days.
- 5.4 If a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter. The provisions of this paragraph are subject to standing order.
- 5.5 "relevant and material" interests may include but may not be limited to the following:
- 5.5.1 directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
 - 5.5.2 ownership or part-ownership or directorships of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
 - 5.5.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
 - 5.5.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
 - 5.5.5 any connection with a voluntary or other organisation contracting for or commissioning NHS services;
 - 5.5.6 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks;
 - 5.5.7 research funding/grants that may be received by an individual or their department;
 - 5.5.8 interests in pooled funds that are under separate management.
- 5.6 Any travelling or other expenses or allowances payable to a Governor in accordance with this Constitution shall not be treated as a pecuniary interest.
- 5.7 Subject to any other provision of this Constitution, a Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 5.7.1 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
 - 5.7.2 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.
- 5.8 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

- 5.8.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
 - 5.8.2 of an interest in any company body or person with which he is connected as mentioned standing orders 5.3, 5.4 and 5.6 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.
- 5.9 Where a Governor:
- 5.9.1 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
 - 5.9.2 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
 - 5.9.3 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, the governor shall not be prohibited 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 duty disclose his interest.
- 5.10 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Standing Orders to be also an interest of the other.
- 5.11 If Governors have any doubt about the relevance of an interest, this should be discussed with the Company Secretary.
- 5.12 **Register of Interests** - the Company Secretary shall record any declarations of interest made in a Register of Interests kept by him in accordance with paragraph 32 of the Constitution. Any interest declared at a meeting shall also be recorded in the minutes of the meeting.
- 5.13 The Register will be available for inspection by members of the public free of charge at all reasonable times. A person who requests it is to be provided with a copy or extract from the register. If the person requesting a copy or extract is not a member of the Trust then a charge may be made for doing so.

6. STANDARDS OF BUSINESS CONDUCT

- 6.1 **Policy** – in relation to their conduct as a Governor of the Trust, each Governor must comply with the Trust's Code of Conduct for Governors. In particular, the Trust must be impartial and honest in the conduct of its business and its office holders and staff must remain beyond suspicion. Governors are expected to be impartial and honest in the conduct of official business.
- 6.2 **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 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 Company Secretary 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.
- 6.3 A Governor shall not solicit for any person any appointment in the Trust.

7. REMUNERATION

- 7.1 Governors are not to receive remuneration.
8. PAYMENT OF EXPENSES TO GOVERNORS
- 8.1 The Trust will pay travelling expenses to Governors at the prevalent NHS Public Transport rate for attendance at General Meetings of the Governors, or any other business authorised by the Company Secretary as being under the auspices of the Council of Governors.
- 8.2 Expenses will be authorised and reimbursed through the Company Secretary's office on receipt of a completed and signed expenses form provided by the Company Secretary.
- 8.3 A summary of expenses paid to Governors will be published in the Annual Report.
9. MISCELLANEOUS
- 9.1 **Review of Standing Orders** – These Standing Orders shall be reviewed annually by the Council of Governors. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.
- 9.2 **Vice-Chairman** – In relation to any matter touching or concerning the Council of Governors or a Governor outside a meeting of the Council of Governors, which arises the Vice-Chairman, may exercise such power as the Chairman would have in those circumstances.
- 9.3 **Notice** – Any written notice required by these Standing Orders shall be deemed to have been given on the day the notice was sent to the recipient.
- 9.4 **Confidentiality** – A Governor shall not disclose any matter reported to the Council of Governors notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors shall resolve that it is confidential.
10. COUNCIL OF GOVERNORS: NOMINATIONS AND REMUNERATION COMMITTEE
- 10.1 Subject to the provisions of paragraph 22 of the Constitution in relation to the appointment of the Initial Chairman and Non-Executive Directors of the Trust the Chairman and other Non-Executive directors shall be appointed following a process of open competition conducted in accordance with standing order 10.4 below.
- 10.2 The Council of Governors shall establish a committee of its members to be called the Nominations and Remuneration Committee ("the Committee") to discharge those functions in relation to the appointment of the Chairman and Non-Executive Directors described in standing order 10.4 below and such other functions as are provided for in standing order 10.6 below.
- 10.3 The functions of the Committee shall be as follows:
- 10.3.1 to determine the criteria and process for the selection of the candidates for office as Chairman or other Non-Executive Director of the Trust having first consulted with the Board of Directors as to those matters and having regard to such views as may be expressed by the Board of Directors including the Trust's proposal as set out in standing order 10.6 below;
- 10.3.2 to seek by way of open advertisement and other means candidates for office and to assess and select for interview such candidates as are considered appropriate and in doing so the Committee shall have regard always to the Trust's proposal in standing order 10.6 below and be at liberty to seek advice and assistance from persons other than members of the Committee or of the Council of Governors

- 10.3.3 to make recommendation to the Council of Governors as to potential candidates for appointment as Chairman or other Non-Executive Director, as the case may be; and
- 10.3.4 as further stipulated in paragraph 10.5 below.
- 10.4 The Council of Governors shall resolve in general meeting to appoint such candidate or candidates (as the case may be) as it considers appropriate and in reaching its decision it shall have regard to the views of the Board of Directors and of the Committee as to the suitability of the available candidates, and to the proposals of the Trust as set out in standing order 10.6 below.
- 10.5 The Committee shall:-
- 10.5.1 on a regular and systematic basis monitor the performance of the Chairman and other Non-Executive Directors and make reports thereon to the Board of Governors from time to time when requested to do so or when, in the opinion of the Committee, the results of such monitoring ought properly to be brought to the attention of the Council of Governors; and
- 10.5.2 consider and make recommendations to the Council of Governors as to the remuneration and allowances and other terms and conditions of office of the Chairman and other Non-Executive Directors.
- 10.6 Local Authority Non-Executive
- In exercising their functions, pursuant to standing order 10.3 to 10.5 above, the Committee shall have regard to the following:
- 10.6.1 the Trust's proposal that at least one Non-Executive Director with knowledge and experience of health and social care functions of a local authority and current membership of a local authority be appointed; and
- 10.6.2 the Local Authority's right pursuant to an agreement between the Trust and the Local Authority under Section 75 of the 2006 Act to nominate one of its members with experience of health and social care functions of the Local Authority;
- and any such nomination by the Local Authority pursuant to standing order 10.6.2 shall be considered for appointment as a Non-Executive Director.

CORE CONSTITUTION

ANNEX 8

Standing Orders - Board of Directors

Sheffield Health & Social Care NHS Foundation Trust

Standing Orders

Board of Directors

Statutory Framework

The Sheffield Health and Social Care NHS Foundation Trust ("**the Trust**") is a public benefit corporation which was established under the 2006 Act on [insert date], subject to its Constitution and Terms of Authorisation.

The place of business of the Trust is Fulwood House, Old Fulwood Road, Sheffield S10 3TH.

NHS Foundation Trusts are governed by a regulatory framework that confers the functions of the Trust and comprises the 2006 Act, the Constitution and the Terms of Authorisation. The powers of the Trust are set out in the 2006 Act subject to any restrictions in the Terms of Authorisation. Functions are also conferred on the Trust by virtue of the S.75 Partnership Agreement with Sheffield City Council.

The Trust will be bound by such other statute and legal provisions or guidance which governs the conduct of its affairs.

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

The Trust also has statutory powers under section 256 of the 2006 Act to fund projects jointly planned with local authorities, voluntary organisations and other bodies.

In accordance with paragraph 27 of the Constitution, the Standing Orders of the Board of Directors are to be set out in this Annex 8. The Trust adopts Standing Orders for the regulation of proceedings and business. The Trust has adopted Standing Financial Instructions as an integral part of the Standing Orders setting out the responsibilities of individuals.

NHS Framework

The Trust Board will draw up a schedule of decisions reserved to the Board, and will ensure that management arrangements are in place to ensure responsibility to be clearly delegated to the Executive Committee and to senior executives (a scheme of delegation). The Trust will also have regard to the NHS Foundation Trust Code of Governance and the Constitution, which make various requirements concerning possible conflicts of interest of Board Directors.

The Code of Practice on Openness in the NHS (which is subject to the Freedom of Information Act 2000) sets out the requirements for public access to information on the NHS .

Delegation of Powers

The Trust has powers to delegate and make arrangements for delegation. The Standing Orders set out the detail of these arrangements. Under the Standing Order relating to the Arrangements for the Exercise of Functions (SO 4) the Trust is given powers to "make arrangements for the exercise, on behalf of the Trust of any of their functions by a committee, sub-committee or joint committee appointed by virtue of Standing Order 5 or by an Officer of the Trust, in each case subject to such restrictions and conditions as the Trust thinks fit ". Delegated Powers are covered in a separate document (Reservation of Powers to the Board and Delegation of Powers). Further powers to delegate and make arrangements for delegation are provided through the S.75 Partnership Agreement with Sheffield City Council.

1. INTERPRETATIONS AND DEFINITIONS

- 1.1 Save as otherwise 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 or Company Secretary).
- 1.2 All references in these Standing Orders to the masculine gender shall be read equally applicable to the feminine gender.
- 1.3 For convenience, and unless the context otherwise requires, the terms and expressions contained within the Interpretations and Definitions section of the Constitution at page 1 are incorporated and are deemed to have been repeated here verbatim for the purposes of interpreting words contained in this Annex 8 and in addition:

"Audit and Assurance Committee" means a committee whose functions are concerned with providing the Trust Board with a means of independent and objective review and monitoring financial systems and information, quality and clinical effectiveness, compliance with law, guidance and codes of conduct, effectiveness of risk management, the processes of governance and the delivery of the Board Assurance Framework.

"Committee" means a committee or sub-committee appointed by the Trust.

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

"Contracting and Procuring" means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets..

"Commissioning" means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources.

"Nominated Officer" means an Officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.

"Officer" means an employee of the Trust or any other person holding a paid appointment or office with the Trust.

"SFIs" means Standing Financial Instructions.

"SOs" means Standing Orders.

2. THE BOARD

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 All funds received in trust shall be held in the name of the Trust as corporate trustee.
- 2.3 The powers of the Trust shall be exercised in public or private session as provided for in SO 3.
- 2.4 The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in

Reservation of Powers to the Board and have effect as if incorporated into the Standing Orders.

- 2.5 **Composition of the Board** - In accordance with the Constitution, the composition of the Board shall comprise Directors being:
- 2.5.1 the non-executive Chairman of the Trust;
 - 2.5.2 up to five other Non-Executive Directors;
 - 2.5.3 up to five Executive Directors, including:
 - (a) the Chief Executive (Accounting Officer);
 - (b) Finance Director;
 - (c) a registered medical practitioner or a registered dentist;
 - (d) a registered nurse or a registered midwife
- 2.5A The Board of Directors shall at all times be constituted so that the number of Non-Executive Directors (excluding the Chairman) equals or exceeds the number of Executive Directors.
- 2.6 **Appointment of the Chairman and Directors** – The Chairman and Non-Executive Directors are appointed (and removed) by the Council of Governors. The Chief Executive will be appointed or removed by the Non-Executive Directors subject to approval by the Council of Governors. The Trust shall appoint an Appointments Committee whose members shall be the Chairman, Non-Executive Directors and the Chief Executive whose function will be to appoint the other Executive Directors of the Trust.
- 2.7 **Terms of Office of the Chairman and Directors** – The provisions governing the period of tenure of office of the Chairman and Directors and for the termination or suspension of office of the Chairman and Directors are set out in the Constitution and these Standing Orders.
- 2.8 **Appointment and Powers of Vice-Chairman** – Subject to SO 2.10 below, the Council of Governors may appoint a Non-Executive Director 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.
- 2.9 Any Non-Executive Director so elected may at any time resign from the office of Vice-Chairman by giving notice in writing to the Chairman and the Council of Governors may thereupon appoint another Non-Executive Director as Vice-Chairman in accordance with standing order 2.8.
- 2.10 Where the Chairman of the Trust has died or has ceased to hold office or where he has been unable to perform his duties as Chairman owing to illness or any other cause, the Vice Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes his duties, as the case may be; and references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform his duties, be taken to include references to the Vice-Chairman.
- 2.11 **Joint Directors** - Where more than one person is appointed jointly to a post of Director, those persons shall count for the purpose of SO 2.5 as one person.

- 2.12 **Role of Directors** – The Board will function as a corporate decision-making body within which all Directors will be equal. Their role as members of the Board will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions. In exercising these functions the Board will consider guidance from the NHS Foundation Trust Code of Governance as amended from time to time.

3. MEETINGS OF THE BOARD

- 3.1 **Admission of the Public and the Press** – The meetings of the Board of Directors shall be open to members of the public and press unless the Board decides otherwise in relation to all or part of a meeting for reasons of confidentiality or on other proper grounds.
- 3.2 In the event that the public and press are admitted to all or part of a Board meeting pursuant to SO 3.1 above, the Chairman (or Vice Chairman) shall give such directions as he 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 Board's business shall be conducted without interruption and disruption and the public will be required to withdraw upon the Board resolving "that in the interests of public order the meeting adjourn for (*the period to be specified*) to enable the Board to complete business without the presence of the public".
- 3.3 Nothing in these Standing Orders shall be construed as permitting the introduction by the public or press representatives of recording, transmitting, video or small apparatus into meetings of the Board or Committee. Such permissions shall be granted only upon resolution of the Trust.
- 3.4 **Calling of Meetings** – Ordinary meetings of the Board shall be held at such times and places as the Board determines.
- 3.5 The Chairman of the Trust may call a meeting of the Board at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to him/her, or if, without so refusing, the Chairman does not call a meeting within seven days after such requisition has been presented to him at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting.
- 3.6 **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 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.
- 3.7 Want of service of the notice on any Director shall not affect the validity of a meeting.
- 3.8 In the case of a meeting called by Directors in default of the Chairman, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.
- 3.9 Agendas will normally be sent to members 5 days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three clear days before the meeting, save in emergency. Failure to serve such a notice on more than three Directors will

- invalidate the meeting. A notice shall be presumed to have been served one day after posting.
- 3.10 Before any meeting of the Board which is to be held in public, 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.
- 3.11 **Setting the Agenda** - The Board may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders.
- 3.12 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. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chairman.
- 3.13 **Petitions** - Where a petition has been received by the Trust the Chairman of the Board shall include the petition as an item for the agenda of the next Board meeting.
- 3.14 **Chairman of Meeting** - At any meeting of the Board, the Chairman of the Board, 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 as the Directors present shall choose shall preside.
- 3.15 If the Chairman is absent 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.
- 3.16 **Notices of Motion** - A Director of the Board 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 standing order shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda.
- 3.17 **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.
- 3.18 **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 who gives it and also the signature of 4 other Board Directors. When any such motion has been disposed of by the Board, it shall not be competent for any Director other than the Chairman to propose a motion to the same effect within 6 months, however the Chairman may do so if he/she considers it appropriate.
- 3.19 **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.

- 3.20 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- 3.20.1 an amendment to the motion;
 - 3.20.2 the adjournment of the discussion or the meeting;
 - 3.20.3 that the meeting proceed to the next business; (*)
 - 3.20.4 the appointment of an ad hoc committee to deal with a specific item of business;
 - 3.20.5 that the motion be now put; (*)
 - 3.20.6 *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 and who is eligible to vote.
 - 3.20.7 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.
- 3.21 **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, relevancy, regularity and any other matters shall be final.
- 3.22 **Voting** - Every question at a meeting shall be determined by a majority of the votes of the Chairman of the meeting and Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chairman of the meeting shall have a second or casting vote.
- 3.23 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 3.24 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 3.25 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.26 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.27 An Officer who has been appointed formally by the Board 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. An Officer 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. An Officer's status when attending a meeting shall be recorded in the minutes.
- 3.28 **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.

- 3.29 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.
- 3.30 Minutes shall be circulated in accordance with Director' wishes. Where providing a record of a public meeting the minutes shall be made available to the public as required by Code of Practice on Openness in the NHS.
- 3.31 **Joint Members** - Where the Office of a Director is shared jointly by more than one person:
- 3.31.1 Either or both of those persons may attend or take part in meetings of the Board:
- 3.31.2 If both are present at a meeting they should cast one vote if they agree:
- 3.31.3 In the case of disagreements no vote should be cast:
- 3.31.4 The presence of either or both of those persons should count as the presence of one person for the purposes of SO 3.39 (Quorum).
- 3.32 **Suspension of Standing Orders** - Except where the Standing Orders would contravene any statutory provision or any provision in the Constitution or the Terms of Authorisation, 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.
- 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 Chairman and Directors of the Board.
- 3.35 No formal business may be transacted while Standing Orders are suspended.
- 3.36 The Audit and Assurance Committee shall review every decision to suspend Standing Orders.
- 3.37 **Variation and Amendment of Standing Orders** - These Standing Orders shall be amended only if:
- 3.37.1 a notice of motion under Standing Order 3.16 has been given; and
- 3.37.2 no fewer than half the total of the Trust's Non-Executive Directors vote in favour of amendment; and
- 3.37.3 at least two-thirds of the Board Directors are present; and
- 3.37.4 the variation proposed does not contravene any applicable Statutory provision or direction, the Constitution or the Terms of Authorisation, and
- subject always to the fact that no change shall be made without the prior consent of the Independent Regulator having first been obtained.
- 3.38 **Record of Attendance** - The names of the Chairman and Directors present at the meeting shall be recorded in the minutes.

- 3.39 **Quorum** - No business shall be transacted at a meeting unless at least one-third of the whole number of the Chairman and Directors appointed, (including at least one Non-Executive Director and one Executive Director) are present.
- 3.40 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 3.41 If the Chairman or Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6 or 7) he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board considers the recommendations of the Remuneration and Nominations Committee).

4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 4.1 Subject to the Constitution, Terms of Authorisation or any relevant statutory provision, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions:
- 4.1.1 by a committee or sub-committee appointed by virtue of Standing Order 5.1 or 5.2 below; or
 - 4.1.2 by an Officer of the Trust, or
 - 4.1.3 by another body as defined in Standing Order 4.2 below,
- in each case subject to such restrictions and conditions as the Trust thinks fit.
- 4.2 Where a function is delegated to a third party, the Trust has responsibility to ensure that the proper delegation is in place. In other situations, i.e. delegation to committees, sub committees or Officers, the Trust retains full responsibility.
- 4.3 **Emergency Powers** - The powers which the Board has retained to itself within these Standing Orders (Standing Order 2.4) 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 Chairman shall be reported to the next formal meeting of the Executive Committee and the Board for ratification.
- 4.4 **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, or joint-committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, or joint committees, and their specific executive powers shall be approved by the Board in respect of its sub-committees.
- 4.5 **Delegation to Officers** - Those functions of the Trust which have not been retained as reserved by the Board or delegated to a committee or sub-committee or joint-committee shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions he/she will

perform personally and shall nominate Officers to undertake the remaining functions for which he/she will still retain an accountability to the Trust.

- 4.6 **Powers of discharge** – where the Trust is exercising the powers of discharge under Section 45 of the Mental Health Act 2007 such powers may be exercised by three or more persons authorised by the Board of Directors in that behalf, each of whom is neither an Executive Director nor an employee of the Trust.
- 4.7 The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation that shall be considered and approved by the Board as indicated above.
- 4.8 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance to provide information and advise the Board in accordance with statutory or Independent Regulator requirements. Outside these requirements the roles of the Director of Finance shall be accountable to the Chief Executive for operational matters.
- 4.9 The arrangements made by the Board as set out in the Reservation of Powers to the Board and Delegation of Powers document shall have effect as if incorporated in these Standing Orders.
- 4.10 Not used.
- 4.11 **Overriding Standing Orders** – If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All Directors of the Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive/Deputy Chief Executive as soon as possible.
5. COMMITTEES
- 5.1 Subject to the Constitution, (and to any guidance as may be given by the Independent Regulator), the Trust may appoint committees of the Trust, or together with one or more Health Authorities or other Trusts, appoint joint committees, consisting wholly or partly of the Chairman and members of the Trust or other health service bodies or wholly of persons who are not members of the Trust or other health service bodies in question.
- 5.2 A committee or joint committee appointed under SO 5.1 may, subject to such directions as may be given the Trust or other health service bodies in question, appoint sub-committees consisting wholly or partly of members of the committee or joint committee (whether or not they are members of the Trust or other health service bodies in question); or wholly of persons who are not members of the Trust or other health service bodies or the committee of the Trust or other health service bodies in question.
- 5.3 The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Trust. In which case the term “Chairman” is to be read as a reference to the Chairman of the committee as the context permits, and the term “member” is to be read as a reference to a member of the committee also as the context permits. (There is no requirement to hold meetings of committees, established by the Trust in public).

- 5.4 Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide and shall be in accordance with any applicable legislation and regulation or direction. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board.
- 5.6 The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines, and regulations permit, that persons, who are neither Directors nor Officers, shall be appointed to a committee the terms of such appointment shall be within the powers of the Board. The Board shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.
- 5.7 Where the Board is required to appoint persons to a committee and/or to undertake statutory functions, and where such appointments are to operate independently of the Board such appointment shall be made in accordance with the Constitution, the Terms of Reference and any applicable regulations and directions.
- 5.8 The committees, sub-committees, and joint-committees established by the Board are:
- Audit and Assurance Committee**]
As laid down in the Constitution and the 2006 Act, a committee of Non-Executive Directors will be established and constituted.
- Remuneration and Nominations Committee**
As laid down in the Constitution and the 2006 Act, a committee of Non-Executive Directors will be established to decide this remuneration and allowances of, and other terms and conditions of the Executive Directors.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 6.1 **Declaration of Interests** - The Constitution, 2006 Act and the NHS Foundation Trust Code of Governance requires Board Directors to declare interests which are relevant and material to the NHS board of which they are a director. All existing Board Directors should declare such interests. Any Board Directors appointed subsequently should do so on appointment.
- 6.2 Interests which should be regarded as "relevant and material" are:
- 6.2.1 Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies);
- 6.2.2 Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- 6.2.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- (a) a position of trust in a charity or voluntary organisation in the field of health and social care;

- (b) any connection with a voluntary or other organisation contracting for NHS services.;
 - (c) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to , lenders or banks;
 - (d) interests in pooled funds that are under separate management;
 - (e) research funding/grants that may be received by an individual or their department;
 - (f) any other commercial interest in the decision before the meeting.
- 6.2.4 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.
- 6.2.5 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.
- 6.2.6 During the course of a Board meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 6.2.7 Standing Order 7 requires that the interest of Directors' spouses, if living together, in contracts should be declared. Therefore the interests of Board Directors' spouses and cohabiting partners should also be regarded as relevant.
- 6.2.8 If Board Directors have any doubt about the relevance of an interest, this should be discussed with the Chairman. Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.
- 6.3 **Register of Interests** - The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board Directors. In particular the Register will include details of all directorships and other relevant and material interests which have been declared by both Executive and Non-Executive Directors, as defined in Standing Order 6.2.
- 6.4 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.
- 6.5 The Register will be available to the public in accordance with paragraph 31 and 32 of the Constitution 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.

6.6 All senior managers and clinicians have a duty to ensure that declaration of interests are made which could materially effect the outcome of decisions made by them. Where in doubt, all senior managers and clinicians should contact their respective Directors for clarification.

7. DISABILITY OF CHAIRMAN AND MEMBERS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

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

7.2 The Board may exclude the Chairman or a Director of the Board from a meeting of the Board while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.

7.3 Any remuneration, compensation or allowances payable to the Chairman or a Director by virtue of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this Standing Order.

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

7.4.1 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

7.4.2 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;

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

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

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

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

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

- 7.7 The Standing Order applies to a committee or sub-committee and to a joint committee as it applies to the Trust and applies to a director 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.

8. STANDARDS OF BUSINESS CONDUCT POLICY

- 8.1 Staff should have due regard to the national guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff" (contained in Appendix B) as usually representing best practice. This section of Standing Orders should be read in conjunction with this document.
- 8.2 **Interest of Officers in Contracts** - If it comes to the knowledge of 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 shall, at once, give notice in writing to the Chief Executive of the fact that he is interested therein. In the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 8.3 An Officer should also declare to the Chief Executive any other employment or business or other relationship of his, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- 8.4 The Trust requires interests, employment or relationships declared, to be entered in a register of interests of staff.
- 8.5 **Canvassing of, and Recommendations by, Directors in Relation to Appointments** - Canvassing of Directors of the Trust or of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 8.6 A Director of the Board shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 8.7 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 8.8 **Relatives of Directors or Officers** - Candidates for any staff appointment under the Trust shall, when making application, disclose in writing to the Trust whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.

- 8.9 The Chairman and every Director and Officer of the Trust shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that Director or Officer is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made.
- 8.10 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Board whether they are related to any other Director or holder of any office in the Trust.
- 8.11 Where the relationship to a Director of the Trust is disclosed, the Standing Order headed 'Disability of Chairman and Directors in proceedings on account of pecuniary interest' (SO 7) shall apply.

9. TENDERING AND CONTRACT PROCEDURE

- 9.1 **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 Standing Order 3.32 is applied).
- 9.2 **EU Directives Governing Public Procurement** – the Trust will comply with, and have due regard to, EU Directives (and associated Regulations) governing public procurements.
- 9.3 The Trust shall have due regard to the requirements of the Department of Health "Capital Investment Manual" and "Estatecode" and will comply with the guidance "Risk Evaluation for Investment Decisions by NHS Foundation Trusts" and such other guidance as may be issued by the Independent Regulator from time to time in respect of capital investment and estate and property transactions. In the case of management consultancy contracts the Trust shall have due regard to, as far as is practicable, with Department of Health guidance "The Procurement and Management of Consultants within the NHS".
- 9.4 **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 DoH); for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals.
- 9.5 Where the Trust elects to invite tenders for the supply of healthcare these Standing Orders shall apply as far as they are applicable to the tendering procedure.
- 9.6 Formal tendering procedures may be waived by Officers to whom powers have been delegated by the Chief Executive without reference to the Chief Executive (except in 9.6.3 to 9.6.6 below) where:
- 9.6.1 The estimated expenditure or income does not, or is not reasonably expected to, exceed £30,000, (this figure to be reviewed annually); or
- 9.6.2 where the supply is proposed under special arrangements negotiated by the DoH in which event the said special arrangements must be complied with;
- 9.6.3 the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender;

- 9.6.4 specialist expertise is required and is available from only one source;
- 9.6.5 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;
- 9.6.6 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.
- 9.6.7 where provided for in the Capital Investment Manual.
- 9.7 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.
- 9.8 Where it is decided that competitive tendering is not applicable and should be waived by virtue of 9.6.3 to 9.6.6 above the fact of the waiver and the reasons should be documented and reported by the Chief Executive to the Trust in a formal meeting.
- 9.9 Except where Standing Order 9.6, or a requirement under Standing Order 9.2, applies, the Trust shall ensure that invitations to tender are sent to a sufficient number of firms/individuals to provide fair and adequate competition as appropriate, and in no case less than three firms/individuals, having regard to their capacity to supply the goods or materials or to undertake the services or works required.
- 9.10 Subject to EU directives governing EU procurements the Trust shall ensure that normally the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists compiled. Where in the opinion of the Director of Finance it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive for approval (see Appendix A: Tendering Procedure).
- 9.11 Tendering procedures are set out in Appendix A below.
- 9.12 **Quotations** - are required where formal tendering procedures are waived under Standing Order 9.5 9.6.1 or 9.6.3 and where the intended expenditure or income exceeds, or is reasonably expected to exceed £10,000.
- 9.13 Where quotations are required under Standing Order 9.12 they should be obtained from at least three firms/individuals as per Annex A based on specifications or terms of reference prepared by, or on behalf of, the Trust.
- 9.14 Quotations 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 quotation should be obtained as soon as possible and the reasons why the telephone quotation was obtained should be set out in a permanent record.
- 9.15 All quotations should be treated as confidential and should be retained for inspection.
- 9.16 The Chief Executive or his nominated Officer should evaluate the quotations and select the one which 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.

- 9.17 Non-competitive quotations in writing may be obtained for the following purposes:
- 9.17.1 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;
 - 9.17.2 the goods/services are required urgently.
- 9.18 Where tenders or quotations are not required, because expenditure is below £10,000, the Trust shall procure goods and services in accordance with procurement procedures approved by the Trust.
- 9.19 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house. The Trust may also determine from time to time that in-house services should be market tested by competitive tendering (Standing Order 11).
- 9.20 **Private Finance** – Where the Trust proposes to market test for PFI (Private Finance Initiative Funding) when considering a capital procurement the following should apply:
- 9.20.1 The Chief Executive shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector.
 - 9.20.2 The Trust will give full Board consideration to the scheme, which must be specifically agreed by the Board.
 - 9.20.3 The Board will consider the Independent Regulator's guidance on "Roles and responsibilities in the approval of NHS foundation trust PFI schemes", the Independent Regulator's Compliance Framework, and any other Department of Health and/or HM Treasury requirements.
 - 9.20.4 The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.
- 9.21 **Contracts with Commissioners** – The Chief Executive, as Accounting Officer is responsible for ensuring the Trust enters into suitable legally binding contracts with service commissioners for the provision of services. Contracts with commissioners are legally binding and appropriate legal advice identifying the Trust's liabilities within the terms of the contract should be considered.
- 9.22 The Board will approve standard terms and conditions for legally binding contracts on the basis of which the Trust will provide healthcare and other services.
- 9.23 Cancellation of Contracts Except where specific provision is made in model Forms of Contracts or standard Schedules of Conditions approved for use within the NHS (as amended to take into account the Trust's Foundation Trusts status) and in accordance with Standing Orders 9.2 and 9.3, 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.

9.24 **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. 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.

9.25 **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 Act.

10. DISPOSALS

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

10.1.1 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;

10.1.2 obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust;

10.1.3 items to be disposed of with an estimated sale value of less than £500, this figure to be reviewed annually;

10.1.4 items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;

10.1.5 land or buildings concerning which DoH guidance has been issued, where the Trust wishes to adhere to such guidance as a matter of good practice.

11. IN-HOUSE SERVICES

11.1 In all cases where the Board determines that in-house services should be subject to competitive tendering the following groups shall be set up:

11.1.1 Specification group, comprising the Chief Executive or nominated Officer/s and specialist.

11.1.2 In-house tender group, comprising a nominee of the Chief Executive and technical support.

11.1.3 Evaluation team, comprising normally a specialist Officer, a supplies Officer and a Director of Finance representative. For services having a likely annual expenditure exceeding £100,000, a Non-Executive Director should be a Director of the evaluation team.

11.2 All groups should work independently of each other and individual Officers may be a Director of more than one group but no Director of the in-house tender group may participate in the evaluation of tenders.

11.3 The evaluation team shall make recommendations to the Board.

11.4 The Chief Executive shall nominate an Officer to oversee and manage the contract on behalf of the Trust.

12. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

12.1 **Custody of Seal** - The Common Seal of the Trust shall be kept by the Chief Executive or designated Officer in a secure place.

12.2 **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.

12.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or an Officer nominated by him/her) and authorised and countersigned by the Chief Executive (or an Officer nominated by him/her who shall not be within the originating directorate).

12.4 **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 sealings shall be made to the Board at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

13. SIGNATURE OF DOCUMENTS

13.1 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.

13.2 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 requested to be executed as a deed, the subject matter of which has been approved by the Board or any committee, sub-committee or standing committee with delegated authority.

14. MISCELLANEOUS

14.1 **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 Standing Financial Instructions. 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 in Standing Orders.

- 14.2 **Documents having the standing of Standing Orders** - Standing Financial Instructions and Reservation of Powers to the Board and Delegation of Powers shall have effect as if incorporated into Standing Orders.
- 14.3 **Review of Standing Orders** - Standing Orders shall be reviewed annually by the Board. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

APPENDIX A

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:
- 1.1.1 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
 - 1.1.2 (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 Estate code 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. The Trust may consider Tendering based on other forms of contract.
- 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 Chief Executive.
- 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 (Opening Formal Tenders).

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.
- 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 to show for each set of competitive tender invitations despatched:
 - 3.3.1 The names of firms/individuals invited;
 - 3.3.2 The names of and the number of firms/individuals from which tenders have been received;
 - 3.3.3 The total price(s) tendered;
 - 3.3.4 Closing date and time;
 - 3.3.5 Date and time of opening;
 - 3.3.6 And the persons present at the opening shall sign the record.
- 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 fides 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 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 an Officer designated by the Chief Executive.
- 4.8 Where only one tender/quotation is received the Chief Executive 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.

5. LIST OF APPROVED FIRMS

- 5.1 In accordance with Standing Order 9.10 the Trust shall compile, or procure from another health body or organisation, lists of approved firms and individuals from whom tenders and quotations may be invited. The Finance Director shall keep and maintain these under review subject always to EU directives governing EU procurement. Where compiled by the Trust, the lists shall be selected from all firms who have applied for permission to tender or quote provided:
 - 5.1.1 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 Finance is satisfied that their financial standing is adequate.
 - 5.1.2 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 Finance is satisfied that their financial standing is adequate.
 - 5.1.3 In the case of the provision of healthcare services to the Trust by a private sector provider, the Director of Finance is satisfied as to their financial standing and the Medical Director (or nominated representative) is satisfied as to their technical/medical competence.
- 5.2 The Chief Executive shall arrange for advertisements to be issued as may be necessary, and not less frequently than every third year, in trade journals and

national newspapers inviting applications from firms for inclusion in the prescribed lists.

- 5.3 If in the opinion of the Chief Executive and the Director of Finance it is impractical to use a 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 should ensure that appropriate checks are carried out as to the technical and financial capability of firms invited to tender or quote.
- 5.4 A permanent record should be made of the reasons for inviting a tender or quote other than from an approved list.

CORE CONSTITUTION

ANNEX 9

Further Provisions

FURTHER PROVISIONS

1. ELIGIBILITY FOR MEMBERSHIP

- 1.1 An individual shall not be eligible for Membership of the Trust if he or she:
- 1.1.1 is less than 12 years of age at the time of the application to become a Member;
 - 1.1.2 fails or ceases to fulfil the criteria for Membership of any of the constituencies;
 - 1.1.3 he was formerly employed by the Trust or the Applicant NHS Trust and was dismissed for gross misconduct;
 - 1.1.4 he was formerly employed by the Trust or the Applicant NHS Trust and in the preceding two years was lawfully dismissed other than by reason of redundancy;
 - 1.1.5 has been placed on the registers of Schedule 1 Offenders pursuant to the Sex Offenders Act 1977 and/or the Children & Young Person's Act 1937 and his or her conviction is not spent under the Rehabilitation of Offenders Act 1974;
 - 1.1.6 does not agree to abide by the Trust principles;
 - 1.1.7 in the five years prior to his application, he has been involved as a perpetrator in a serious incident of violence or harassment of people working for the Trust or any other Health Service Body or any service users or carers of or visitors to the Trust or any other Health Service Body consistent with the Trust's Zero Tolerance Policy;
 - 1.1.8 as deemed, in the reasonable opinion of the Trust, to have acted in a manner contrary to the interests of the Trust;
 - 1.1.9 he has been excluded from the Trust's premises; and
 - 1.1.10 he is a vexatious complainant as determined by the Secretary.
- 1.2 It is the responsibility of Members to ensure their eligibility and not the Trust, but if the Trust is on notice that a Member may be disqualified from Membership, the Trust shall carry out all reasonable enquiries to establish if this is the case.

Public Constituency

- 1.3 For the purposes of determining whether an individual lives in an area specified as an area for Public Constituency, an individual shall be deemed to do so if;
- 1.3.1 his name appears on the electoral roll at an address within the said area and the Trust has no reasonable cause to conclude that the individual is not living at that address; or
 - 1.3.2 the Trust is otherwise satisfied that the individual lives in the said area.
- 1.4 An individual who is a Member of the Public Constituency shall cease to be eligible to continue as a Member if he ceases to live in the area of the Public Constituency of which he is a Member save as may otherwise be provided in this paragraph 1.
- 1.5 Where a Member of a Public Constituency ceases to live permanently in the area of the Public Constituency of which he is a Member he shall forthwith advise the Trust that he is no longer eligible to continue as a Member and the Trust shall forthwith

remove his name from the Register of Members unless the Trust is satisfied that the individual concerned lives in some other area of a Public Constituency of the Trust. Where the Trust is satisfied that such an individual continues to live in the area of a Public Constituency of the Trust it shall, if the individual so requests, thereafter treat that individual as a Member of that other Public Constituency and amend the Register of Members accordingly provided the Trust has given that individual not less than 14 days notice of its intention to do so.

- 1.6 Where a Member ceases to live temporarily in the area of the Public Constituency of which he is a Member, the Trust may permit that individual nonetheless to remain on the Register of Members for that Public Constituency if it is for good cause satisfied that the absence is of a temporary duration only and that the Member will either return to live in the area of that Public Constituency of which he is a Member or will live in some other part of the Area of the Trust in which case the provisions of paragraph 1.4 shall apply as appropriate.

Staff Constituency

- 1.7 A Member of a Staff Class will cease to be eligible to be a Member of that Staff Class if they no longer meet the eligibility requirements of paragraph 7 of the Constitution and of Annex 2.
- 1.8 Where an individual is a Member by virtue of their eligibility to be a Member of a Staff Class and they cease to be eligible for Membership of that Staff Class but are eligible for Membership of some other Staff Class then the Trust may give notice to that Member of its intention to transfer him to that other Staff Class on the expiration of a period of time or upon a date specified in the said notice and shall after the expiration of that notice or date amend the Register of Members accordingly.

Service Users and Carers' Constituency

- 1.9 A Member of the Service Users and Carers' Constituency shall cease to be eligible for Membership unless they have at all times since becoming a Member attended one of the Trust's hospitals as a Service User or Carer, as the case may be, within the preceding five years.
- 1.10 Where in the reasonable opinion of the Trust an individual is no longer eligible to continue as a Member of the Service Users and Carers' Constituency it shall be at liberty to remove an individual from the Register of Members and that individual shall thereupon cease to be a Member of the Trust. However, this power may not be exercised until the Trust has given not less than 14 days written notice to that Member addressed to him at the address given in the Register of Members of its intention to remove him from the Register of Members and that Member has not within that period notified the Trust of his wish to continue as a Member.

2. APPLICATION FOR MEMBERSHIP

- 2.1 An individual may become a Member by application to the Trust in accordance with this Constitution or, where so provided for in this Constitution, by being invited by the Trust to become a member of a Staff Class of the Staff Constituency in accordance with paragraph 7.
- 2.2 Where an individual wishes to apply to become a Member of the Trust, the following procedure shall apply:
 - 2.2.1 the Trust shall upon request supply the individual with a form of application for Membership in a form determined by the Trust;
 - 2.2.2 upon receipt of the said form of application duly completed and signed by the applicant (or in the Trust's discretion signed on behalf of the applicant) the Trust shall as soon as is reasonable practicable and in any event within

twenty-eight working days of receipt of the duly completed form consider the same;

2.2.3 unless the applicant is ineligible for Membership or is disqualified from Membership, the Trust shall cause his name to be entered forthwith on the Trust's Register of Members and shall give notice in writing to the applicant of that fact;

2.2.4 upon the applicant's name being entered on the Trust's Register of Members the individual shall thereupon become a Member;

2.2.5 the information to be included in the Trust's Register of Members shall include the following details relating to that Member:

- (a) his full name and title;
- (b) his date of birth;
- (c) his full postal address;
- (d) his home telephone number (if any);
- (e) his email address (if any);
- (f) the constituency of which he is a Member, and, where there are classes within it, the Class to which he belongs;
- (g) the date upon which he became a Member;
- (h) his gender and ethnicity, and
- (i) his affiliation to any health and social care group.

2.3 Where an individual is to be invited by the Trust to become a Member, the following procedure shall apply:

2.3.1 the Trust shall take all reasonable steps to satisfy itself that the individual is eligible to become a Member of the Staff Class of the Staff Constituency relevant to him before inviting him to become a Member of the Trust and that it has all the information needed to complete the Register of Members in accordance with paragraph 2.2.5 above;

2.3.2 the Trust having so satisfied itself, it shall thereupon invite that individual to become a Member pursuant to paragraph Seven, of the Constitution and if necessary shall request the individual to provide such further information, if any, as it may need to complete the necessary entry in the Register of Members;

2.3.3 unless the individual has within twenty-eight days of the date upon which the Trust dispatches its invitation to him to become a Member advised the Trust that he does not wish to become a Member, the Trust shall thereupon enter that individual's name on the Register of Members and he shall thereupon become a Member provided that the Trust has been provided with the information, if any, requested pursuant to paragraph 2.2.5 to enable it to complete the relevant entry in the Register of Members;

2.3.4 if the individual has failed to provide the information requested by the Trust within fourteen days of being invited by the Trust to provide it in accordance with paragraph 2.2.5 above, the Trust shall give notice in writing to the applicant that the information has not been provided and that unless and until the information is provided that individual's name shall not be entered on the Register of Members.

- 2.4 No individual who is ineligible or disqualified from Membership shall be entered or remain on the Register of Members.
- 2.5 For the avoidance of doubt, an individual shall become a Member on the date upon which his name is entered on the Trust's Register of Members and shall cease to be a Member upon the date on which his name is removed from the Register of Members as provided for in this Constitution.
- 2.6 The Trust shall procure that the Register of Members and all other Registers to be maintained in accordance with this Constitution or in accordance with the 2006 Act are regularly reviewed and updated and that the Register of Members in particular is reviewed and updated as appropriate and no less often than every twenty eight days.

3. TERMINATION OF MEMBERSHIP

- 3.1 A Member shall cease to be a Member if:
 - 3.1.1 he resigns by notice to the Company Secretary;
 - 3.1.2 he dies;
 - 3.1.3 he is expelled from Membership under this constitution;
 - 3.1.4 if it appears to the Company Secretary that he no longer wishes to be a Member of the Trust, and after enquiries made in accordance with a process approved by the Council of Governors, he fails to establish that he wishes to continue to be a Member of the Trust;
 - 3.1.5 they cease to be entitled under this Constitution to be a Member of any of the Public Constituencies or one of the Classes of the Service Users and Carers' Constituency or one of the Classes of the Staff Constituency.

4. MEMBERS MEETINGS

- 4.1 The Trust shall hold a Members' Meeting for all the Members (called the Annual Members' Meeting) which is to be held no later than the 30 September in each Financial Year of the Trust.
- 4.2 Any Members' Meetings other than the Annual Members' Meeting shall be called "Special Members' Meetings".
- 4.3 Members' Meetings shall be open to all Members of the Trust, members of the Council of Governors and the Board of Directors, representatives of the Trust's financial auditors and to members of the public. The Trust may invite representatives of the media, and any experts or advisors, whose attendance they consider to be in the best interests of the Trust to attend a Members' Meeting.
- 4.4 All Members' Meetings are to be convened by the Company Secretary by order of the Board of Directors.
- 4.5 The Trust shall make provision for the Members' Meeting to be held at different venues whether simultaneously or at different times.
- 4.6 The Board of Directors shall present at the Annual Members' Meeting to the Members:
 - 4.6.1 a report on steps taken to secure that (taken as a whole) the actual membership is representative of those eligible for such Membership;
 - 4.6.2 the progress of the Membership strategy;
 - 4.6.3 any proposed changes to the policy for the composition of the Council of Governors and of the Non-Executive Directors;

- 4.6.4 the results of the election and appointment of Governors any other reports or documentation it considers necessary or otherwise required by the Independent Regulator or the 2006 Act.
- 4.7 The Trust shall give notice of all Members' Meetings:
 - 4.7.1 by notice in writing to all Members;
 - 4.7.2 by notice prominently displayed at the Trust's main address and at all of the Trust's principal places of business;
 - 4.7.3 by notice on the Trust's website at least fourteen clear days before the date of the meeting;
 - 4.7.4 to the Council of Governors and the Board of Directors, and to the Trust's auditors stating whether the meeting is an Annual or Special Members' Meeting giving the time, date and place of the meeting and indicating the business to be dealt with at the meeting.
- 4.8 The Chairman or in his absence the Vice Chairman shall preside at all Members' Meetings of the Trust. If neither the Chairman nor the Vice Chairman is present, the Governors present shall elect one of their number to be Chairman and if there is only one Governor present and willing to act that person shall be Chairman. If no Governor is willing to act as Chairman or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be Chairman.

4A VOTING AT GOVERNOR ELECTIONS

- 4A.1 A Member may not for the purpose of section 60 of the 2006 Act vote at an election for a Public Governor or Service User and Carer Governor unless within the specified period he has made a declaration in the specified form stating the particulars of his qualification to vote as a Member of the Public constituency or Class of the Service User and Carers' Constituency for which an election is being held. It is an offence to knowingly or recklessly make such a declaration which is false in material particular.

5. BOARD OF DIRECTORS: DISQUALIFICATION

- 5.1 In addition to the grounds of disqualification set out in paragraph 26 of the Constitution, a person may also not be or continue as a Director of the Trust if:
 - 5.1.1 in the case of a Non-Executive Director, he no longer satisfies relevant appointment requirements;
 - 5.1.2 he is a person whose tenure of office as a Chairman or as a Member or Director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of public service, or for non-disclosure of a pecuniary interest;
 - 5.1.3 he has within the preceding two years been dismissed, otherwise than by reason of redundancy, by the coming to an end of fixed term contract or through ill health, from any paid employment with a health service body;
 - 5.1.4 information revealed by a Criminal Records Bureau check is such that it would be inappropriate for him to become or continue as a Director on the grounds that this would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
 - 5.1.5 in the case of an Executive Director, he is no longer employed by the Trust.

6. GOVERNORS AND DIRECTORS: COMMUNICATION AND CONFLICT

Summary

- 6.1 This paragraph 6 describes the processes intended to ensure a successful and constructive relationship between the Council of Governors and the Board of Directors. It emphasises the importance of informal and formal communication, and confirms the formal arrangements for communication within the Trust. It suggests an approach to informal and formal communications between the Council of Governors and the Board of Directors.

Informal Communications

- 6.2 Informal and frequent communication between the Governor and the Directors is an essential feature of a positive and constructive relationship designed to benefit the Trust and the services it provides.
- 6.3 The Chairman shall use his reasonable endeavours to encourage effective informal methods of communication including:
- 6.3.1 participation of the Board of Directors in the induction, orientation and training of Governors;
 - 6.3.2 development of special interest relationships between Non-Executive Directors and Governors;
 - 6.3.3 discussions between Governors and the Chairman and/or the Chief Executive and/or Directors through the office of the Chief Executive or his nominated Officer;
 - 6.3.4 involvement in membership recruitment and briefings at public events organised by the Trust.
- 6.4 Some aspects of formal communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively.

Formal Communication

- 6.5 Formal communications initiated by the Council of Governors and intended for the Board of Directors will be conducted as follows:
- 6.5.1 specific requests by the Council of Governors will be made through the Chairman to the Board of Directors;
 - 6.5.2 any Governor has the right to raise specific issues to be put to the Board of Directors at a duly constituted meeting of the Council of Governors through the Chairman but if the Chairman declines to raise any such issue the said Governor may nonetheless still raise it provided two thirds of the Governors present approve his request to do so. The Chairman shall then raise the matter with the Board of Directors and provide the response to the Council of Governors;
 - 6.5.3 joint meetings will take place between the Council of Governors and the Board of Directors as and when appropriate as determined by the Chairman (in his capacity as the Chairman of both the Board of Directors and the Council of Governors).
- 6.6 The Board of Directors may request the Chairman to seek the views of the Council of Governors on such matters as the Board of Directors may from time to time determine.
- 6.7 Communications between the Council of Governors and the Board of Directors may occur with regard to, but shall not be limited to:
- 6.7.1 the Board of Directors proposals for the Strategic Direction and the Annual Business Plan;

- 6.7.2 the Board of Directors' proposals for developments;
 - 6.7.3 Trust performance;
 - 6.7.4 involvement in service reviews and evaluation relating to the Trust's services;
and
 - 6.7.5 proposed changes, plans and developments for the Trust other than may be covered by paragraph 6.6 above.
- 6.8 The Board of Directors shall also present to the Council of Governors the Annual Accounts, Annual Report and Auditors Report in accordance with the terms of this Constitution and of the 2006 Act.
- 6.9 The following formal methods of communication may also be used as appropriate with the consent of both the Council of Governors and the Board of Directors:
- 6.9.1 attendance by the Board of Directors at a meeting of the Council of Governors;
 - 6.9.2 provision of formal reports or presentations by Executive Directors to a meeting of the Council of Governors;
 - 6.9.3 inclusion of appropriate minutes for information on the agenda of a meeting of the Council of Governors;
 - 6.9.4 reporting the views of the Council of Governors to the Board of Directors through the Chairman or Vice Chairman.

Other Disputes

- 6.10 Where an individual is held by the Trust to be ineligible and/or disqualified from Membership of the Trust and disputes the Trust's decision in this respect, the matter shall be referred to the Chief Executive (or such other Officer of the Trust as the Chief Executive may nominate) as soon as reasonably practicable thereafter.
- 6.11 The Chief Executive (or his nominated representative) shall:
- 6.11.1 review the original decision having regard to any representations made by the individual concerned and such other material, if any, as the Chief Executive considers appropriate;
 - 6.11.2 then either confirm the original decision or make some other decision as appropriate based on the evidence which he has considered; and
 - 6.11.3 communicate his decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.

Where a Governor is declared ineligible or disqualified from office or his term of office as a Governor has been terminated (otherwise than as a consequence of his own resignation) and that person disputes the decision, he shall as reasonably practicable be entitled to attend a meeting with the Chairman and Chief Executive of the Trust, who shall use their best endeavours to facilitate such a meeting, to discuss the decision with a view to resolving any dispute which may have arisen but the Chairman and Chief Executive shall not be entitled to rescind or vary the decision which has already been taken.

Resolution of Disputes between the Board and Council of Governors

- 6.13 Should a dispute between the Council of Governors and the Board of Directors arise then the disputes resolution procedure set out below recognises the different roles of the Council and the Board as described in the Constitution.

- 6.13.1 The Chairman, or Vice Chairman (if the dispute involves the Chairman) shall first endeavour through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.
 - 6.13.2 Failing resolution under 6.13.1 above then the Board or the Council, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
 - 6.13.3 The Chairman shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an Agenda Item and Agenda Paper at the next formal meeting of the Board or Council as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
 - 6.13.4 The Chairman or Vice Chairman (if the dispute involves the Chairman) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined above shall be repeated.
 - 6.13.5 If, in the opinion of the Chairman or Vice Chairman (if the dispute involves the Chairman), and following the further discussions prescribed above there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chairman or Vice Chairman, as the case may be, there is no prospect of a resolution (partial or otherwise) then he shall advise the council and Board accordingly.
 - 6.13.6 On the satisfactory completion of this disputes process the Board of Directors shall implement agreed changes.
 - 6.13.7 On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 6.14 Nothing in this procedure shall prevent the Council, if it so desires, from informing Monitor that, in the Council's opinion, the Board has not responded constructively to concerns of the Council that the Trust is not meeting its Terms of Authorisation.

7. AMENDMENT OF CONSTITUTION

- 7.1 The Trust may make amendments to this Constitution with the approval of the Independent Regulator.
- 7.2 No proposals for amendment of this Constitution will be put to the Independent Regulator unless it has been approved by no less than three quarters of the Council of Governors present and voting at a meeting convened for that purpose.
- 7.3 The Constitution shall be reviewed on the first anniversary of the Trust's authorisation as an NHS Foundation Trust or as soon as reasonably practicable thereafter. Further review dates shall be established at that time.

8. INDEMNITY

- 8.1 Members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Council or Board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust and the Trust shall have the power to purchase suitable insurance or make appropriate arrangements with the National Health Service Litigation Special Health Authority to cover such costs.

9. VALIDITY OF ACTIONS

- 9.1 No defect or deficiency in the appointment or composition of the Council of Governors or the Board of Directors shall affect the validity of any action taken by them.

**AUTHORISATION OF SHEFFIELD HEALTH & SOCIAL CARE NHS FOUNDATION
TRUST**

Schedule 2

Mandatory Goods and Services

Schedule 2
Mandatory goods and services

Sheffield Health & Social Care NHS Foundation Trust

2008/09

| Specialty | Inpatient - functional Occupied Bed Days | Rehabilitation - Inpatient Occupied Bed Days | Low Secure Occupied Bed Days | Inpatient - organic Occupied Bed Days | Inpatient Occupied BD Occupied Bed Days | Crisis resolution team Community Contact | Early Intervention team Community Contact | Assertive Outreach Team Community Contact | Community interventions Community Contact | Day Care Community Contact | Psychiatric Liaison Community Contact | Specialist Community Contact | Inpatient Admissions Referrals | Specialist Referrals |
|---|--|---|------------------------------------|--|--|--|---|---|--|----------------------------------|--|------------------------------------|--------------------------------------|-------------------------|
| 700 Learning disability (previously known as mental handicap) | - | - | - | - | 8,044 | - | - | - | 12,104 | - | - | - | - | - |
| 710 Mental illness | - | 19,804 | - | - | 36,253 | 17,128 | 7,700 | 12,302 | 44,911 | 11,767 | 879 | 5,104 | 117 | 5,104 |
| 711 Child and adolescent psychiatry | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| 712 Forensic psychiatry | - | - | 6,475 | - | - | - | - | - | - | - | - | - | - | - |
| 713 Psychotherapy | - | - | - | - | - | - | - | - | - | - | - | 6,013 | - | 6,013 |
| 715 Old age psychiatry | 15,974 | - | - | 8,901 | 7,023 | - | - | - | 36,636 | 5,994 | - | - | - | - |
| 420 Other | - | - | - | - | - | - | - | - | 1,992 | - | - | 789 | - | 789 |
| Total | 15,974 | 19,804 | 6,475 | 8,901 | 51,320 | 17,128 | 7,700 | 12,302 | 95,643 | 17,761 | 879 | 11,906 | 117 | 11,906 |

**AUTHORISATION OF SHEFFIELD HEALTH & SOCIAL CARE NHS FOUNDATION
TRUST**

Schedule 3

Mandatory Education and Training

**Schedule 3
Mandatory Education and Training Services**

Sheffield Health & Social Care NHS Foundation Trust

2008/09

| Commissioning body | Educational body | Contract Length | Expiry date of contract | Student group | Type of training | Number of Students | Contract Value |
|--|--|-----------------|-------------------------|-------------------------------|-------------------------------------|--------------------|-----------------------|
| | | (Years) | | | | | (£000s) |
| Yorkshire and Humber SHA (via Learning and Development Agreement) | Sheffield University Sheffield Hallam | 3 Year | 31st March 2010 | Doctors Nursing Medical | Medical Nursing Undergraduate | 63 - 34 | 1,584 172 1,099 |
| Yorkshire & Humber SHA | Sheffield University | 1 Year | 31st March 2009 | Psychologists | Psychology | 60 | 2,419 |
| Leeds Metropolitan University | Leeds Metropolitan University | 3 Year | 31st August 2012 | Psychotherapists | Art Psychotherapy | 60 | 155 |
| Sheffield PCT Clinical Audit | | 1 Year | 31st March 2009 | | | | 108 |
| Yorkshire & Humber SHA | South Yorkshire Workforce Development Confederation | 1 Year | 31st March 2009 | | NVQ | | 92 |

**AUTHORISATION OF SHEFFIELD HEALTH & SOCIAL CARE NHS FOUNDATION
TRUST**

Schedule 4

Private Health Care

**AUTHORISATION OF SHEFFIELD HEALTH & SOCIAL CARE NHS FOUNDATION
TRUST**

PRIVATE HEALTH CARE

In 2002/03 the proportion of the total patient income derived from private health charges was 0.0%

Pursuant to section 44 of the Act and Condition 10 of this Authorisation the proportion of total income of the Trust in any financial year derived from private charges shall not be greater than 0.0%¹.

DEFINITION:

Private patient income

Total patient
related income

¹ The proportion of the total patient income derived from private health charges was nil in the base year, 2002/03. Accordingly, the proportion of total income of the Trust in any financial year derived from private charges shall not be greater than 0.0%.

**AUTHORISATION OF SHEFFIELD HEALTH & SOCIAL CARE NHS FOUNDATION
TRUST**

Schedule 5

Limit on Borrowing

**AUTHORISATION OF SHEFFIELD HEALTH & SOCIAL CARE NHS FOUNDATION
TRUST**

PRUDENTIAL BORROWING LIMIT

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

- (i) Maximum cumulative long term borrowing: £16.0 million and
- (ii) Approved working capital facility: not to exceed £8.1 million

**AUTHORISATION OF SHEFFIELD HEALTH & SOCIAL CARE NHS FOUNDATION
TRUST**

Schedule 6

Information

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