

TAUNTON AND SOMERSET NHS FOUNDATION TRUST

(A PUBLIC BENEFIT CORPORATION)

CONSTITUTION

May 2014

Taunton and Somerset NHS Foundation Trust Constitution

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1 Name

- 1.1 The name of the Trust is to be “Taunton and Somerset NHS Foundation 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 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 2.3 The Trust may provide goods and services for any purposes related to:
 - 2.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
 - 2.3.2 the promotion and protection of public health.
- 2.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

3 Powers

- 3.1 The powers of the Trust are set out in the 2006 Act, subject to any restrictions in the Terms of Licence.
- 3.2 In the exercise of its powers the Trust shall have regard to the core principles of the NHS and the Trust as set out in Appendix 1 of Annex 8.
- 3.3 All powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 3.4 Any of these powers may be delegated to a committee of Directors or to an executive Director.

4 Other purposes

- 4.1 The purpose of the Trust is to provide goods and services, including education, training and research and other facilities for purposes related to the provision of health care, in accordance with its statutory duties and the terms of its Licence.
- 4.2 The Trust may carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others.
- 4.3 The Trust may also carry on other activities than those mentioned above subject to the Regulatory Framework. These activities must be for the purpose of making additional income available in order to carry out the Trust's principal purpose better.

5 Membership and constituencies

- 5.1 It is a requirement that the Trust, in deciding membership constituencies, shall have regard to the need for those eligible to be representative of those to whom the Trust provides services.
- 5.2 The Trust shall have Members, each of whom shall be a member of one of the following constituencies:
 - 5.2.1 a public constituency ; or
 - 5.2.2 a staff constituency.

6 Application for membership

- 6.1 An individual who is eligible to become a Member of the Trust may do so on application to the Trust as set out in paragraphs 7 and 8 below.

7 Public Constituency

- 7.1 Subject to the provisions of paragraphs 1 and 2 of Appendix 2 to Annex 8, an individual who lives in an area specified in column 2 of Annex 1 as an area for a public constituency may become or continue as a Member of the Trust.
- 7.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the “Public Constituency”.
- 7.3 The minimum number of members in each area for the Public Constituency is specified in column 3 of Annex 1.
- 7.4 An eligible individual shall become a Member upon entry to the membership register pursuant to an application by them.
- 7.5 On receipt of an application for membership and subject to being satisfied that the applicant is eligible the Secretary shall cause the applicant’s name to be entered in the Trust’s register of Members.

8 Staff Constituency

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member of the Trust provided:
 - 8.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Individuals who are employed by a designated Trust Subcontractor and who otherwise exercise functions for the purposes of the Trust, may become or continue as members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. For the

avoidance of doubt, this does not include Voluntary Organisations or those who assist or provide services to the Trust on a voluntary basis.

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

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

8.5 An individual who is:

8.5.1 eligible to become a Member of the Staff Constituency under paragraph 8.1; and

8.5.2 invited by the Trust to become a member of the Staff Constituency.

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

8.6 An individual who is eligible to become a member of the Staff Constituency under paragraph 8.2 above shall become a Member upon entry to the membership register pursuant to an application by them.

8.7 On receipt of an application for membership as described in paragraph 8.5 above and subject to being satisfied that the applicant is eligible the Secretary shall cause the applicant's name to be entered in the Trust's register of Members.

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 Appendix 2 of Annex 8 (“Further Provisions”).

10 Annual Members’ Meeting

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

10.2 At least one member of the Board of Directors must attend the meeting and present the following documents to the Members at the meeting:

10.2.1 the Annual Accounts;

10.2.2 any report of the Auditor on them; and

11 Council of Governors – composition

- 11.1 The Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors.
- 11.2 The composition of the Council of Governors is specified in Annex 3.
- 11.3 The members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

12 Council of Governors – Election of Governors

- 12.1 Subject to the provisions of paragraphs 11.5 to 11.9 below, elections for Elected Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time, and are attached at Annex 4. Elections for Elected Governors shall be conducted using the Single Transferable Vote system thus, where appropriate, the alternative rules marked "STV" (Single Transferable Vote) should be used.
- 12.2 A variation of the Model Rules for Elections 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.
- 12.3 An election, if contested, shall be by secret ballot.
- 12.4 A person may not vote at an election for or stand for election as an Elected Governor unless within the specified period stated in the Model Rules for Elections he has made a declaration in the specified form setting out the particulars of his qualification to vote or stand as a member of the constituency for which the election is being held. It is an offence (other than in relation to the Staff Constituency) to knowingly or recklessly make such a declaration which is false in a material particular.

Election of Staff Governors

- 12.5 Candidates for Staff Governors will be allocated to one of the following occupational categories:
 - 12.5.1 "Medical and Dental Staff Category"; or
 - 12.5.2 "Nursing and Midwifery Staff Category"; or
 - 12.5.3 "Clerical, Administrative and Managerial Staff Category";
 - 12.5.4 "Allied Professional, Scientific and Technical Staff Category"; and
 - 12.5.5 "Hotel and Estate Services Staff Category".

- 12.6 Save while a vacancy exists, at least one Staff Governor must be elected from any three of the five occupational categories listed in paragraph 11.5 above (together the "Reserved Seats") and, for the avoidance of doubt, three of the five occupational categories must be represented.
- 12.7 In addition to electing Staff Governors to the Reserved Seats, two Staff Governors will be elected from any of the occupational categories listed in paragraph 11.5 above.
- 12.8 Only individuals who are on the statutory registers of medical and dental practitioners maintained by the General Medical Council and the General Dental Council respectively, including for the avoidance of doubt, those with provisional registration may stand for election to the Council of Governors representing the occupational category set out at paragraph 11.5.1 above.
- 12.9 Only individuals who are on the statutory register maintained by the Nursing and Midwifery Council, may stand for election to the Council of Governors representing the occupational category set out at paragraph 11.5.2 above.

13 Council of Governors - tenure

13.1 Elected Governors

Subject to the provisions of paragraphs 12.2 and 12.3 below:

- 13.1.1 An Elected Governor may hold office for a period of up to 3 years.
- 13.1.2 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.
- 13.1.3 An Elected Governor shall be eligible for re-election at the end of his term.
- 13.1.4 An Elected Governor may hold office for a maximum of 9 consecutive years.

13.2 Initial Term of Office for Public Governors

- 13.2.1 Notwithstanding the provisions of paragraph 12.1 above, of those candidates who are declared elected, the two candidates polling the lowest number of votes in the constituencies listed in paragraphs 12.2.1.1 to 12.2.1.3 (as defined in column 2 of the table set out in Annex 1) below shall be elected for an initial term of office of 2 years only; the remaining candidates shall be elected for an initial term of 3 years:
- 13.2.2 Taunton Deane;
- 13.2.3 West Somerset; and
- 13.2.4 East Somerset.
- 13.2.5 If after applying the provisions of paragraph 12.2.1 it is not possible to determine which candidate or candidates are entitled to an initial term of office of 3 years, he or they shall be selected in a ballot conducted by the Chairman in the presence of two non-executive Directors of the Trust

and the Secretary of the Trust who shall report the outcome of the ballot to candidates concerned. The remaining candidates shall be elected for an initial term of 2 years.

13.3 Initial Term of Office for Staff Governors

13.3.1 Notwithstanding the provisions of paragraph 12.1 above, of those candidates who are declared elected, the two candidates polling the lowest number of votes shall be elected for an initial term of office of 1 year only; the remaining three candidates shall be elected for an initial term of 2 years.

13.3.2 If after applying the provisions of paragraph 12.3.1 it is not possible to determine which candidate or candidates are entitled to an initial term of office of 2 years, he or they shall be selected in a ballot conducted by the Chairman in the presence of two non-executive Directors of the Trust and the Secretary of the Trust who shall report the outcome of the ballot to candidates concerned. The remaining candidates shall be elected for an initial term of 1 year.

13.4 Appointed Governors

Subject to the provisions of paragraph 12.5 below:

13.4.1 An Appointed Governor shall hold office for a period of 3 years.

13.4.2 An Appointed Governor shall cease to hold office if the sponsoring organisation withdraws its sponsorship of him by notice in writing to the Secretary.

13.4.3 An Appointed Governor shall be eligible for re-appointment at the end of his term.

13.4.4 An Appointed Governor may hold office for a maximum of 9 consecutive years.

13.5 Initial Term of Office for Appointed Governors

13.5.1 Notwithstanding the provisions of paragraph 12.4 above, the initial term of office for Appointed Governors shall be 2 years.

14 Council of Governors – disqualification and removal

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

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

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

- 14.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
- 14.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 14.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Appendix 1 of Annex 5.
- 14.4 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary.
- 14.5 If a Governor fails to attend three consecutive meetings of the Council of Governors, his tenure of office is to be terminated immediately unless the other Governors are satisfied that:
 - 14.5.1 the absence was due to a reasonable cause; and
 - 14.5.2 he will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.
- 14.6 If a Governor is considered to have acted in a manner inconsistent with:
 - 14.6.1 the core principles as set out in Appendix 1 of Annex 8; or
 - 14.6.2 the Authorisation; or
 - 14.6.3 the Standing Orders for the Practice and Procedure of the Council of Governors, as set out in Annex 6 ("the Standing Orders for Governors"); or
 - 14.6.4 the Governor's Code of Conduct, or
 - 14.6.5 he has failed to declare an interest as required by this Constitution or the Standing Orders for Governors or, he has spoken or voted at a meeting on a matter in which he has an interest contrary to this Constitution or the Standing Orders Governors, and in this paragraph "interest" includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect, andhe is adjudged to have so acted by a majority of not less than 75% of the Council of Governors then the Governor shall vacate his office immediately.
- 14.7 The Standing Orders for Governors shall provide for the process to be adopted in cases relating to the termination of a Governor's tenure.

15 Council of Governors – duties of Governors

- 15.1 The general duties of the Council of Governors are:
 - 15.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and

15.1.2 to represent the interests of the Members of the Trust as a whole and the interests of the public.

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

16 Council of Governors – meetings of Governors

16.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 21.1 or paragraph 22.1 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 and the person chairing the meeting shall have a casting vote.

16.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons by resolution of the Council of Governors on the grounds that the Council of Governors considers that publicity would be prejudicial to the public interest 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 or the proceedings.

16.3 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting of the Council of Governors.

17 Council of Governors – standing orders

17.1 The Standing Orders for Governors, as may be varied from time to time, are attached at Annex 6.

18 Council of Governors – referral to the Panel

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

18.1.1 to act in accordance with its Constitution, or

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

18.2 A Governor may refer a question to the Panel only if more than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors approve the referral and the local process of raising appropriate concerns has been exhausted.

19 Council of Governors - conflicts of interest of Governors

19.1 If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the

Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The Standing Orders for Governors 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.

20 Council of Governors – travel and other expenses

20.1 The Trust may pay travelling and other costs and expenses to members of the Council of Governors at such rates as the Trust decides and in accordance with the Trust's policy on travelling and subsistence expenses as may be varied from time to time.

21 Council of Governors – further provisions

21.1 Further provisions with respect to the Council of Governors are set out in Annex 5, these include:

21.1.1 Eligibility to be on the Council of Governors;

21.1.2 Council of Governors: Objectives;

21.1.3 Roles and responsibilities of Governors;

21.1.4 Remuneration;

21.1.5 Vacancies;

21.1.6 Meetings; and

21.1.7 Committees and sub-committees.

22 Board of Directors – Composition

22.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive Directors.

22.2 The Board of Directors is to comprise:

22.2.1 a non-executive Chairman;

22.2.2 up to a maximum of eight other non-executive Directors; and

22.2.3 up to a maximum of eight executive Directors.

22.3 One of the executive Directors shall be the Chief Executive.

22.4 The Chief Executive shall be the Accounting Officer.

22.5 One of the executive Directors shall be the Finance Director.

22.6 One of the executive Directors is to be a registered medical practitioner (within the meaning of the Medical Act 1983) or a registered dentist (within the meaning of the Dentists Act 1984).

- 22.7 One of the executive Directors is to be a registered nurse or a registered midwife.
- 22.8 In the event of a formal vote being required at Board meetings, to reflect the balance of Executive/Non-Executive Directors, the maximum number of Executive votes to be counted will be equivalent to the number of NEDs (excluding the Chairman) present at the meeting of the Board of Directors in accordance with the Standing Orders for Directors attached at Annex 7.
- 22.9 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

23 Board of Directors – general duty

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

24 Board of Directors – qualification for appointment as a non-executive Director

- 24.1 Subject to the provisions of paragraph 26.3 below, a person may be appointed as a non-executive Director only if:
- 24.1.1 he is a member of the Public Constituency; and
- 24.1.2 he is not disqualified by virtue of paragraph 30 below.

25 Board of Directors – appointment and removal of Chairman and other non-executive Directors

- 25.1 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.
- 25.2 Removal of the Chairman or another non-executive Director shall require the approval of three-quarters of the members of the Council of Governors.
- 25.3 The initial Chairman and the initial non-executive Directors are to be appointed in accordance with paragraph 26 below.
- 25.4 Subject to the provisions of paragraph 26, the process for appointing new non-executive Directors and the Chairman will be as set out in paragraph 1 of Appendix 3 of Annex 8.

26 Board of Directors – appointment of initial Chairman and initial other non-executive Directors

- 26.1 The Chairman of the Applicant NHS Trust shall be appointed as the initial Chairman of the Trust if he wishes to be appointed.
- 26.2 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.

26.3 The criteria for qualification for appointment as a non-executive Director set out in paragraph 24 above (other than disqualification by virtue of paragraph 30 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.

26.4 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.

27 Board of Directors – appointment of Vice Chairman

27.1 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.

28 Board of Directors - appointment and removal of the Chief Executive and other executive Directors

28.1 The non-executive Directors shall appoint or remove the Chief Executive.

28.2 Subject to the provisions of paragraph 29.2 below, the appointment of the Chief Executive is subject to the approval of a majority of the members of the Council of Governors present and voting at a meeting of the Council of Governors.

28.3 The initial Chief Executive is to be appointed in accordance with paragraph 29 below.

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

29 Board of Directors – appointment and removal of initial Chief Executive

29.1 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.

29.2 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.

30 Board of Directors – disqualification

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

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

30.1.2 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;

30.1.3 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;

- 30.1.4 a person whose tenure of office as a chairman or member or director of a Health Service Body has been terminated on the grounds that his/her appointment is not in the interests of the health service;
- 30.1.5 a person who has had his name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list;
- 30.1.6 a person who has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
- 30.1.7 a person who is an executive or non-executive director or a governor of another NHS Foundation Trust, an executive or non-executive director, chairman, chief executive officer of another Health Service body or a body corporate whose business includes the provision of health care services;
- 30.1.8 a person who is a member of a Patient and Public Involvement Forum;
- 30.1.9 a person who is a member of a local authority's Health Overview and Scrutiny Committee;
- 30.1.10 a person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
- 30.1.11 a person who has failed without reasonable cause to fulfil any training requirement established by the Board of Directors;
- 30.1.12 a person who has failed to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Directors' Code of Conduct;
- 30.1.13 a person who is an occupant of the same household and/or is an Immediate Family Member of a Director or a Governor of the Trust; or
- 30.1.14 a person who is the subject of a Sex Offenders Order and/or his name is included in the Sex Offenders Register.

31 Board of Directors – meetings

- 31.1 Meetings of the Board of Directors will be open to members of the public. Members of the public may be excluded from a meeting for special reasons by resolution of the Board of Directors on the grounds that a publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for the other special reasons stated in the resolution and arising from the business or nature of the proceedings.
- 31.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as is practicable after holding

a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

32 Board of Directors – Standing Orders

32.1 The standing orders for the practice and procedure of the Board of Directors (“Standing Orders for the Board of Directors”), as may be varied from time to time, are attached at Annex 7.

33 Board of Directors - conflicts of interest of Directors

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

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

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

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

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

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

33.3 The duty referred to in paragraph 33.1.2 above is not infringed if acceptable of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

33.4 In paragraph 33.1.2 above, “third party” means a person other than:

32.4.1 The Trust, or

33.3.2 A person acting on its behalf.

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

33.6 If a declaration under this paragraph 33 proves to be, or becomes, inaccurate or incomplete, the Director must make a further declaration before the Trust enters into the transaction or arrangement.

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

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

33.9 A Director need not declare an interest:

- 33.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 33.9.2 if, or to the extent that, the Directors are already aware of it;
- 33.9.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered;
- 33.9.4 by a meeting of the Board of Directors, or
- 33.9.5 by a committee of the Directors appointed for the purpose under the Constitution.

34 Board of Directors – remuneration and terms of office

- 34.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive Directors.
- 34.2 The Trust shall establish a committee of non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive Directors, but pending the establishment of such a committee and its decisions, these matters are to be decided in accordance with the remuneration and allowances of the respective officers as employed by the Applicant NHS Trust.

35 Registers

- 35.1 The Trust shall have:
 - 35.1.1 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;
 - 35.1.2 a register of members of the Council of Governors;
 - 35.1.3 a register of interests of the members of the Council of Governors;
 - 35.1.4 a register of Directors;
 - 35.1.5 a register of interests of the Directors; and
- 35.2 The Secretary shall be responsible for compiling and maintaining the registers and the registers may be kept in either paper or electronic form. Removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practical and in any event within 14 days of receipt.

36 Admission to and removal from the registers

Register of Members

- 36.1 Subject to paragraph 8.6 above, members must complete and sign an application in the form prescribed by the Secretary.
- 36.2 The Secretary shall maintain the register in two parts. Part one, which shall be the register referred to in the 2006 Act, shall include the name of each Member and the constituency or class to which they belong, and shall be open to inspection by the public in accordance with paragraphs 32 and 33 below. Part two shall contain all the information from the application form and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party. Notwithstanding this provision the Trust shall extract such information as it needs in aggregate to satisfy itself that the actual membership of the Trust is representative of those eligible for membership and for the administration of the provisions of this Constitution.
- 36.3 Register of Governors**
- 36.3.1 The register shall list the names of Governors, their category of membership of the Council of Governors (public, staff, local authority, other partnership organisation) and an address through which they may be contacted which may be the Secretary.
- 36.4 Register of interests of the Governors**
- 36.4.1 The register shall contain the names of each Governor, whether he has declared any interests and, if so, the interests declared in accordance with this Constitution or the Standing Orders for Governors.
- 36.5 Register of Directors**
- 36.5.1 The register shall list the names of Directors, their capacity on the Board of Directors and an address through which they may be contacted which may be the Secretary.
- 36.6 Register of interests of Directors**
- 36.6.1 The register shall contain the names of each Director, whether he has declared any interests and, if so, the interests declared in accordance with this Constitution or the Standing Orders for the Board of Directors.

37 Registers – inspection and copies

- 37.1 The Trust shall make the registers specified in paragraph 35 above available for inspection by members of the public, except in the circumstances set out below in paragraph 37.2 or as otherwise prescribed by regulations.
- 37.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any Member of the Trust, if the Member so requests.
- 37.3 So far as the registers are required to be made available:
- 37.3.1 they are to be available for inspection free of charge at all reasonable times; and

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

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

38 Documents available for public inspection

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

38.1.1 a copy of the current Constitution;

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

38.1.3 a copy of the latest annual report;

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

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

38.2 Any person who requests a copy of or extract from any of the documents listed in paragraphs 38.1.1 to 38.1.5 above is to be provided with a copy or extract.

38.3 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.

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

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

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

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

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

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

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

State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;

- 38.4.7 A copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- 38.4.8 A copy of any final report published under section 65I (administrator's final report);
- 38.4.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection or final report) of the 2006 Act; and
- 38.4.10 A copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

39 Auditor

- 39.1 The Trust is to have an Auditor.
- 39.2 The Council of Governors at a general meeting shall appoint or remove the Trust's Auditor.
- 39.3 The Auditor is to carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.
- 39.4 The Board of Directors may resolve that an "external auditor" be appointed to review and publish a report on any other aspect of the Trust's performance. Any such "external auditor" is to be appointed by the Council of Governors.

40 Audit Committee

- 40.1 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. One of the Non-Executive Director members will be appointed Chairman of the Committee by the Chairman of the Trust.

41 Accounts

- 41.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 41.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 41.3 The accounts are to be audited by the Trust's Auditor.
- 41.4 The Trust shall prepare in respect of each Financial Year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 41.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

42 Annual Report, Forward Plans and non-NHS work

- 42.1 The Trust shall prepare an Annual Report and send it to Monitor.
- 42.2 The Trust shall prepare and submit the Forward Plan in respect of each Financial Year to Monitor.
- 42.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 42.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 42.5 Each forward plan must include information about:
 - 42.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
 - 42.5.2 the income it expects to receive from doing so.
- 42.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 42.5.1 the Council of Governors must:
 - 42.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions, and
 - 42.6.2 notify the Directors of its determination.
- 42.7 A Trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors voting approve its implementation.

43 Presentation of the Annual Accounts and reports to the Governors and Members

- 43.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
 - 43.1.1 the Annual Accounts;
 - 43.1.2 any report of the Auditor on them; and
 - 43.1.3 the Annual Report.
- 43.2 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 43.1 with the Annual Members' Meeting.

44 Instruments

- 44.1 The Trust shall have a seal.

- 44.2 The seal shall not be affixed except under the authority of the Board of Directors, as set out in the Standing Orders for the Board of Directors.

45 Amendment of the Constitution

- 45.1 The Trust may make amendments to the Constitution only if:
- 45.1.1 more than half of the members of the Council of Governors of the Trust present and voting at a meeting of the Council of Governors approve the amendments, and
 - 45.1.2 more than half of the members of the Board of Directors of the Trust present and voting at a meeting of the Board of Directors approve the amendments.
- 45.2 Amendments made under paragraph 45.1 above take effect as soon as the conditions in that paragraph are satisfied by the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.
- 45.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust);
- 45.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment;
 - 45.3.2 The Trust must give the Members an opportunity to vote on whether they approve the amendment; and
 - 45.3.3 If more than half of the Members present and voting at the Annual Members' Meeting approve the amendments, the amendment continues to have effect, otherwise it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 45.4 Amendments by the Trust of its Constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

46 Significant Transactions

The Constitution does not contain any descriptions of the term "significant transactions" for the purposes of section 51A of the 2006 Act and therefore, for the avoidance of doubt, no transactions are "significant transactions" for the purposes of section 51A of the 2006 Act.

47 Interpretation and Definitions

- 47.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act.
- 47.2 References in this Constitution to legislation include all amendments, replacements or re-enactments made.

- 47.3 References to legislation include all regulations, orders, statutory guidance or directives.
- 47.4 Headings are for ease of reference only and are not to affect interpretation.
- 47.5 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 47.6 In this constitution:

"2006 Act"

means the National Health Service Act 2006 (as amended);

"2012 Act"

means the Health and Social Care Act 2012;

"Accounting Officer"

means the person who from time to time discharges the functions specified paragraph 25(5) of Schedule 7 to the 2006 Act;

"Annual Governors' Meeting"

has the meaning ascribed to it in paragraph x of Appendix x of Annex x of the Constitution.

"Annual Members' Meeting"

has the meaning ascribed to it in paragraph xx of this Constitution.

"Applicant NHS Trust"

means Taunton and Somerset NHS Trust which has made the application to become the Trust;

"Appointed Governors"

means a Local Authority Governor, or an Other Partnership Governor

"Appointment Committee "

means a committee appointed by the Council of Governors pursuant to paragraphs 1.2.5 and 1.2.6 of Appendix 3 of Annex 8 of this Constitution;

"Area of the Trust"

means the area, consisting of all the areas, specified in Annex 1, as an area for a public constituency;

"Audit Committee"

means a committee of the Board of Directors as established pursuant to paragraph 35 of this Constitution;

"Auditor"

means the Auditor of the Trust appointed by the Council of Governors pursuant to paragraph 34 of this Constitution;

"Authorisation"

means the authorisation of the Trust by Monitor under Section 35 of the 2006 Act;

"Board of Directors"

means the Board of Directors as constituted in accordance with this Constitution;

"Chairman"

means the Chairman of the Trust;

"Chief Executive"

means the Chief Executive of the Trust;

"Constitution"

means this Constitution together with the annexes and appendices attached hereto;

"Council of Governors"

means the Council of Governors as constituted in this Constitution, which has the same meaning as the "Council of Governors" in the 2006 Act;

"Director"

means a member of the Board of Directors of the Trust;

"Director's Code of Conduct"

means the code of conduct for Directors of the Trust, as adopted by the Applicant NHS Trust and as amended from time to time by the Board of Directors, which all Directors must subscribe to;

"Elected Governors"

means a Public Governor or a Staff Governor;

"Finance Director"

means the Finance Director of the Trust;

"Financial Year"

means:

- (a) a period beginning with the date on which the Trust is authorised as an NHS Foundation Trust and ending with the next 31 March; and
- (b) each successive period of twelve months beginning with 1 April;

"Governor"

means a member of the Council of Governors, and includes both Appointed Governors and Elected Governors

"Governors' Code of Conduct"

means the code of conduct for Governors of the Trust, as adopted by the Applicant NHS Trust and as amended from time to time by the Council of Governors, which all Governors must subscribe to;

"Health Service Body"

shall have the meaning ascribed to it in Section 275 of the 2006 Act;

"Hospital"

means Musgrove Park Hospital, and all associated hospitals and facilities at which the Trust provides goods and/or services;

"Immediate Family Member"

means either:

- (a) a partner (whether or not of the opposite sex), whether married, in a civil partnership (as defined in the Civil Partnership Act 2004), or some other similar arrangement, whether or not residing together in the same household; or
- (b) a child including a biological child of one or both of two parties to a marriage or relationship or any other child who has been treated by one or both of those parties as a child of their family (and for the avoidance of doubt this does not include a child who is placed with those parties as foster parents by a local authority or Voluntary Organisation); or
- (c) a sibling or step-sibling; or
- (d) a parent or step-parent; or
- (e) a partner (as defined in sub-paragraph (a) above), of a person identified in sub-paragraphs (b), (c) or (d);

"Local Authority Governor"

means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of the Area of the Trust;

"Local Authority Partnership Agreement"

means an agreement made under section 75 of the 2006 Act;

"Member"

means a member of the Trust;

"Model Rules for Elections"

means the election rules set out in Annex 4 of this Constitution;

"Monitor"

means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;

"Musgrove Partner"

means an individual who has made an application to the Applicant NHS Trust, or the Trust, and who has been accepted by the Applicant NHS Trust or (as the case may be) the Trust to be a member of the Musgrove Partners Group of the Trust;

"Other Partnership Governor"

means a member of the Council of Governors other than a Public Governor, Staff Governor, PCT Governor or Local Authority Governor;

"Youth Governor"

means an individual who is representing the Somerset College of Advanced Technology or another education college approved by the Board and Council of Governors.

"Patient and Public Involvement Forum"

has the same meaning as a "Patients' Forum" established under section 237 of the 2006 Act;

"Public Governor"

means a member of the Council of Governors elected by the members of one of the public constituencies;

"Secretary"

means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;

"Sex Offenders Order"

means a Sexual Offences Preventative Order or a Risk of Sexual Harm Order made under Part II of the Sexual Offences Act 2003;

"Sex Offenders Register"

means the Register of Sex Offenders maintained under Part I of the Sex Offenders Act 1997 (as amended by the Sexual Offences Act 2003);

"Staff Governor"

means a member of the Council of Governors elected by the members of the Staff Constituency;

"Trust"

means Taunton and Somerset 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.

ANNEX 1 – THE PUBLIC CONSTITUENCIES

(Paragraph 6)

PUBLIC CONSTITUENCIES OF THE TRUST

| NAME OF CONSTITUENCY | AREA | NUMBER OF GOVERNORS |
|-----------------------------|---|----------------------------|
| Taunton Deane | All electoral wards within Taunton Deane Borough Council area. | 5 |
| West Somerset | All electoral wards within the areas covered by West Somerset Council and Sedgemoor District Council. | 5 |
| East Somerset | All electoral wards within the areas covered by South Somerset District Council and Mendip District Council. | 4 |
| Rest of England | All other electoral wards in England save those electoral wards that fall within the Taunton Deane, West Somerset and East Somerset constituencies. | 1 |
| Total | Public Governors | 15 |

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraph 8)

1 Staff Constituency

1.1 The minimum number of members of the Staff Constituency shall be 500.

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraph 10)

The composition of the Council of Governors shall be as follows:

1 Composition

1.1 The Council of Governors shall comprise:

1.1.1 15 Public Governors;

1.1.2 5 Staff Governors;

1.1.3 4 Local Authority Governors

1.1.4 1 Youth Governor; and

1.1.5 4 Partnership Governors.

1.2 The number of Public Governors is to be more than half of the total membership of the Council of Governors.

1.3 The organisations currently specified as Other Partnership Organisations that may appoint members of the Council of Governors are:

1.3.1 Somerset Partnership National Health Service and Social Care Trust as established pursuant to the Avalon, Somerset, National Health Service Trust (Establishment) Order 1992, (SI 1992/2588), as amended by The Avalon, Somerset, National Health Service Trust (Change of Name) Order 1999, (SI 1999/3050) (“SPNHSSCT”); and

1.3.2 Bournemouth University (established under Section 216(1) of the Education Reform Act 1988 by virtue of the Educational (Recognised Bodies) (England) Order 2003), whose address is Fern Barrow, Talbot Campus, Poole, Dorset, BH12 5BB; University of Bristol, (established under Royal Charter granted on 17 May 1909) whose address is Senate House, Tyndall Avenue, Bristol, BS8 1TH; University of Plymouth (established under Section 216(1) of the Education Reform Act 1988 by virtue of the Educational (Recognised Bodies) (England) Order 2003) whose address is Drake Circus, Plymouth, PL4 8AA, (together the "Universities").

1.3.3 Somerset College of Advanced Technology or another education college approved by the Board on the Council of Governors.

1.4 The organisations listed in paragraphs 1.3 above may be varied from time to time by the Trust. .

2 Appointed Governors

2.1 Local Authority Governors

- 2.1.1 Somerset County Council or its successor organisation may appoint 1 Local Authority Governor by notice in writing signed by the leader of the Council or a member of the Council executive, and delivered to the Secretary.
- 2.1.2 Taunton Deane Borough Council or its successor organisation may appoint 1 Local Authority Governor by notice in writing signed by the leader of the Council or a member of the Council executive, and delivered to the Secretary.
- 2.1.3 West Somerset District Council or its successor organisation and Sedgemoor District Council or its successor organisation may appoint 1 Local Authority Governor between them by notice in writing signed by the leaders of both Councils or members of the Council executives and delivered to the Secretary.
- 2.1.4 South Somerset District Council or its successor organisation and Mendip District Council or its successor organisation may appoint 1 Local Authority Governor between them by notice in writing signed by the leaders of both Councils or members of the Council executives and delivered to the Secretary.

2.2 Youth Governor

- 2.2.1 Somerset College of Advanced Technology (include address) or another education college approved by the Board and the Council of Governors may appoint 1 Youth Governor by notice of writing signed by the chairman of the Somerset College of Advanced Technology and delivered to the Secretary.

2.3 Other Partnerships Governors

- 2.3.1 SPNHSSCT, or its successor organisation may appoint 1 Other Partnership Governor by notice in writing signed by the Chief Executive or a member of the Trust executive, and delivered to the Secretary.
- 2.3.2 The Universities or their respective successor organisations may appoint 1 Other Partnership Governor between them by notice in writing signed by a Vice Chancellor or a Pro Vice Chancellor from each university, and delivered to the Secretary.
- 2.3.3 Somerset Clinical Commissioning Group may appoint 1 CCG Governor by notice in writing signed by the Chief Executive of the Clinical Commissioning Group and delivered to the Secretary.
- 2.3.4 Somerset College of Advanced Technology or another education college approved by the Board may appoint 1 Governor by notice in writing signed by the Chief Executive of the College and delivered to the Secretary.

ANNEX 4 –THE MODEL RULES FOR ELECTIONS

(Paragraph 11)

Model Rules for Elections to the Council of Governors

Part 1 – Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning officer

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

Part 5 – Contested elections

- 19. Poll to be taken by ballot
- 20. The ballot paper
- 21. The declaration of identity

Action to be taken before the poll

- 22. List of eligible voters
- 23. Notice of poll
- 24. Issue of voting documents
- 25. Ballot paper envelope and covering envelope

The poll

- 26. Eligibility to vote
- 27. Voting by persons who require assistance
- 28. Spoilt ballot papers
- 29. Lost ballot papers
- 30. Issue of replacement ballot paper
- 31. Declaration of identity for replacement ballot papers

Procedure for receipt of envelopes

- 32. Receipt of voting documents
- 33. Validity of ballot paper
- 34. Declaration of identity but no ballot paper
- 35. Sealing of packets

Part 6 - Counting the votes

- STV36. Interpretation of Part 6
- 37. Arrangements for counting of the votes
- 38. The count
- STV39. Rejected ballot papers
- FPP39. Rejected ballot papers
- STV40. First stage

STV41. The quota

STV42. Transfer of votes

STV43. Supplementary provisions on transfer

STV44. Exclusion of candidates

STV45. Filling of last vacancies

STV46. Order of election of candidates

FPP46. Equality of votes

Part 7 – Final proceedings in contested and uncontested elections

FPP47. Declaration of result for contested elections

STV47. Declaration of result for contested elections

48. Declaration of result for uncontested elections

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll

50. Delivery of documents

51. Forwarding of documents received after close of the poll

52. Retention and public inspection of documents

53. Application for inspection of certain documents relating to election

Part 9 – Death of a candidate during a contested election

FPP54. Countermand or abandonment of poll on death of candidate

STV54. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

55. Expenses incurred by candidates

56. Expenses incurred by other persons

57. Personal, travelling, and administrative expenses

Publicity

58. Publicity about election by the corporation

59. Information about candidates for inclusion with voting documents

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

Part 11 – Questioning elections and irregularities

61. Application to question an election

Part 12 – Miscellaneous

62. Secrecy

63. Prohibition of disclosure of vote

64. Disqualification

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

Part 1 – Interpretation

1. **Interpretation** – (1) In these rules, unless the context otherwise requires –

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

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

“the regulator” means Monitor; and

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

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

Part 2 – Timetable for election

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

| Proceeding | Time |
|--|--|
| Publication of notice of election | Not later than the fortieth day before the day of the close of the poll. |
| Final day for delivery of nomination papers to returning officer | Not later than the twenty eighth day before the day of the close of the poll. |
| Publication of statement of nominated candidates. | Not later than the twenty seventh day before the day of the close of the poll. |
| Final day for delivery of notices of withdrawals by candidates from election | Not later than twenty fifth day before the day of the close of the poll. |

| | |
|---------------------------------|---|
| Notice of the poll | Not later than the fifteenth day before the day |
| Close of the close of the poll. | Close of the poll By 5.00pm on the final day of the election. |

3. Computation of time - (1) In computing any period of time for the purposes of the timetable –

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

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

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

Part 3 – Returning officer

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

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

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

6. Expenditure - The Corporation is to pay the returning officer –

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

7. Duty of co-operation – The Corporation is to co-operate with the returning officer in the exercise of his or her functions under these rules.

Part 4 - Stages Common to Contested and Uncontested Elections

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

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the board of governors to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,

- (d) the address and times at which nomination papers may be obtained;
- (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer, and
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates – (1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

- (a) is to supply any member of the corporation with a nomination paper, and
- (b) is to prepare a nomination paper for signature at the request of any member of the corporation, but it is not necessary for a nomination to be on a form supplied by the returning officer.

10. Candidate's particulars – (1) The nomination paper must state the candidate's -

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

11. Declaration of interests – The nomination paper must state –

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

12. Declaration of eligibility – The nomination paper must include a declaration made by the candidate–

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

13. Signature of candidate – The nomination paper must be signed and dated by the candidate, indicating that –

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

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

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

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

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

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

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

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

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

(2) The statement must show –

- (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing, as given in their nomination paper.

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

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

16. Inspection of statement of nominated candidates and nomination papers –

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

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

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

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

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

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

(a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and

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

Part 5 – Contested elections

19. Poll to be taken by ballot – (1) The votes at the poll must be given by secret ballot.

(2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

20. The ballot paper – (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

(2) Every ballot paper must specify –

(a) the name of the corporation,

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

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

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

- (e) instructions on how to vote,
 - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
 - (g) the contact details of the returning officer.
- (3) Each ballot paper must have a unique identifier.
- (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

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

Action to be taken before the poll

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

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

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

- (a) the name of the corporation,

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

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

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

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

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

(2) The covering envelope is to have –

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

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

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

The poll

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

27. Voting by persons who require assistance – (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

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

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

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

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

(a) is satisfied as to the voter’s identity, and

(b) has ensured that the declaration of identity, if required, has not been returned.

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

(a) the name of the voter, and

(b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and

(c) the details of the unique identifier of the replacement ballot paper.

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

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

(a) is satisfied as to the voter’s identity,

(b) has no reason to doubt that the voter did not receive the original ballot paper, and

(c) has ensured that the declaration of identity if required has not been returned.

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

(a) the name of the voter, and

(b) the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot paper– (1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in

addition to the requirements imposed rule 28(3) or 29(2), he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

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

(a) the name of the voter, and

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

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

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

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

(a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and

(b) of the particulars of that member’s qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.

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

(a) the name of the voter,

(b) the address of the voter,

(c) the voter’s signature, and

(d) the date that the declaration was made by the voter.

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

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

Procedure for receipt of envelopes

32. Receipt of voting documents – (1) Where the returning officer receives a –

(a) covering envelope, or

(b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper, before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.

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

(a) the candidate for whom a voter has voted, or

(b) the unique identifier on a ballot paper.

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

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

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

(a) put the declaration of identity if required in a separate packet, and

(b) put the ballot paper aside for counting after the close of the poll.

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

(a) mark the ballot paper “disqualified”,

(b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper,

(c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and

(d) place the document or documents in a separate packet.

34. Declaration of identity but no ballot paper (public and patient constituency) – Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

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

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

(c) place the declaration of identity in a separate packet.

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

(a) the disqualified documents, together with the list of disqualified documents inside it,

(b) the declarations of identity if required,

(c) the list of spoiled ballot papers,

(d) the list of lost ballot papers,

(e) the list of eligible voters, and

(f) the list of tendered ballot papers.

Part 6 - Counting the votes

STV36. Interpretation of Part 6 – In Part 6 of these rules –

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

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

“deemed to be elected” means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll, “mark” means a figure, an identifiable written word, or a mark such as “X”,

“non-transferable vote” means a ballot paper –

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

(b) which is excluded by the returning officer under rule STV44(4) below,

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

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

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

(b) 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 STV41 below,

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

“stage of the count” means –

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

(b) the transfer of a surplus of a candidate deemed to be elected, or

(c) the exclusion of one or more candidates at any given time,

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

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

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule STV42 below.

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

38. The count – (1) The returning officer is to –

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

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

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

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

STV39. Rejected ballot papers – (1) Any ballot paper –

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

(b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,

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

(d) which is unmarked or rejected because of uncertainty, shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

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

(3) The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of paragraph (1).

FPP39. Rejected ballot papers – (1) Any ballot paper –

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

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

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

(d) which is unmarked or rejected because of uncertainty, shall, subject to paragraphs (2) and (3) below, be rejected and not counted.

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

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

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

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

(4) The returning officer is to –

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

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

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

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

STV40. First stage – (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

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

(3) The returning officer is to also ascertain and record the number of valid ballot papers.

STV41. The quota – (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.

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

(3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall

not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule 44 has been complied with.

STV42. Transfer of votes – (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped –

(a) according to next available preference given on those papers for any continuing candidate, or

(b) where no such preference is given, as the sub-parcel of non-transferable votes.

(2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

(3) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) The vote on each ballot paper transferred under paragraph (3) above shall be at a value (“the transfer value”) which –

(a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and

(b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

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

(a) according to the next available preference given on those papers for any continuing candidate, or

(b) where no such preference is given, as the sub-parcel of non-transferable votes.

(6) The returning officer is, in accordance with this rule and rule STV43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

(7) The vote on each ballot paper transferred under paragraph (6) shall be at –

(a) a transfer value calculated as set out in paragraph (4)(b) above, or

(b) at the value at which that vote was received by the candidate from whom it is now being transferred, whichever is the less.

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

(9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

(10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are –

(a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or

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

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

STV43. Supplementary provisions on transfer – (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if –

(a) The surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and

(b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable papers of the candidate on whom the lot falls shall be transferred first.

(2) The returning officer shall, on each transfer of transferable papers under rule STV42 above –

(a) record the total value of the votes transferred to each candidate,

(b) add that value to the previous total of votes recorded for each candidate and record the new total,

(c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes,

And

(d) compare—

(i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with

(ii) the recorded total of valid first preference votes.

(3) All ballot papers transferred under rule STV42 or STV44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule STV42 or STV44 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.

STV44. Exclusion of candidates – (1) If—

(a) all transferable papers which under the provisions of rule STV42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and

(b) subject to rule STV45 below, one or more vacancies remain to be filled, the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where paragraph (12) below applies, the candidates with the then lowest votes).

(2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—

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

(b) ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).

(3) The returning officer shall, in accordance with this rule and rule STV43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

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

(5) If, subject to rule STV45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

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

(7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.

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

(9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph (1) above.

(10) The returning officer shall after each stage of the count completed under this rule—

(a) record –

(i) the total value of votes, or

(ii) the total transfer value of votes transferred to each candidate,

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

(c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and

(d) compare—

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

(ii) the recorded total of valid first preference votes.

(11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule STV42 and rule STV43.

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

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

(a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and

(b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

STV45. Filling of last vacancies – (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

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

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

STV46. Order of election of candidates – (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV42(10) above.

(2) A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

(3) Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

(4) Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

FPP46. Equality of votes – Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7 – Final proceedings in contested and uncontested elections

FPP47. Declaration of result for contested elections –

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

(a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the board of governors from the constituency, or class within a constituency, for which the election is being held to be elected,

(b) give notice of the name of each candidate who he or she has declared elected–

(i) where the election is held under a proposed constitution pursuant to powers conferred on the Taunton and Somerset NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or

(ii) in any other case, to the chairman of the corporation; and

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

(2) The returning officer is to make –

(a) the total number of votes given for each candidate (whether elected or not), and

(b) the number of rejected ballot papers under each of the headings in rule FPP39(5), available on request.

STV47. Declaration of result for contested elections –

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

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

(b) give notice of the name of each candidate who he or she has declared elected –

(i) where the election is held under a proposed constitution pursuant to powers conferred on the Taunton and Somerset NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or

(ii) in any other case, to the chairman of the corporation, and

(c) give public notice of the name of each candidate who he or she has declared elected.

(2) The returning officer is to make –

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule STV39(1), available on request.

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

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

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll –

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

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

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

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

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

- (a) its contents,

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

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

51. Forwarding of documents received after close of the poll – Where –

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued, the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chairman of the corporation.

52. Retention and public inspection of documents –

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

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

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

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

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

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,
- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters, by any person without the consent of the Regulator.

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

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

- (a) persons,
- (b) time,

(c) place and mode of inspection,

(d) production or opening, and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

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

(a) in giving its consent, the regulator, and

(b) and making the documents available for inspection, the corporation, must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –

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

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

Part 9 – Death of a candidate during a contested election

FPP54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to

(a) countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that constituency or class, and

(b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

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

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

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

(5) The returning officer is to –

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

(b) seal up the ballot papers into packets, along with the records of the number of ballot papers.

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

(a) its contents,

(b) the date of the publication of notice of the election,

(c) the name of the corporation to which the election relates, and

(d) the constituency, or class within a constituency, to which the election relates.

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

STV54. Countermand or abandonment of poll on death of candidate –

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

(a) publish a notice stating that the candidate has died, and

(b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –

(i) ballot papers which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and

(ii) ballot papers which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

(2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity

Election expenses

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

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

(a) personal expenses,

(b) travelling expenses, and expenses incurred while living away from home, and

(c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

57. Election expenses incurred by other persons – (1) No person may –

(a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or

(b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

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

Publicity

58. Publicity about election by the corporation –

(1) The corporation may –

(a) compile and distribute such information about the candidates, and

(b) organise and hold such meetings to enable the candidates to speak and respond to questions, as it considers necessary.

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

(a) objective, balanced and fair,

(b) equivalent in size and content for all candidates,

(c) compiled and distributed in consultation with all of the candidates standing for election, and

(d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

59. Information about candidates for inclusion with voting documents –

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

(2) The information must consist of –

(a) a statement submitted by the candidate of no more than 150 words, and

(b) a photograph of the candidate.

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

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

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

Part 11 – Questioning elections and the consequence of irregularities

61. Application to question an election –

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

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

(3) An application may only be made to the Regulator by –

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

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

(4) The application must –

(a) describe the alleged breach of the rules or electoral irregularity, and

(b) be in such a form as the Regulator may require.

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

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

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

b. The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

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

Part 12 – Miscellaneous

62. Secrecy – (1) The following persons –

(a) the returning officer,

(b) the returning officer's staff, must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to –

(i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,

(ii) the unique identifier on any ballot paper,

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

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

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

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

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

(a) a member of the corporation,

(b) an employee of the corporation,

(c) a director of the corporation, or

(d) employed by or on behalf of a person who has been nominated for election.

65. Delay in postal service through industrial action or unforeseen event – If industrial action, or some other unforeseen event, results in a delay in –

(a) the delivery of the documents in rule 24, or

(b) the return of the ballot papers and declarations of identity, the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

(Paragraph 18)

Appendix 1:

Eligibility to be on the Council of Governors

- 1 A person may not become or continue as a Governor of the Trust if:
 - 1.1 in the case of an Elected Governor, he ceases to be a member of the constituency he represents;
 - 1.2 in the case of an Appointed Governor, the sponsoring organisation withdraws their sponsorship of him;
 - 1.3 he has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
 - 1.4 he is a person whose tenure of office as the 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 interest of the health service;
 - 1.5 he is a Director of the Trust, or a governor, executive director, non-executive Director, chairman, chief executive officer of another Health Service Body, or a body corporate whose business involves the provision of health care services;
 - 1.6 he has had his name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list;
 - 1.7 he is a member of “Healthwatch”
 - 1.8 he is a Musgrove Partner of the Trust;
 - 1.9 he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
 - 1.10 he has refused without reasonable cause to undertake any training which the Trust and/or Council of Governors requires all Governors to undertake;
 - 1.11 he is a member of a local authority "Health Overview and Scrutiny Committees";
 - 1.12 He is a member of the Health & Wellbeing Board;
 - 1.13 he is the subject of a Sex Offenders Order and /or his name is included in the Sex Offenders Register;
 - 1.14 he is an occupant of the same household and/or he is an Immediate Family Member of a Governor or a Director of the Trust;
 - 1.15 he has failed to repay (without good cause) any amount of monies properly owed to the Trust; or

- 1.16 he has failed to sign and deliver to the Secretary a statement in the form required by the Trust confirming acceptance of the Governor's Code of Conduct.
- 2 Where a person has been elected or appointed to be a Governor and he becomes disqualified from office under paragraph 13 of the Constitution or paragraph 1.1 of this Annex 5, he shall notify the Secretary in writing of such disqualification. If it comes to the notice of the Secretary at the time of his taking office or later that the Governor is so disqualified, the Secretary shall immediately declare that the person in question is disqualified and notify him in writing to that effect. Upon despatch of any such notification, that person's tenure of office, if any, shall be terminated and he shall cease to act as a Governor.

Appendix 2:

Council of Governors: Objectives

- 1 The Trust shall seek to ensure, subject to the requirements of the 2006 Act, that the composition of the Council of Governors meets the following objectives:
 - 1.1 the interests of the community served by the Trust are appropriately represented and NHS and Trust core principles (as set out in Appendix 1 of Annex 8) are upheld; and
 - 1.2 the level of representation of the Public Constituency and the Staff Constituency, and the Other Partnership Organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs and, to this end, the Council of Governors:
 - 1.2.1 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the Trust's membership strategy, and
 - 1.2.2 shall from time to time, and not less than every three years, review the policy for the composition of the Council of Governors;
 - 1.2.3 when appropriate, shall propose amendments to this Constitution;
 - 1.2.4 shall provide to the Members relevant information concerning the performance and forward plans of the Trust;
 - 1.2.5 shall act in an advisory capacity when the Board of Directors has to make challenging or difficult decisions including those that affect the strategic direction of the Trust; and
 - 1.2.6 when appropriate, shall be entitled to appoint an independent advisor and a nominated non-executive Director to assist the Council of Governors in their advisory role.

Appendix 3:

Roles and Responsibilities of Governors

- 1 The roles and responsibilities of the Governors are:
 - 1.1 at a general meeting:
 - 1.1.1 Subject to paragraphs 21 and 22 of this Constitution, to appoint or remove the Chairman and the other non-executive Directors. The removal of a non-executive Director requires the approval of three-quarters of the members of the Council of Governors;
 - 1.1.2 to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors;
 - 1.1.3 to appoint or remove the Auditor;
 - 1.1.4 to be presented with the annual accounts, any report of the Auditor on them and the annual report;
 - 1.1.5 to consider disputes as to membership referred to it pursuant to paragraph 1.6 of Appendix 2 of Annex 8; and/or
 - 1.1.6 to consider resolutions to remove a Governor pursuant to paragraph 13 of this Constitution.
 - 1.2 at a general meeting or otherwise:
 - 1.2.1 approve (by a majority of the Council of Governors voting) an appointment (by the non-executive Directors) of the Chief Executive (and Accounting Officer) other than the initial Chief Executive appointed in accordance with paragraph 19 (5) of Schedule 7 to the 2006 Act;
 - 1.2.2 give the views of the Council of Governors to the Directors for the purposes of the preparation (by the Directors) of the document containing information as to the Trust's forward planning in respect of each Financial Year to be given to Monitor;
 - 1.2.3 consider the annual accounts, any report of the Auditor on them and the annual report; and/or
 - 1.2.4 respond as appropriate when consulted by the Directors.
 - 1.3 The Governors also have the specific role and function of:
 - 1.3.1 providing views to the Board of Directors on the strategic direction of the Trust;
 - 1.3.2 developing membership;
 - 1.3.3 representing the interests of the Members of the Trust as a whole and the interests of the public; and

- 1.3.4 holding the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors.
- 1.3.5 approve an application by the Trust to enter into a merger, acquisition, separation or dissolution.
- 1.3.6 notwithstanding the provisions of paragraphs 1.1.1 to 1.1.3 of Appendix 3 of Annex 5, the Governors may exercise other functions at the request of the Board of Directors.

Appendix 4:

Council of Governors: Further Provisions

1 Remuneration

- 1.1 Governors are not to receive remuneration, provided that this shall not prevent the remuneration of Governors by their employer.

2 Vacancies

- 2.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 2.2 Where the vacancy arises amongst the Elected Governors, the Council of Governors shall decide either:
- 2.2.1 to call an election within three months to fill the seat for the remainder of that term of office;
 - 2.2.2 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office; or
 - 2.2.3 to leave the seat vacant until the next scheduled elections are held if the unexpired period of office is less than six months.
- 2.3 Where the application of paragraph 2.2.2 of Appendix 4 to Annex 5 above would result in a breach of the requirements of paragraph 11.6 of this constitution then the Council of Governors must apply either paragraph 2.2.1 or 2.2.3 above.
- 2.4 Where the vacancy arises amongst the Appointed Governors the Trust will request that the relevant Other Partnership Organisation appoint a "Replacement Governor" within 30 days. Appointed Governors shall be replaced in accordance with the processes agreed pursuant to paragraph 2 of Annex 3.
- 2.5 The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

3 Meetings

- 3.1 The Council of Governors is to meet at least four times per year, including an annual meeting no later than 30 September in each year apart from the first year, when the Council of Governors is to receive and consider the annual accounts and any report of the Auditor on them and the Board of Directors is to present to the Council of Governors the annual report.
- 3.2 The Secretary shall call meetings in accordance with paragraph 3.1 of Appendix 4 of Annex 5 above.
- 3.3 Any meeting of the Council of Governors requires a quorum of one third of the total number of Governors to be present with a majority of those present being Public Governors.

- 3.4 At each meeting of the Council of Governors, the Board of Directors is required to report to the Council of Governors on the Trust's general progress and forward plans unless it is agreed in writing that they will not do so.

4 Committees and Sub-Committees

- 4.1 The Council of Governors may appoint committees consisting wholly or partly of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.
- 4.2 The Council of Governors may appoint members to serve on joint committees with the Board of Directors or committees thereof.
- 4.3 These committees or sub-committees may call upon outside advisers to help them in their tasks, provided that the financial and other implications of seeking outside advisers have been discussed and agreed by the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph will be determined in accordance with paragraph 2 of Appendix 4 of Annex 8 (Dispute Resolution Procedure).

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

(Paragraph 15)

**TAUNTON AND SOMERSET NHS FOUNDATION TRUST
STANDING ORDERS FOR THE COUNCIL OF GOVERNORS**

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1 INTRODUCTION

- 1.1 The Taunton and Somerset NHS Foundation Trust (“the Trust”) became a Public Benefit Corporation on 1 December 2007 following approval by Monitor pursuant to the National Health Service Act 2006 (the “2006 Act”).
- 1.2 The principal place of business of the Trust is currently at Musgrove Park Hospital, Taunton, Somerset, TA1 5DA.
- 1.3 The Trust is governed by the 2006 Act, its Constitution and its Terms of Authorisation granted by Monitor (the Regulatory Framework). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Council of Governors of the Trust to adopt Standing Orders for the regulation of its proceedings and business and to adhere at all times to the Code of Conduct for Governors.

2 DEFINITIONS

- 2.1 In these Standing Orders:

Board of Directors

means the Board of Directors of the Trust as constituted in accordance with the Constitution.

Chairman

means the Chairman of the Council of Governors appointed in accordance with the Constitution to ensure that the Council of Governors and the Board of Directors successfully discharge their overall responsibilities for the Trust as a whole.

Chief Executive

means the Chief Executive of the Trust.

Clear Day

means a day of the week not including Saturday, Sunday or a public holiday.

Constitution

means the Constitution together with the attached Annexes and Appendices.

Council of Governors

means the Council of Governors as constituted in this Constitution, which has the same meaning as the “Council of Governors” in the 2006 Act. "

Governor

means a member of the Council of Governors elected or appointed as provided by the Constitution.

Non-Executive Director

means a member of the Board of Directors who does not hold an executive office of the Trust.

Officer

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

Secretary

means a person appointed by the Trust to be the Trust Secretary to act independently of the Council of Governors to provide advice on corporate governance issues to the Board of Directors and the Chairman and monitor the Trust's compliance with the Regulatory Framework and these Standing Orders.

Vice Chairman

means one of the non-executive Directors appointed by the Council of Governors, either generally or for a specific meeting, to preside at a meeting of the Council of Governors in the absence of the Chairman.

2.2 Words importing the masculine gender include the feminine gender and vice versa.

3 THE COUNCIL OF GOVERNORS

3.1 The roles and responsibilities of the Governors are set out in Appendix 3 of Annex 5 of the Constitution and also have effect as if incorporated into the Standing Orders. Certain powers and decisions may only be exercised by the Council of Governors in formal session. These powers and decisions are set out in paragraphs 1.1 and 1.2 of Appendix 3 of Annex 5 of the Constitution.

4 MEETINGS OF THE COUNCIL OF GOVERNORS**4.1 Admission of the Public**

4.1.1 The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors except where it resolves by special resolution that members of the public and representatives of the Press be excluded from all or part of a meeting on the grounds that:

4.1.1.1 any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or

4.1.1.2 for other reasons stated in the resolution and arising from the nature of the business or the proceedings that the Council of Governors believe are special reasons for excluding the public from the meeting in accordance with the Constitution.

4.1.2 Nothing in these Standing Orders shall require the Council of Governors to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council of Governors.

4.2 Calling Meetings

4.2.1 Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine and there shall be at least 4 meetings in any year including:

4.2.1.1 an annual meeting no later than the 30 September in each year apart from the first year, when the Council of Governors are to receive and consider the annual accounts, any report by the Auditor and the annual report and

4.2.1.2 any other meetings required of the Governors in order to fulfil their functions in accordance with the Constitution.

4.2.2 The Secretary may call a meeting of the Council of Governors at any time. If the Secretary refuses to call a meeting after a requisition for that purpose, signed by at least one third of the whole number of the Governors and specifying the business to be transacted at the meeting, has been presented to him, or if, without so refusing, the Secretary does not call a meeting within 5 Clear Days after such requisition has been presented to him at the Trust's Headquarters, such one third or more of the Governors may forthwith call a meeting for the purpose of conducting that business.

4.3 Notice of Meetings

4.3.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer authorised by the Chairman to sign on his behalf, shall be delivered to, or sent by post to the usual place of residence of every Governor, so as to be available to him at least 10 Clear Days before the meeting save in the case of emergencies.

4.3.2 Before each meeting of the Council of Governors a public notice of the time and place of the meeting, and if possible the public part of the Agenda, shall be displayed at the Trust's headquarters and shall be advertised on the Trust's website at least 10 Clear Days before the meeting, save in the case of emergencies.

4.3.3 Want of service of the notice on any one Governor shall not affect the validity of a meeting but failure to serve such a notice on more than three Governors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of posting.

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

4.3.5 Agendas will be sent to Governors before the meeting and supporting papers, whenever possible, shall accompany the Agenda, but will certainly be despatched no later than 3 Clear Days before the meeting, save in the case of emergencies.

4.3.6 In the event of an emergency giving rise to the need for an immediate meeting failure to comply with the notice periods referred to in Standing Order 4.3 shall not prevent the calling of or invalidate such meeting provided that every effort is made to contact members of the Council of Governors who are not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.

4.4 Annual Meeting

4.4.1 The Council of Governors shall hold an annual meeting of the Council of Governors in every calendar year so that there is no more than fifteen

calendar months between one meeting and the next and shall present to that meeting:

4.4.1.1 A report on the proceedings of its meetings held since the last annual meeting;

4.4.1.2 A report on the progress since the last annual meeting in developing the membership strategy including the steps taken to ensure that the actual membership is fully representative of the persons who are eligible to be members under the Constitution;

4.4.1.3 A report on any change to the Governors which has taken place since the last annual meeting; and

4.4.1.4 A report containing such comments as it wishes to make regarding the performance of the Trust and the accounts of the Trust for the preceding financial year and the future service development plans of the Trust.

4.4.2 The reports for the first annual meeting shall cover the period from the Authorisation of the Trust as a Foundation Trust to the date of that meeting.

4.5 Setting the Agenda

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

4.5.2 A member of the Council of Governors desiring a matter to be included on an Agenda, including a formal proposition for discussion and voting on at a meeting, shall make his 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 Clear Days before a meeting may be included on the Agenda at the discretion of the Chairman.

4.6 Petitions

4.6.1 Where a petition has been received by the Trust, the Chairman shall include the petition as an item for the Agenda of the next Council of Governors meeting.

4.7 Chairman of Meeting

4.7.1 At any Council of Governors meeting, the Chairman, if present, shall preside.

4.7.2 If the Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the Vice Chairman shall preside.

4.7.3 If the Vice Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another non-executive Director as shall be appointed by the Council of Governors shall preside.

- 4.7.4 Where it has been determined by the Chair that it is inappropriate for the Chair or any non-executive Director to chair the meeting, the Governor nominated as Lead Governor to Monitor shall preside.

4.8 Agenda Proposals

- 4.8.1 Where a Governor has requested inclusion of a matter on the Agenda in accordance with Standing Order 4.5.2 above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this Standing Order 4.8 shall apply in respect of the proposition:
- 4.8.2 The mover of the proposition shall have a right of reply at the close of any discussion on the proposition or any amendment thereto.
- 4.8.3 When a proposition is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- 4.8.3.1 an amendment to the proposition;
 - 4.8.3.2 the adjournment of the discussion or the meeting;
 - 4.8.3.3 that the meeting proceed to the next business;
 - 4.8.3.4 the appointment of an ad hoc committee to deal with a specific item of business;
 - 4.8.3.5 that the motion be now put;
 - 4.8.3.6 that the public be excluded from the meeting in relation to the discussion concerning the proposition under Standing Order 4.1.1.
 - 4.8.3.7 In the case of Standing Orders 4.8.3.3 and 4.8.3.5 above, to ensure objectivity these matters may only be put by a Governor who has not previously taken part in the debate and who is eligible to vote.
- 4.8.4 No amendment to the proposition shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the proposition.
- 4.8.5 The mover of a proposition shall have a maximum of five minutes to move and three minutes to reply. Once a proposition has been moved, no Governor shall speak more than once or for more than three minutes.

4.9 Report from the Board of Directors

- 4.9.1 Unless otherwise agreed in writing, at each meeting of the Council of Governors, the Board of Directors is required to report to the Council of Governors on the Trust's general progress forward and forward planning unless it is agreed in writing they will not do so.

4.10 Chairman's Ruling

- 4.10.1 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 final.

4.11 Voting

- 4.11.1 A Governor may not vote at a meeting of the Council of Governors unless within 7 Clear Days prior to the commencement of the meeting he has made a declaration in the form specified within Schedule A of these Standing Orders, that he is a member of the constituency which elected him and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution.
- 4.11.2 Subject to Standing Order 4.11.4 below, every question at a meeting shall be determined by a majority of the votes of the Chairman of the meeting and the Governors present and voting on the question.
- 4.11.3 Whoever is Chairman of the meeting of the Council of Governors shall in the case of an equality of votes on any question or proposal have a casting vote.
- 4.11.4 A resolution for the removal of the Chairman or a non-executive Director shall be passed only if three quarters of the total number of Governors vote in favour of it.
- 4.11.5 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 4.11.6 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 4.11.7 If a Governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.11.8 A Governor may only vote if present at the time of the vote on which the question is to be decided; no Governor may vote by proxy.
- 4.11.9 In certain circumstances which must be approved in advance by the Council of Governors and which may be included in a Schedule to these Standing Orders, the Chairman may specify in a notice of a meeting any matter which requires approval by a written resolution and such a matter may be approved in writing provided that at least three quarters of the Governors, and a majority of Governors who are members of the public constituency of the Trust, approve the resolution in writing within the timescale imposed in such a notice.

4.12 Special Provisions relating to Termination of Governor's Tenure:

- 4.12.1 Where a person has been elected or appointed to be a Governor and he becomes disqualified from office under paragraph 13.1 of the Constitution

or paragraph 1 of Appendix 1 of Annex 5 of the Constitution, he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of the first becoming aware of those matters which render him disqualified. The Secretary shall forthwith remove him from the Register of the Governors.

- 4.12.2 If it comes to the notice of the Secretary that the Governor is disqualified pursuant to Standing Order 4.12.1, whether at the time of the Governor's appointment or later, the Secretary shall immediately declare that the individual in question is disqualified and give him notice in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration. In the event that the Governor shall dispute that he is disqualified the Governor may refer the matter to the Chairman within 28 days of the date upon which the notice was given to the Governor. The Chairman will consider the matter and make a determination on this issue. That determination will be final.
- 4.12.3 The Chairman shall be authorised to take such action as may be immediately required, including but not limited to exclusion of the Governor concerned so that any allegation made against a Governor on the following grounds can be investigated;
 - 4.12.3.1 non-compliance with the Regulatory Framework, Code of Conduct, Standing Orders and Standing Financial Instructions; or
 - 4.12.3.2 misconduct detrimental to the Trust; or
 - 4.12.3.3 a failure to attend three consecutive meetings of the Council of Governors unless the Council of Governors is satisfied by a 75% majority that:
 - (i) the absence was due to reasonable cause; and
 - (ii) the Governor concerned will be able to start attending meetings of the Council of Governors again within such period as they consider reasonable.
- 4.12.4 Where any grounds within Standing Order 4.12.3 above are alleged, it shall be open to the Council of Governors to decide, by two thirds majority of those present and voting, to lay a formal charge of non-compliance or misconduct.
- 4.12.5 The Governor in question will be notified in writing of the allegations, detailing the specific behaviour which is considered to be detrimental to the Trust, and inviting and considering his response within a defined appropriate and reasonable timescale.
- 4.12.6 The Governor may be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.
- 4.12.7 The Governors, by three quarters majority of those present and voting and a majority of Governors who are members of the public constituency of the Trust, can decide whether to uphold the charge of non-compliance or misconduct detrimental to the Trust.

- 4.12.8 The Governors can impose such sanctions as shall be deemed appropriate. Such sanctions will range from the issuing of a written warning as to the Governor's future conduct and consequences, non-payment of expenses and removal of the Governor from office.
- 4.12.9 Upon removal or termination of a Governor's office under this Standing Order, the Secretary shall cause his name to be removed immediately from the Register of Governors.
- 4.12.10 Any decision of the Council of Governors to terminate a Governor's tenure of office may be referred by the Governor concerned to the Chairman within 28 days of the date upon which notice in writing of the Council of Governors' decision made in accordance with Standing Order 4.12.7 is communicated to the Governor concerned. The Chairman will consider the matter and make a determination on the issue. That determination will be final.
- 4.12.11 A Governor may resign from that office at any time during the term of that office by giving notice to the Secretary in writing, upon which he shall cease to hold office.
- 4.12.12 A Governor who resigns under Standing Order 4.12.11 above or whose office is terminated under this Standing Order or paragraph 1 of Appendix 1 of Annex 5 of the Constitution shall not be eligible to stand for re-election to the Council of Governors 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 later.
- 4.12.13 In the event that an elected Governor's seat falls vacant before the end of the term of office, the provisions as set out at paragraphs 2.1 to 2.5 of Appendix 4 of Annex 5 of the Constitution shall apply.

4.13 Minutes

- 4.13.1 The Minutes of the proceedings of a meeting shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting where they will be signed by the Chairman presiding at it.
- 4.13.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.14 Suspension of Standing Orders

- 4.14.1 Except where this would contravene any statutory provision or any direction made by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Governors are present, there is a majority of Governors who are members of the public constituency of the Trust, and that a majority of those present vote in favour of suspension.
- 4.14.2 A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.

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

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

4.15 Variation and Amendment of Standing Orders

4.15.1 These Standing Orders shall be amended only if:

4.15.1.1 a notice of proposal under Standing Order 4.5.2 has been given; and

4.15.1.2 no fewer than half the total number of Governors vote in favour of amendment; and

4.15.1.3 at least one half of the total number of Governors is present; and

4.15.1.4 the variation proposed has been approved by the Council of Governors and does not contravene a statutory provision or direction made by Monitor; and

4.15.1.5 it has been approved in accordance with the provisions of paragraph 3 of Appendix 4 of Annex 8 of the Constitution.

4.16 Record of Attendance

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

4.17 Quorum

4.17.1 No business shall be transacted at a meeting unless at least 14 Governors consisting of a majority of Governors who are members of the public constituency are present.

4.17.2 If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for a minimum of 5 Clear Days to a maximum of 20 Clear Days and upon reconvening, those present shall constitute a quorum.

4.17.3 If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest as provided in Standing Order 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.

5 LEAD GOVERNOR

- 5.1 The Governors may (at their discretion) appoint a Lead Governor at either the first meeting of the Council of Governors or at any annual meeting of the Council of Governors thereafter. The method of appointment shall be determined by agreement of the Council of Governors.
- 5.2 If the Governors make the appointments specified in Standing Order 5.1 above, then the following provisions of this Standing Order shall apply:
- 5.3 Without prejudice to the rights of any Governor to communicate directly with the Chairman, the Lead Governor shall be responsible for receiving from Governors observations and concerns expressed to him by Governors regarding a potential significant breach of the Trust's Terms of Authorisation.
- 5.4 This appointment shall be made from those Governors who have been elected as Governors from the public constituency of members.
- 5.5 Subject to Standing Order 5.8, the Lead Governor so appointed shall hold office for a period of 12 calendar months but shall be eligible for reappointment at that time.
- 5.6 The contact details of the Lead Governor shall be provided to Monitor on appointment. The Lead Governor shall then be responsible for receiving and communicating to the Council of Governors any correspondence from Monitor.
- 5.7 The Lead Governor shall chair the meeting of the Council of Governors when it is inappropriate for the Chair or a non-executive Director to do so.
- 5.8 Notwithstanding the tenure provisions set out at Standing Order 5.5 above, if either the Lead Governor is considered to have acted in a manner inconsistent with Standing Orders 5.3 and he is adjudged to have so acted by a majority of not less than 75% of the Council of Governors, then the Lead Governor shall stand down and cease to fulfil the role of Lead Governor.

6 COMMITTEES

- 6.1 Subject to such directions and guidance as may be issued by Monitor, the Council of Governors may and, if directed by Monitor, shall appoint committees of the Council of Governors to assist it in the proper performance of its functions under the Regulatory Framework, consisting wholly or partly of the Chairman and Governors.
- 6.2 A committee appointed under Standing Order 6 may, subject to such directions as may be given by Monitor or the Council of Governors, appoint sub-committees consisting wholly or partly of members of the committee.
- 6.3 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors with the terms "Chairman" to be read as a reference to the Chairman of the committee, and the term "Governor" to be read as a reference to a member of the committee as the context permits.
- 6.4 Each such committee shall have such terms of reference and powers and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with the Regulatory Framework and any direction or guidance issued by

Monitor, but the Council of Governors shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council of Governors at a formal meeting. Such terms of reference shall have effect as if incorporated into the Standing Orders.

- 6.5 Where committees are authorised to establish sub-committees they may not delegate their powers to the sub-committee unless expressly authorised by the Council of Governors.
- 6.6 Any committee or sub-committee established under this Standing Order 6 may call upon outside advisers to assist them with their tasks, subject to the advance agreement of the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph shall be determined in accordance with the Dispute Resolution Procedure as set out at Paragraph 2 of Appendix 4 to Annex 8 of the Constitution.
- 6.7 The Council of Governors shall approve the appointments to each of the committees which it has formally constituted.
- 6.8 Where the Council of Governors is required to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Council of Governors, such appointments shall be made in accordance with applicable statute and regulations and with guidance issued by Monitor.
- 6.9 Where the Council of Governors determines that persons who are neither Governors, nor Directors or Officers of the Trust, shall be appointed to a committee, the terms of such appointment shall be determined by the Council of Governors subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the Board of Directors or Monitor.
- 6.10 The Council of Governors may appoint members to serve on joint committees with the Board of Directors or committees of the Board of Directors.

7 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

7.1 Declaration of Interests

7.1.1 The Regulatory Framework requires each Governor to declare to the Secretary (before the Trust enters into the transaction or arrangement):

- 7.1.1.1 any actual or potential interest, direct or indirect, interest in a proposed transaction or arrangement with the Trust as described in Standing Order 7.2.1; and
- 7.1.1.2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, as described in Standing Orders 7.2.2 and 7.2.3; and
- 7.1.1.3 any actual or potential family interest, direct or indirect, of which the Member is aware, as described in Standing Order 7.2.5.

- 7.1.2 Such a declaration shall be made either at the time of the Governor's election or appointment or as soon thereafter as the interest arises, but within 5 Clear Days of becoming aware of the existence of that interest, and in a form prescribed by the Secretary which shall be included as Schedule B.
- 7.1.3 In addition, 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.
- 7.1.4 Subject to Standing Order 7.2.4, if a Governor has declared a pecuniary interest (as described in Standing Orders 7.2.2 and 7.2.3) he shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the Governor's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 7.1.5 This Standing Order 7 applies to any committee, sub-committee or joint committee of the Council of Governors and applies to any member of any such committee, sub-committee, or joint committee (whether or not he is also a Governor).
- 7.1.6 The interests of Governors in companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

7.2 Nature of Interests

- 7.2.1 Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by Monitor:
 - 7.2.1.1 directorships, including non-executive Directorships held in private companies or public limited companies (with the exception of those of dormant companies); or
 - 7.2.1.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS; or
 - 7.2.1.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS; or
 - 7.2.1.4 a position of authority in a charity or voluntary organisation in the field of health and social care; or
 - 7.2.1.5 any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or
 - 7.2.1.6 any connection with an organisation, entity or company considering entering into or having entered into a financial

agreement with the Trust, including but not limited to, lenders or banks.

7.2.2 A Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

7.2.2.1 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

7.2.2.2 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.

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

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

7.2.3.2 of an interest in any company, body or person with which he is connected 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; or

7.2.3.3 of any travelling or other expenses or allowances payable to a Governor in accordance with the Constitution.

7.2.4 Where a Governor:

7.2.4.1 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

7.2.4.2 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

7.2.4.3 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 to disclose his interest.

7.2.5 A family interest is an interest of the spouse or partner or any parent, child, brother or sister of a Governor which if it were the interest of that Governor would be a personal interest or a pecuniary interest of his.

- 7.2.6 If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including General Practitioners should also be considered.

7.3 Register of Governors

- 7.3.1 The Register of Governors shall list the names of Governors, their category of membership of the Council of Governors and an address through which they may be contacted which may be the Secretary.

7.4 Register of Governors' Interests

- 7.4.1 The Secretary shall keep a Register of Interests of Governors which shall contain the names of each Governor, whether he has declared any interest, and if so, the interest declared.

8 STANDARDS OF BUSINESS CONDUCT

Members of the Council of Governors shall comply with the Trust's Code of Conduct and any guidance and directions issued by Monitor.

9 APPOINTMENTS AND RECOMMENDATIONS

- 9.1 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this paragraph of this Standing Order shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.
- 9.2 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 9.3 Candidates for any staff appointment under the Trust shall, when making such an application, disclose in writing to the Trust whether they are related to any Governor or the holder of any office within the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 9.4 The Chairman and every Governor shall disclose to the Chief Executive or his delegated officer any relationship between himself and a candidate of whose candidature that Governor or Officer is aware. It shall be the duty of the Chief Executive or his delegated officer to report to the Council of Governors any such disclosure made.
- 9.5 On appointment, Members of the Council of Governors should disclose to the Council of Governors whether they are related to any other Member of the Council of Governors or holder of any office in the Trust.
- 9.6 Where the relationship to a Member of the Council of Governors of the Trust is disclosed, Standing Order 7 shall apply.

10 MISCELLANEOUS

- 10.1 The Secretary shall provide a copy of these Standing Orders to each Governor and endeavour to ensure that each Governor understands his responsibilities within these Standing Orders.
- 10.2 These Standing Orders including all documents having effect as if incorporated in them shall be reviewed annually by the Board of Directors and the Council of Governors.
- 10.3 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Council of Governors for action or ratification. All Governors have a duty to disclose any non-compliance with these Standing Orders to the Chairman as soon as possible.

Schedule A

Declaration to the Secretary of Taunton and Somerset NHS Foundation Trust

I hereby declare that I am at the date of this declaration a member of the [Public/Staff] constituency, and I am not prevented from being a member of the Council of Governors by reason of any provision of paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution.

Schedule B

Prescribed Form of Declaration of Interests

Declaration to the Secretary of Taunton and Somerset NHS Foundation Trust

Date [insert]

To the Secretary of Taunton and Somerset NHS Foundation Trust

Dear [insert]

In fulfilment of the obligations imposed on me by paragraph 16 of the Constitution of the Foundation Trust and the provisions of Standing Order 7 of the Standing Orders for the Council of Governors generally, and in particular Standing Order 7.1.2, I hereby give notice to the Trust of my interest in [insert details of the nature and extent of the relevant interest(s) (e.g. pecuniary, non pecuniary, direct, indirect, actual, potential, etc.)] as of the date posted above.

I require the nature and extent of my interest(s) to be recorded in the Foundation Trust's Register of Interests of the Members of the Council of Governors.

Yours faithfully

[name]

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

(Paragraph 27)

TAUNTON AND SOMERSET NHS FOUNDATION TRUST

STANDING ORDERS

FOR THE

BOARD OF DIRECTORS

INTRODUCTION

Statutory Framework

The TAUNTON AND SOMERSET NHS FOUNDATION TRUST (the “Trust”) became a Public Benefit Corporation on 1 December 2007 following approval by Monitor pursuant to the National Health Service Act 2006 (the “2006 Act”).

The principal place of business of the Trust is at the Trust Headquarters at Musgrove Park Hospital, Taunton, Somerset, TA1 5DA.

The Trust is governed by the 2006 Act, its Constitution and the Authorisation granted by Monitor (the Regulatory Framework). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework and in particular paragraph 27 of the Constitution requires the Board Directors of the Trust to adopt Standing Orders for the regulation of its proceedings and business.

The Standing Orders, Scheme of Delegation and Standing Financial Instructions provide a comprehensive business framework. All executive and non-executive Directors, and all members of staff, should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.

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 its Licence or any financial or performance thresholds which Monitor may specify from time to time.

The Chairman, Chief Executive or any other person giving information to the public on behalf of the Trust shall ensure that they follow the principles set out by the Committee on Standards in Public Life (the Nolan Committee, now the Wicks Committee) and that they will adhere to the principles set out within the Independent Commission’s Good Governance Standard for Public Service. They will also ensure that they follow The NHS Foundation Trust Code of Governance 2006 published by Monitor that sets out the overarching framework for compliance with the Regulatory Framework.

Delegation of Powers – Scheme of Delegation

Under the Standing Orders relating to the Arrangements for the Exercise of Functions by Delegation (SO 4) the Board of Directors exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee appointed by virtue of SO 5 or by an Officer of the Trust, in each case subject to such restrictions and conditions as the Board of Directors thinks fit or as Monitor may direct. Delegated Powers are covered in a separate document (the Scheme of Delegation). That document has effect as if incorporated into the Standing Orders.

1 INTERPRETATION

Part II 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 and Secretary).

Part III Any expression to which a meaning is given in the 2006 Act or any Regulations or Order made under the Act shall have the same meaning in this interpretation and in addition:

"Accounting Officer"

means the Officer responsible for discharging the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act. For this Trust it shall be the Chief Executive;

"Applicant NHS Trust"

means Taunton and Somerset NHS Trust;

"Authorisation"

means the Terms of Authorisation provided by Monitor;

"Board of Directors"

means the Board of Directors as constituted in accordance with the Constitution;

"Budget"

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

"Chairman"

means the person appointed in accordance with the Constitution to ensure that the Board of Directors and Council of Governors successfully discharge their overall responsibilities for the Trust as a whole. The expression "the Chairman" shall be deemed to include the Vice Chairman or any other non-executive appointed in accordance with SO 2.12.3 if the Chairman is absent from the meeting or is otherwise unavailable;

"Chief Executive"

means the Chief Executive officer of the Trust;

"Clear Days"

means a day of the week not including a Saturday, Sunday or Public Holiday;

"Constitution"

means the Constitution of the Trust, together with the Annexes and Appendices attached hereto as approved by Monitor;

"Council of Governors"

means the Council of Governors as constituted in this Constitution, which has the same meaning as the "Council of Governors" in the 2006 Act;

"Director"

means a member of the Board of Directors appointed in accordance with the Constitution, and includes both executive and non-executive Directors and the phrase "member of the Board" shall be construed accordingly;

"Finance Director"

means the Chief Finance Officer of the Trust;

"Funds held on Trust"

means those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Section 14 of Part 2, Schedule 4 of the 2006 Act. Such funds may or may not be charitable;

"Member"

means a member of the Trust;

"Monitor"

means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;

"Motion"

means a formal proposition to be discussed and voted on during the course of a meeting;

"Nominated Officer"

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

"Officer"

means an employee or any other person holding a paid appointment or office with the Trust;

"Scheme of Delegation"

means the Reservation of Powers to the Board of Directors and Delegation of Powers;

"Secretary"

means a person appointed by the Trust to act independently of the Board of Directors, to provide advice on corporate governance issues to the Board of Directors and the Chairman and to monitor the Trust's compliance with the Regulatory Framework, the Standing Orders, and NHS Executive Guidance;

"SFIs"

means Standing Financial Instructions;

"SOs"

means these Standing Orders;

"the 2006 Act"

means the National Health Service Act 2006;

"Trust"

means the Taunton and Somerset NHS Foundation Trust;

"Trust Headquarters"

means the Musgrove Park Hospital, Taunton, Somerset, TA1 5DA;

"Vice Chairman"

means a non-executive Director appointed by the Council of Governors to undertake the Chairman's duties in the event that the Chairman is absent for any reason.

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

SCHEDULE 2 THE TRUST BOARD

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

Part II All funds received in trust shall be in the name of the Trust as corporate trustee.

Part III In relation to Funds held on Trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.

Part IV The Trust has the functions conferred on it by its Authorisation issued by Monitor. Directors acting on behalf of the Trust as corporate trustees are acting as quasi-trustees. Accountability for charitable Funds held on Trust is to be made to the Charity Commission and to Monitor. Accountability for non-charitable Funds held on Trust is only to Monitor.

Part V The powers of the Trust established under statute shall be exercised by the Board meeting in formal session except as otherwise provided for in SO 3.

Part VI The Trust has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. These powers and decisions are set out in the Scheme of Delegation and have effect as if incorporated into the Standing Orders.

Part VII Composition of the Board of Directors

- 1 In accordance with the Constitution the Board of the Trust is to comprise:
 - 1.1 the following non-executive Directors:
 - 1.2 the Chairman, and a maximum of eight other non-executive Directors.
- 2 the following executive Directors:
 - 2.1 the Chief Executive who shall be the Accounting Officer, the Finance Director, and a maximum of six other Directors, one of whom is a registered medical practitioner (within the meaning of the Medical Act 1983) or registered dentist (within the meaning of the Dentists Act 1984) and another of whom is to be a registered nurse or midwife.
- 3 In the event that the number of non-executive Directors (including the Chairman) is equal to the number of executive Directors, the Chairman (and in his absence Vice Chairman) shall have the casting vote at meetings of the Board of Directors.
- 4 A person may only be appointed as a non-executive Director if:
 - 4.1 he is a Member of a public constituency , or
 - 4.2 he is not disqualified by virtue of paragraph 26 of the Constitution.
- 5 The validity of any act is not affected by any vacancy among the Directors or defect in the appointment of a Director.
- 6 The Board (in consultation with the Council of Governors) may appoint any independent non-executive Director as the Senior Independent Director, for such period not exceeding

the remainder of his term as a non-executive Director as they may specify on appointing him.

- 7 Any non-executive Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chairman. The Board (in consultation with the Council of Governors) may thereupon appoint another independent non-executive Director as Senior Independent Director in accordance with the provisions in SO 2.7.6 above.
- 8 The Senior Independent Director shall perform the role set out in “The NHS Foundation Trust Code of Governance” (2006) issued by Monitor.

Part VIII Register of Directors

- 1 In accordance with paragraphs 30 and 31 of the Constitution the Applicant Trust shall keep and maintain a Register of Directors which shall list the names of the Directors, their capacity on the Board of Directors and an address through which they may be contacted which may be the Secretary.

Part IX Appointment of the initial Chairman and other non-executive Directors

- 1 The Chairman of the Applicant NHS Trust shall be appointed as the initial Chairman of the Trust if he wishes to be appointed.
- 2 The Council of Governors shall appoint, so far as possible, the non-executive Directors of the Trust, by appointing any of the non-executive Directors of the Applicant NHS Trust (other than the Chairman) who wish to be appointed.
- 3 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 their respective terms of office as Chairman or non-executive Director of the Trust, or 12 months whichever is the longer, unless they notify the Council of Governors that they do not wish to be appointed. In the case of any vacancies SO 2.10.1 below shall apply.
- 4 The criteria for qualification for appointment as a non-executive Director as set out in SOs 2.7.4.1 to 2.7.4.2 do not apply to the appointment of the initial Chairman and the initial other non-executive Directors.

Part X Appointment and Removal of the Chairman and other non-executive Directors

- 1 The Chairman and other non-executive Directors are to be appointed by the Council of Governors following a process of open competition, unless the criteria are met for re-appointment and re-appointment is approved by the Council of Governors. The current Chairman or a non-executive Director may stand for reappointment. Six months before the end of the term of office of the Chairman or a non-executive Director (as the case may be), the Council of Governors will adopt a procedure as set out at paragraph 1.2 of Appendix 3 of Annex 8 of the Constitution for appointing the Chairman and the non-executive Directors which shall provide for the process to be open and fair and in accordance with any guidance issued by Monitor.
- 2 Removal of the Chairman or another non-executive Directors shall require approval of three-quarters of the members of the Council of Governors.

Part XI Remuneration and Terms Of Office of the Chairman and non-executive Directors

- 1 The Chairman and the non-executive Directors are to be appointed for a period of office by the Council of Governors at General Meeting.
- 2 At the General Meeting referred to at SO 2.11.1 above the Council of Governors shall decide the:
 - 2.1 period of office;
 - 2.2 remuneration and allowances and
 - 2.3 the other terms and conditions of officeof the Chairman and other non-executive Directors.
- 3 Pending the establishment of the Council of Governors, the matters referred to at SO 2.11.2 above shall be determined in accordance with terms and conditions of the respective officers as employed by the Trust.

Part XII Appointment and Powers of Vice Chairman

- 1 For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman, the Council of Governors may appoint a non-executive Director to be Vice Chairman for such period, not exceeding the remainder of his term as non-executive Director of the Applicant NHS Trust, as the Council of Governors may specify on appointing him.
- 2 Any non-executive Director so appointed may at any time resign from the office of Vice Chairman by giving notice in writing to the Council of Governors. The Council of Governors may thereupon appoint another non-executive Director as Vice Chairman in accordance with the provisions of SO 2.12.3 below.
- 3 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. Where both the Chairman and Vice Chairman are unable to perform their duties owing to illness, conflict of interest or any other cause, another non-executive Director as may be appointed by the Council of Governors shall act as Chairman.

Part XIII Appointment and Removal of Chief Executive and Other executive Directors

- 1.1 Subject to the approval of a majority of the members of the Council of Governors present and voting at a meeting of the Council of Governors, the non-executive Directors shall appoint or remove the Chief Executive.
- 1.2 The initial Chief Executive is to be appointed in accordance with SO 2.14 below.
- 1.3 A Committee consisting of the Chairman, the Chief Executive and the other non-executive Directors shall appoint or remove the other executive Directors.

Part XIV Appointment and removal of the Chief Executive

- 1.1 The Chief Officer of the Applicant NHS Trust shall be appointed as the initial Chief Executive of the Trust if he wishes to be so appointed.
- 1.2 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.

Part XV Remuneration and Terms of Office of the Chief Executive and executive Directors

- 1 The Trust shall establish a Committee of non-executive Directors in accordance with SO 5 to decide the:
 - 1.1 period of office;
 - 1.2 remuneration and allowances;
 - 1.3 the other terms and conditions of officeof the Chief Executive and other executive Directors.
- 2 Pending the establishment of such a committee of non-executive Directors the matters referred to at paragraphs 2.15.1 shall be determined in accordance with the terms and conditions of the respective officers employed by the Applicant NHS Trust.

Part XVI Disqualification

- 1 A Director will be subject to the disqualification criteria included at paragraph 26 of the Constitution.

SCHEDULE 3 MEETINGS OF THE TRUST¹

Part I Formal meeting of the Board of Directors

- 3.1.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons, to be determined by the Board of Directors.
- 3.1.2 Before holding a public meeting, the Board of Directors will send a copy of the agenda of the meeting to the Council of Governors. As soon as is practicable after holding the meeting, the Board of Directors will send a copy of the minutes of the meeting to the Council of Governors.
- 3.1.3 Admission of the Public and the Press: The public and representatives of the press shall be afforded facilities to attend any public events or meetings of the Board of Directors, one of which will include the Annual General Meeting, but shall be required to withdraw upon the Board of Directors resolving as follows:
- ‘That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity of which would be prejudicial to the public interest’ (Section 1(2) Public Bodies (Admission to Meeting) Act 1960).¹*
- 3.1.4 The 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 of Directors business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board of Directors resolving as follows:
- ‘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’ (Section 1(8) Public Bodies (Admission to Meetings) Act 1960).*
- 3.1.5 Nothing in the Standing Orders shall require the Board of Directors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place without the prior agreement of the Board.

Part II Calling Meetings

- 1 Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.
- 2 The Chairman may call a meeting of the Board of Directors 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 members of the Board of the Directors, and this has been presented to him, or if, without so refusing, the Chairman does not call a meeting within 7 days after such requisition has been presented to him, at the Trust’s Headquarters, such one third or more members of the Board of Directors may forthwith call a meeting.

¹ The Board of Directors is aware that the provisions of the Public Bodies (Admission to Meetings) Act 1960 (the 1960 Act) do not apply to NHS Foundation Trusts. Nevertheless, the Board of Directors has opted to adopt the wording used in the 1960 Act, as set out below.

Part III Notice of Meetings

- 1 Before each meeting of the Trust a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman, or by an Officer of the Trust authorised by the Chairman to sign on his behalf, shall be delivered to every Director, or sent by post to the usual place of residence of every Director, so as to be available to him at least three Clear Days before the meeting.
- 2 Want of service of the notice on any member of the Board of Directors shall not affect the validity of a meeting. Failure to serve such a notice on more than three members of the Board of Directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.
- 3 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.
- 4 Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 5 In the event of an emergency giving rise to the need for an immediate meeting, SOs 3.3.1 to 3.3.4 above shall not prevent the calling of such a meeting without the requisite 3 Clear Days notice provided that every effort is made to make personal contact with every Director who is not absent from the United Kingdom and the Agenda for the meeting is restricted to matters arising in that emergency.

Part IV Agendas

- 1 Agendas will be sent to members of the Board of Directors 5 Clear Days before the meeting and supporting papers, whenever possible, shall accompany the Agenda, but will certainly be dispatched no later than 3 Clear Days before the meeting, save in emergency. Failure to serve such a notice on more than three members of the Board of Directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.
- 2 Before each meeting of the Board a public notice of the time and place of the meeting, and the open part of the Agenda, shall be circulated to the Council of Governors and shall be displayed at the Trust's Headquarters at least 3 Clear Days before the meeting.

Part V Setting the Agenda

- 1 The Board of Directors may determine that certain matters shall appear on every Agenda for a meeting of the Trust 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).
- 2 A director desiring a matter to be included on an Agenda shall make his request in writing to the Chairman at least 14 Clear Days before the meeting, subject to SO 3.3 above. Requests made less than 14 Clear Days before a meeting may be included on the Agenda at the discretion of the Chairman. Agendas will be sent to members of the Board of Directors before the meeting and supporting papers, whenever possible, shall accompany the Agenda, but will certainly be dispatched no later than 3 Clear Days before the meeting, save in the case of emergencies. The request should state whether the item of business is proposed to be available to the public and should include appropriate supporting

information. Requests made less than 14 Clear Days before a meeting may be included on the Agenda at the discretion of the Chairman.

Part VI Petitions

- 1 Where a petition has been received by the Trust the Chairman shall include the petition as an item for the Agenda of the next Board of Directors meeting.

Part VII Chairman of Meeting

- 1 At any meeting of the Board of Directors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Vice Chairman, if there is one and he is present, shall preside. If the Chairman and Vice Chairman are absent such non-executive Director as the members of the Board of Directors present shall choose, shall preside.
- 2 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 members of the Board of Directors present shall choose, shall preside.

Part VIII Chairman's Ruling

- 1 Statements of Directors made at meetings of the Trust shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

1.1.1 Notices of Motion

- 2 Subject to the provisions of SO 3.11 and SO 3.12 below, a member of the Board wishing to move or amend a motion shall send a written notice to the Chairman.
- 3 The notice shall be delivered at least 14 Clear Days before the meeting. The Chairman shall include in the agenda for the meeting all notices so received that are in order and permissible under these Standing Orders and the appropriate Regulations. Subject to SO 3.3.3, this Standing Order shall not prevent any motion being moved without notice on any business mentioned on the agenda for the meeting.

Part IX Emergency Motions

- 1 Subject to the agreement of the Chairman, and subject also to the provision of SO 3.11 below, a member of the Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chairman's decision to include the item shall be final.

Part X Motions: Procedure at and during a meeting

1 Who may propose

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

2 Contents of motions

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

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

3 Amendments to motions

- 3.1 A motion for amendment shall not be discussed unless it has been proposed and seconded.
- 3.2 Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board.
- 3.3 If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

4 Rights of reply to motions

4.1 Amendments

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

4.2 Substantive/original motion

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

5 Withdrawing a motion

- 5.1 A motion, or an amendment to a motion, once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.

6 Motions once under debate

- 6.1 When a motion is under debate, no motion may be moved other than:
- 6.1.1 an amendment to the motion;
 - 6.1.2 the adjournment of the discussion, or the meeting;
 - 6.1.3 that the meeting proceed to the next business;
 - 6.1.4 that the question should be now put;
 - 6.1.5 the appointment of an 'ad hoc' committee to deal with a specific item of business;
 - 6.1.6 a motion under SO 3.1.1 resolving to exclude the public (including the press); and
 - 6.1.7 that a member be not further heard.
- 6.2 In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a member of the Board who has not taken part in the debate and who is eligible to vote.
- 6.3 If a motion to proceed to the next business or that the question be now put, is carried, the Chairman should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.
- 6.4 The mover of a motion shall have a maximum of 5 minutes to move and 5 minutes to reply. Once a motion has been moved, no member of the Board of Directors shall speak more than once or for more than 5 minutes.

Part XI Motion to Rescind a Resolution

- 1 Notice of motion to 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 member of the Board who gives it and also the signature of four other members of the Board, and before considering any such motion of which notice shall have been given, the Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation.
- 2 When any such motion has been dealt with by the Board, it shall not be competent for any member of the Board other than the Chairman to propose a motion to the same effect within 6 months, however the Chairman may do so if he considers it appropriate. This

Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a committee or the Chief Executive.

Part XII Voting

- 1 Every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chairman of the meeting shall have a second or casting vote.
- 2 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 If at least one-third of the members of the Board of 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.
- 4 If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 5 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 6 An Officer who has been appointed formally by the Board of Directors 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 of Directors 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.

Part XIII Minutes

- 1 The minutes of the proceedings of a meeting shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting, where they will be signed by the person presiding at it.
- 2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting. Minutes shall be retained in the Chief Executive's office
- 3 Board minutes shall be circulated in accordance with Directors' 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.

Part XIV Suspension of Standing Orders

- 1 Except where this would contravene any statutory provision or any direction made by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Directors are present, including one executive Director and one non-executive Director, and that a majority of those present vote in favour of suspension.
- 2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.

- 3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 4 No formal business may be transacted while Standing Orders are suspended.
- 5 The Audit Committee shall review every decision to suspend Standing Orders.

Part XV Variation and Amendment of Standing Orders

- 1 These Standing Orders shall be amended only if:
 - 1.1 relevant notice of a meeting has been served in accordance with SO 3.3; and
 - 1.2 a notice of motion under SO 3.9 has been given; and
 - 1.3 no fewer than half the total of the Trust's non-executive Directors vote in favour of amendment;
 - 1.4 the variation proposed does not contravene the Regulatory Framework, any statutory provisions or any guidance made by Monitor; and
 - 1.5 it has been approved in accordance with the provisions of paragraph 3 of Appendix 4 of Annex 8 of the Constitution.

Part XVI Record of Attendance

- 1 The names of the Directors present at the meeting shall be recorded in the minutes.

Part XVII Quorum

- 1 No business shall be transacted at a meeting of the Board unless at least one-third of the whole number of the Directors are present including at least one executive Director and one non-executive Director and the Chairman.
- 2 An Officer in attendance for an executive Director but without formal acting up status may not count towards the quorum.
- 3 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 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 Terms of Service Committee).

Part XVIII Meetings: Electronic Communication

- 1 In this Standing Order "communication" and "electronic communication" shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.

- 2 A Director in electronic communication with the Chairman and all other parties to a meeting of the Board of Directors or of a committee or sub-committee of the Directors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
- 3 A meeting at which one or more of the Directors attends by way of electronic communication is deemed to be held at such a place as the Directors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Directors attending the meeting are physically present, or in default of such a majority, the place at which the Chairman of the meeting is physically present.
- 4 Meetings held in accordance with this Standing Order are subject to SO 3.18 (Quorum). For such a meeting to be valid, a quorum **MUST** be present and maintained throughout the meeting.
- 5 The Minutes of a meeting held in this way **MUST** state that it was held by electronic communication and that the Directors were all able to hear each other and were present throughout the meeting.

SCHEDULE 4 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

Part I Subject to SO 2.6 and such guidance as may be given by Monitor, the Board of Directors may make arrangements for the exercise of any of its functions by a committee or sub-committee appointed by virtue of SO 5.1 below or by a Director or an Officer in each case subject to such restrictions and conditions as the Board of Directors considers appropriate.

Part II Emergency Powers

- 1 The powers which the Board has retained to itself within these Standing Orders may in emergency be exercised by the Chief Executive and the Chairman after having consulted at least two non-executive Directors. The exercise of such powers by the Chief Executive and the Chairman shall be reported to the next formal meeting of the Board of Directors for ratification.

Part III Delegation to committees

- 1 The Board of Directors shall agree from time to time to the delegation of Executive powers to be exercised by committees or subcommittees, or joint committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, and their specific Executive powers shall be approved by the Board of Directors.
- 2 When the Board is not meeting as the Trust in formal session it shall operate as a committee and may only exercise such powers as may have been delegated to it by the Trust in formal session.

Part IV Delegation to Officers

- 1 Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee or subcommittee or joint-committee shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate Officers to undertake the remaining functions for which he will still retain accountability to the Board of Directors.
- 2 The Chief Executive shall prepare a Scheme of Delegation identifying his proposals, which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.
- 3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Finance Director or other executive Director to provide information and advise the Board in accordance with any statutory requirements. Outside these statutory requirements the Finance Director shall be accountable to the Chief Executive for operational matters.
- 4 The arrangements made by the Board of Directors as set out in the Scheme of Delegation shall have effect as if incorporated in these Standing Orders.

Part V Duty to Report Non-Compliance with Standing Orders

- 1 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 of Directors for action or ratification. All members of the Board of Directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Secretary as soon as possible.

SCHEDULE 5 COMMITTEES

Part I Appointment of Committees

- 1 Subject to SO 2.6 and such guidance issued by Monitor the Board of Directors may and, if directed by Monitor, shall appoint committees of the Trust consisting wholly or partly of Directors.
- 2 A committee appointed under SO 5.1.1 above may, subject to such guidance as may be given by Monitor or the Board of Directors or other health service bodies in question, appoint sub-committees consisting wholly or partly of Directors (whether or not they are Directors of the Trust in question).
- 3 The Standing Orders of the Board of Directors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board of Directors, 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.)
- 4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide in accordance with any legislation and regulation or direction issued by Monitor. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 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 of Directors.
- 6 The Board of Directors shall approve the appointments to each of the committees, which it has formally constituted. Where the Board of Directors 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 of Directors as defined by Monitor. The Board of Directors 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.
- 7 Where the Board of Directors is required to appoint persons to a committee and/or to undertake statutory functions as required by the Secretary of State and/or Monitor, and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with the regulations and guidance made by Monitor.
- 8 The committees and sub-committees established by the Board of Directors are:
 - 8.1 Audit Committee
 - 8.2 Nomination & Remuneration Committee
 - 8.3 Charitable Funds Committee
 - 8.4 Governance Committee
 - 8.5 Treasury and Investment Committee

- 9 The Terms of reference of those Committees shall be agreed by the Board.
- 10 The Board may also operate as a committee in accordance with SO 4.3.2. Any decisions taken by the Board in Committee (i.e. Seminar meeting of the Board) must be brought to the next formal meeting of the Board.

Part II Confidentiality

- 1 A member of a committee shall not disclose a matter dealt with, by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.
- 2 A Director or a member of a committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

SCHEDULE 6 INTERFACE BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS

Part I The Board of Directors will cooperate with the Council of Governors as far as possible in order to comply with the Regulatory Framework in all respects and in particular in relation to the following matters which are set out specifically within the Constitution.

Part II The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to Monitor.

Part III The Directors are to present to the Council of Governors at a general meeting the annual accounts, any report of the Auditor on them, and the annual report.

Part IV The annual reports are to give:

- 1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its Public Constituency is representative of those eligible for such membership; and
- 2 any other information Monitor requires.

Part V In order to comply with the Regulatory Framework in all respects and in particular in relation to the matters which are set out above, the Council of Governors may request that a matter which relates to paragraphs 37 and/or 38 of the Constitution is included on the Agenda for a meeting of the Board of Directors.

Part VI If the Council of Governors so desires such a matter as described within SO 6.5 above to be included on an Agenda item, they shall make their request in writing to the Chairman at least 14 Clear Days before the meeting of the Board of Directors, subject to SO 3.3. The Chairman shall decide whether the matter is appropriate to be included on the Agenda. Requests made less than 14 Clear Days before a meeting may be included on the Agenda at the discretion of the Chairman.

SCHEDULE 7 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

Part I The Regulatory Framework requires members of the Board of Directors to declare (before the Trust enters into the transaction or arrangement) :

- 1 any direct or indirect interest in a proposed transaction or arrangement with the Trust; and
- 2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust; and
- 3 any actual or potential family interest, direct or indirect of which the Director is aware.

Part II All members of the Board of Directors should declare such interests as soon as the Director in question becomes aware of it. Any members of the Board of Directors appointed subsequently should do so on appointment.

Part III Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time, setting out any interests required to be declared outside a meeting in accordance with the Constitution or the Standing Orders and delivering it to the Secretary on appointment or as soon thereafter as the interest arises, but within 7 Clear Days of becoming aware of the existence of a relevant and material interest.

Part IV If a declaration under SO 7.1 or 7.2 above proved to be, or becomes, inaccurate or incomplete, the Director must make a further declaration before the Trust enters into the transaction or arrangement. This does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.

Part V A Director need not declare an interest:

- 1 if, it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 2 if, or to the extent that, the Directors are already aware of it;
- 3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered by;
- 4 a meeting of the Board of Directors; or
- 5 by a committee of the Directors appointed for the purpose.

Part VI In addition, if a Director is present at a meeting of the Board of Directors 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.

Part VII If a Director has declared a pecuniary interest in accordance with SO 7.9 below he shall not take part in the consideration or discussion of the matter in respect of which an interest has been disclosed and shall be excluded from the meeting whilst that proposed contract is under consideration. At the time the interests are declared,

they should be recorded in the Director's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.

Part VIII Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by Monitor:

- 1 Directorships, including non-executive Directorships held in private companies or PLCs (with the exception of those of dormant companies);
- 2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- 3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- 4 a position of authority in a charity or voluntary organisation in the field of health and social care;
- 5 any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services;
- 6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks.

Part IX Any travelling or other expenses or allowances payable to a Director in accordance with the Constitution shall not be treated as a pecuniary interest.

Part X Members of the Board of Directors of companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

Part XI A Director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- 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
- 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.

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

- 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; or
- 2 of an interest in any company, body or person with which he is connected 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.

Part XIII Where a Director:

- 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
- 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
- 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 Director 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 to disclose his interest.

Part XIV 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 the Constitution and the Standing Orders to be also an interest of the other.

Part XV If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chief Executive. 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.

Part XVI Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 18 of Schedule 7 of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this Standing Order.

Part XVII SO 7 applies to any committee, sub-committee of the Board of Directors and applies to any member of any such committee or sub-committee (whether or not he is also a Director).

Part XVIII Register of Interests

- 1 The Register of Interests shall contain the names of each Director, whether he has declared any interests and, if so, the interests declared in accordance with the Constitution or these Standing Orders.
- 2 It is the obligation of the Director to inform the Secretary in writing within 7 Clear Days of becoming aware of the existence of a relevant or material interest. The Secretary must amend the appropriate Register of Interests upon receipt of new or amended information as soon as is practical and, in any event, within 14 Days.
- 3 The Register of Interests will be available to the public and the Chairman will take reasonable steps to bring the existence of the Register of Interests to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the Register of Interests must be provided to Members of the Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the Register of Interests.
- 4 In establishing, maintaining, updating and publicising the Register of Interests, the Trust shall comply with all guidance issued from time to time by Monitor. The details of Directors'

interests recorded in the Register of Interests will be kept up to date by means of a regular review as necessary of the Register of Interests by the Chief Executive or Secretary during which any changes of interests recently declared will be incorporated.

SCHEDULE 8 STANDARDS OF BUSINESS CONDUCT

Part I Policy

- 1 Directors and Officers should comply with the NHS Foundation Trust Code of Governance 2006, the Trust Code of Conduct and any guidance and directions issued by Monitor. This section of these Standing Orders should be read in conjunction with these documents.

Part II Interest of Directors and Employees in Contracts

- 1 If it comes to the knowledge of Director or an Officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he shall, at once, give notice in writing to the Chief Executive or Secretary 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.
- 2 A Director or Officer must also declare to the Chief Executive or Secretary any other employment or business or other relationship of his, or of a cohabiting spouse or partner, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust in accordance with SO 7. The Trust shall require such interests to be recorded in the register of Directors interests.

Part III Canvassing of, and Recommendations by, Directors in Relation to Appointments

- 1 Canvassing of Directors or members of any committee of the Board of Directors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of these Standing Orders shall be included in application forms or otherwise brought to the attention of candidates.
- 2 A Director of the Board of Directors 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 in relation to any appointment.
- 3 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

Part IV Relatives of Directors or Officers

- 1 Candidates for any staff appointment shall when making an application disclose in writing whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 2 The Directors and every member and Officer of the Trust shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that member or Officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.
- 3 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 member of the Board of Directors or holder of any office in the Trust.

- 4 Where the relationship to an Officer or another Director to a Director of the Trust is disclosed, SO 7 shall apply.

Part V External Consultants

- 1 SO 8 will apply equally to all external consultants or other agents acting on behalf of the Trust. The Trust's Scheme of Delegation should be adhered to at all times.

SCHEDULE 9 TENDERING AND CONTRACT PROCEDURE

Part I Duty to comply with Standing Orders

- 1 The procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Orders and the Trust's Standing Financial Instructions (except where SO 3.15 is applied).

Part II EU Directives and Acts Governing Public Procurement

- 1 European Union Directives on public sector purchasing promulgated by the Department of Health prescribing procedures for awarding all forms of contracts shall have effect as if incorporated in these Standing Orders.
9.2.2 The Bribery Act 2010, which came into effect on 1 July 2011, makes it a criminal offence to give promise or offer a bribe, and to request, agree to receive or accept a bribe, either at home or abroad. The Bribery Act 2010 shall have effect as if incorporated in these Standing Orders.
- 2 The Trust should have policies and procedures in place for the control of all tendering activity carried out through Reverse eAuctions. For further guidance see www.ogc.gov.uk.
- 3 The Trust shall comply as far as is practicable with the requirements of the Department of Health "Capital Investment Manual" and "Estatecode" and associated relevant guidance issued by Monitor in respect of capital investment and estate and property transactions. In the case of management consultancy contracts the Trust shall comply as far as is practicable with Department of Health guidance "The Procurement and Management of Consultants within the NHS". The Trust will also comply with the Guidance from Monitor entitled "Best Practice in Making Investments" and the Regulatory Framework.
- 4 The Tendering and Contract Procedure is governed by 3 ranges of expenditure:
 - 4.1 Formal Competitive Tendering details are contained in SO 9.3.
 - 4.2 Competitive Quotations details are contained in SO 9.13.; and
 - 4.3 Expenditure where Tendering or Competitive Quotations are not required (details are contained in SO 10).

Part III Formal Competitive Tendering

- 1 The Trust shall ensure that competitive tenders are invited for the supply of goods, materials and manufactured articles and for the rendering of services including all forms of management consultancy services (other than specialised services sought from or provided by the Department of Health); for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals.
- 2 Formal tendering procedures need not be applied where:
 - 2.1 the estimated expenditure or income does not, or is not reasonably expected to, exceed £50,000 (this figure to be reviewed annually); or
 - 2.2 the supply is proposed under special arrangements negotiated by the Department of Health in which event the said special arrangements must be complied with;

- 3 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 (SO 9.3.3.5) to (SO 9.3.3.8) below) in the following circumstances:
 - 3.1 in very exceptional circumstances where the Chief Executive decides that formal tendering procedures would not be practicable or the estimated expenditure or income would not warrant formal tendering procedures, and the circumstances are detailed in an appropriate Trust record;
 - 3.2 where the requirement is covered by an existing contract;
 - 3.3 where NHS Purchasing and Supply Agency ("PASA") agreements are in place and have been approved by the Board;
 - 3.4 where a consortium arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members;
 - 3.5 where the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender;
 - 3.6 where after considering the specification specialist expertise is required and is available from only one source;
 - 3.7 where the task is essential to complete the project, **AND** arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate; or
 - 3.8 where 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;
 - 3.9 for the provision of legal advice and services providing that any legal firm or partnership commissioned by the Trust is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned; or
 - 3.10 where allowed and provided for in the Capital Investment Manual.
- 4 The waiving of competitive tendering procedures should not be used:
 - 4.1 to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure or
 - 4.2 for building and engineering construction works and maintenance (other than in accordance with Concode) without Departmental of Health approval.
- 5 Where it is decided that competitive tendering is not applicable and should be waived by virtue of SO 9.3.3.1 to SO 9.3.3.10 above the fact of the waiver and the reasons should be documented and recorded in an appropriate Trust record and reported by the Chief Executive to the Board of Directors and Audit Committee in a formal meeting.

- 6 Except where SO 9.3.3, or a requirement under SO 9.2, applies, the Board of Directors 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 two firms/individuals, having regard to their capacity to supply the goods or materials or to undertake the services or works required.
- 7 The Board of Directors shall ensure that normally the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists. Where in the opinion of the Finance Director it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive.
- 8 Items estimated to be below the limits set in this Standing Order for which formal tendering procedures are not used which subsequently prove to have a value above such limits shall be reported to the Chief Executive, and be recorded in an appropriate Trust record.
- 9 The Board of Directors shall review the Tendering Procedure at least every two years.

Part IV Invitation to tender

- 1 all invitations to tender shall state the date and time as being the latest time for the receipt of tenders;
- 2 all invitations to tender shall state that no tender will be accepted unless:
 - 2.1 submitted in a plain sealed package or envelope bearing a pre-printed label supplied by the Trust (or the word "tender" followed by the subject to which it relates) and the latest date and time for the receipt of such tender addressed to the Chief Executive or nominated Manager;
 - 2.2 that tender envelopes/ packages shall not bear any names or marks indicating the sender. The use of courier/postal services must not identify the sender on the envelope or on any receipt so required by the deliverer.
- 3 every tender for goods, materials, services or disposals shall embody such of the NHS Standard Contract Conditions as are applicable.
- 4 every tender for building or engineering works (except for maintenance work, when Estatecode guidance shall be followed) shall embody or be in the terms of the current edition of one of the Joint Contracts Tribunal Standard Forms of Building Contract or Department of the Environment (GC/Wks) Standard forms of contract amended to comply with Concode; or, when the content of the work is primarily engineering, the General Conditions of Contract recommended by the Institution of Mechanical and Electrical 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 Institute of Civil Engineers, the Association of Consulting Engineers and the Federation of Civil Engineering Contractors. These documents shall be modified and/or amplified to accord with guidance ISSUED BY Monitor and the Department of Health and, in minor respects, to cover special features of individual projects.

Part V Receipt and safe custody of tenders

- 1 The Chief Executive or his/her nominated representative will be responsible for the receipt, endorsement and safe custody of tenders received until the time appointed for their opening.

- 2 The date and time of receipt of each tender shall be endorsed on the tender envelope/package.

Part VI Opening tenders and Register of tenders

- 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 by two senior officers/managers designated by the Chief Executive and not from the originating department.
- 2 A member of the Trust Board will be required to be one of the two approved persons present for the opening of tenders estimated above £50,000 .The rules relating to the opening of tenders will need to be read in conjunction with any delegated authority set out in the Trust's Scheme of Delegation.
- 3 The 'originating' Department will be taken to mean the Department sponsoring or commissioning the tender.
- 4 The involvement of Finance Directorate staff in the preparation of a tender proposal will not preclude the Director of Finance or any approved Senior Manager from the Finance Directorate from serving as one of the two senior managers to open tenders.
- 5 All executive Directors/Members will be authorised to open tenders regardless of whether they are from the originating department provided that the other authorised person opening the tenders with them is not from the originating department.
- 6 The Secretary will count as a Director for the purposes of opening tenders.
- 7 Every tender received shall be marked with the date of opening and initialled by those present at the opening.
- 8 A register shall be maintained by the Chief Executive, or a person authorised by him/her, to show for each set of competitive tender invitations despatched:
 - 8.1 the name of all firms individuals invited;
 - 8.2 the names of firms individuals from which tenders have been received;
 - 8.3 the date the tenders were opened;
 - 8.4 the persons present at the opening;
 - 8.5 the price shown on each tender;
 - 8.6 a note where price alterations have been made on the tender;
- 9 Each entry to this register shall be signed by those present.
- 10 A note shall be made in the register if any one tender price has had so many alterations that it cannot be readily read or understood.
- 11 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/her own initiative either orally or in writing after the due time for receipt, but prior to the opening of other tenders, should be dealt with in the same way as late tenders. (SO 9.8 below).

Part VII Admissibility

- 1 If for any reason the designated officers are of the opinion that the tenders received are not strictly competitive (for example, because their numbers are insufficient or any are amended, incomplete or qualified) no contract shall be awarded without the approval of the Chief Executive.
- 2 Where only one tender is sought and/or received, the Chief Executive and Director of Finance shall, as far practicable, ensure that the price to be paid is fair and reasonable and will ensure value for money for the Trust.

Part VIII Late tenders

- 1 Tenders received after the due time and date, but prior to the opening of the other tenders, may be considered only if the Chief Executive or his/her Nominated Officer decides that there are exceptional circumstances i.e. despatched in good time but delayed through no fault of the tenderer.
- 2 Only in the most exceptional circumstances will a tender be considered which is received after the opening of the other tenders and only then if the tenders that have been duly opened have not left the custody of the Chief Executive or his/her Nominated Officer or if the process of evaluation and adjudication has not started.
- 3 While decisions as to the admissibility of late, incomplete or amended tenders are under consideration, the tender documents shall be kept strictly confidential, recorded, and held in safe custody by the Chief Executive or his/her Nominated Officer.

Part IX Acceptance of formal tenders

- 1 Any discussions with a tenderer which are deemed necessary to clarify technical aspects of his/her tender before the award of a contract will not disqualify the tender.
- 2 The lowest tender, if payment is to be made by the Trust, or the highest, if payment is to be received by the Trust, shall be accepted unless there are good and sufficient reasons to the contrary. Such reasons shall be set out in either the contract file, or other appropriate record.
- 3 It is accepted that for professional services such as management consultancy, the lowest price does not always represent the best value for money. Other factors affecting the success of a project include:
 - 3.1 experience and qualifications of team members;
 - 3.2 understanding of client's needs;
 - 3.3 feasibility and credibility of proposed approach;
 - 3.4 ability to complete the project on time.
- 4 Where other factors are taken into account in selecting a tenderer, these must be clearly recorded and documented in the contract file, and the reason(s) for not accepting the lowest tender clearly stated.

- 5 No tender shall be accepted which will commit expenditure in excess of that which has been allocated by the Trust and which is not in accordance with these Instructions except with the authorisation of the Chief Executive.
- 6 The use of these procedures must demonstrate that the award of the contract was:
 - 6.1 not in excess of the going market rate/price current at the time the contract was awarded ; and
 - 6.2 achieved best value for money
- 7 All tenders should be treated as confidential and should be retained for inspection.

Part X Tender reports to the Trust Board

- 1 Reports to the Trust Board will be made on an exceptional circumstance basis only.

Part XI List of approved firms

- 1 Responsibility for maintaining list of approved firms
 - 1.1 A manager nominated by the Chief Executive shall on behalf of the Trust maintain lists of approved firms from who tenders and quotations may be invited. These shall be kept under frequent review. The lists shall include all firms who have applied for permission to tender and as to whose technical and financial competence the Trust is satisfied. All suppliers must be made aware of the Trust's terms and conditions of contract.
- 2 Building and Engineering Construction Works
 - 2.1 Invitations to tender shall be made only to firms included on the approved list of tenderers compiled in accordance with this Instruction or on the separate maintenance lists compiled in accordance with Estatecode.
 - 2.2 Firms included on the approved list of tenderers shall ensure that when engaging, training, promoting or dismissing employees or in any conditions of employment, shall not discriminate against any person and shall act in accordance with all relevant employment legislation and guidance.
 - 2.3 Firms shall conform at least with the requirements of the Health and Safety at Work Act and any amending and/or other related legislation concerned with the health, safety and welfare of workers and other persons, and to any relevant British Standard Code of Practice issued by the British Standard Institution. Firms must provide to the appropriate manager a copy of its safety policy and evidence of the safety of plant and equipment, when requested.
- 3 Financial Standing and Technical Competence of Contractors
 - 3.1 The Director of Finance may make or institute any enquiries he/she deems appropriate concerning the financial standing and financial suitability of approved contractors. The Director with lead responsibility for clinical governance will similarly make such enquiries as is felt appropriate to be satisfied as to their technical/medical competence.

Part XII Exceptions to using approved contractors

- 1 If in the opinion of the Chief Executive and the Director of Finance or the Director with lead responsibility for clinical governance it is impractical to use a potential contractor from the list of approved firms/individuals (for example where specialist services or skills are required and there are insufficient suitable potential contractors on the list), or where a list for whatever reason has not been prepared, the Chief Executive should ensure that appropriate checks are carried out as to the technical and financial capability of those firms that are invited to tender or quote.
- 2 An appropriate record in the contract file should be made of the reasons for inviting a tender or quote other than from an approved list.

Part XIII Competitive Quotations

- 1 Quotations are required where formal tendering procedures need not be applied under SO 9.3.2 or where they have been waived under SO 9.3.3. and where the intended expenditure or income exceeds, or is reasonably expected to exceed £5000 but not exceed £50,000
- 2 Where quotations are required under SO 9.13.1 above they should be obtained from at least three firms/individuals based on specifications or terms of reference prepared by, or on behalf of, the Board of Directors
- 3 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.
- 4 All quotations should be treated as confidential and should be retained for inspection.
- 5 The Chief Executive or his Nominated Officer should evaluate the quotations and select the one which gives 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 and approved by the Chief Executive and the Director of Finance.

Part XIV Non-Competitive Quotations

- 1 Non-competitive quotations in writing may be obtained for the following purposes:
 - 1.1 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;
 - 1.2 the supply of goods or manufactured articles of any kind which are required quickly and are not obtainable under existing contracts, the approvals required for these courses of action will be by reference to the financial limits set out in Appendix 1 of the Standing Financial Instructions;
 - 1.3 miscellaneous services, supplies and disposals;
 - 1.4 where the goods or services are for building and engineering maintenance the responsible works manager must certify that the first two conditions of this Standing Order (i.e. SO 9.14.1.1 and SO 9.14.1.2) apply.

- 1.5 Where tenders or quotations are not required, because expenditure is below the limits set in Appendix 1 of the Standing Financial Instructions, the Trust shall procure goods and services in accordance with procurement procedures approved by the Board of Directors.
- 2 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house. The Board of Directors may also determine from time to time that in house services should be market tested by competitive tendering (SO 11).

Part XV Quotations to be within Financial Limits

- 1 No quotation shall be accepted which will commit expenditure in excess of that which has been allocated by the Trust and which is not in accordance with these Standing Orders except with the authorisation of either the Chief Executive or Director of Finance.

Part XVI Authorisation of Tenders and Competitive Quotations

- 1 Providing all the conditions and circumstances set out in these Standing Orders have been fully complied with, formal authorisation and awarding of a contract may be decided by the following staff to the value of the contract as follows:

1.1 Contracts awarded to the lowest bidder

1.1.1 Below £50,000 - Main List Authorised Signatory

1.1.2 Above £50,000 - Main List Authorised Signatory and an executive Director

1.2 Contracts not awarded to lowest bidder

1.2.1 Below £50,000 - Director of Finance or Chief Executive

1.2.2 Above £50,000 - Chief Executive and Chair (and reported to Board)

1.3 Contracts above £1,000,000 (over the full period of the contract) need to be approved by the Board.

- 2 These levels of authorisation may be varied or changed and need to be read in conjunction with the Trust Board's Scheme of Delegation.
- 3 Formal authorisation must be put in writing. In the case of authorisation by the Trust Board this shall be recorded in their minutes.

Part XVII Instances where formal competitive tendering or competitive quotation is not required

- 1 Where competitive tendering or a competitive quotation is not required the Trust should adopt one of the following alternatives:

- 1.1 the Trust shall use the NHS Supply Chain for procurement of all goods and services unless the Chief Executive or nominated officers deem it inappropriate. The decision to use alternative sources must be documented;
- 1.2 if the Trust does not use the NHS Supply Chain - where tenders or quotations are not required, because expenditure is below £5,000, the Trust shall procure goods and services in accordance with procurement procedures approved by the Director of Finance.

Part XVIII Private Finance

- 1 The Trust should normally market-test for PFI (Private Finance Initiative funding) when considering a capital procurement. When the Board of Directors proposes, or is required, to use finance provided by the private sector the following should apply:
 - 1.1 The Chief Executive and Finance Director shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector.
 - 1.2 Where the sum exceeds delegated limits, a business case must be referred to Monitor and/or the Department of Health for approval or treated as per current guidelines.
 - 1.3 The proposal must be specifically agreed by the Board of Directors in the light of such professional advice as should reasonably be sought in particular with regard to *vires*.
 - 1.4 The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.

Part XIX Compliance Requirements for all Contracts (including lease contracts)

- 1 The Board may only enter into contracts on behalf of the Trust within its statutory powers and within the Regulatory Framework and shall comply with:
 - 1.1 these Standing Orders;
 - 1.2 the Trust's Standing Financial Instructions;
 - 1.3 EU Directives and other statutory provisions;
 - 1.4 any relevant directions including the Capital Investment Manual and guidance on the Procurement and Management of Consultants;
 - 1.5 such of the NHS Standard Contract Conditions as are applicable;
 - 1.6 appropriate NHS guidance
 - 1.7 the guidance from Monitor entitled "Best Practice in Making Investments"; and
 - 1.8 any other relevant Monitor guidance.
- 2 Where appropriate contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited.

- 3 Contracts shall include lease and hire purchase agreements.
- 4 In all contracts made by the Trust, the Board shall endeavor to obtain value for money by use of all systems in place. The Chief Executive shall nominate an Officer who shall oversee and manage each contract on behalf of the Trust.

Part XX Personnel and Agency or Temporary Staff Contracts

- 1 The Chief Executive shall nominate Officers with delegated authority to enter into contracts for the employment of other Officers and enter into contracts for the employment of agency staff or temporary staff service contracts.

Part XXI Healthcare Services Agreements

- 1 Healthcare Services contracts made between two NHS organisations for the supply of healthcare services, will be legally binding contracts based on the models issued by the Department of Health.
- 2 The Chief Executive shall nominate Officers with power to negotiate for the provision of healthcare services with purchasers of healthcare.

Part XXII Cancellation of Contracts

- 1 Except where specific provision is made in model forms of contracts or standard schedules of conditions approved for use within the NHS, there shall be inserted in every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if:
 - 1.1 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
 - 1.2 for showing or forbearing to show favour or disfavor 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
 - 1.3 if in relation to any contract with the Trust the contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1989 and 1916 and other appropriate legislation.

Part XXIII Determination of Contracts for Failure to Deliver Goods or Material

- 1 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.
- 2 The clause referred to at SO 9.23.1 above 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.

Part XXIV Contracts Involving Funds held on Trust

- 1 Contracts involving Funds held on Trust shall do so individually to a specific named fund. Such contracts involving charitable funds shall comply with the requirements of the Charities Acts.
- 2 SO 9.24.1 above shall not only apply to expenditure from Exchequer funds but also to works, services and goods purchased from the Trust's trust funds and private resources.

SCHEDULE 10 DISPOSALS

Part I Competitive Tendering or Quotation procedures shall not apply to the disposal of:

- 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;
- 2 obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust;
- 3 items to be disposed of with an estimated sale value of less than £5,000 this figure to be reviewed periodically but at least once annually;
- 4 items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;
- 5 land or buildings concerning which Department of Health guidance has been issued but subject to compliance with such guidance; or
- 6 any matter which Monitor has issued alternate specific guidance in relation to.

SCHEDULE 11 IN-HOUSE SERVICES

Part I The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided on an in-house basis. The Trust may also determine from time to time that in-house services should be market tested by competitive tendering.

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

- 1 Specification group, comprising the Chief Executive or Nominated Officer(s) and specialist(s).
- 2 In-house tender group, comprising representatives of the in-house team, a nominee of the Chief Executive and technical support.
- 3 Evaluation group, comprising normally a specialist Officer, a supplies Officer and a Finance Director representative. For services having a likely annual expenditure exceeding £100,000 a non-Officer member should be a member of the evaluation team.

Part III All groups should work independently of each other but individual Officers may be a member of more than one group. No member of the in-house tender group may, however, participate in the evaluation of tenders.

Part IV The evaluation group shall make recommendations to the Board of Directors.

Part V The Chief Executive shall nominate an Officer to oversee and manage the contract.

SCHEDULE 12 CUSTODY OF SEAL AND SEALING OF DOCUMENTS

Part I Custody of Seal

- 1 The Common Seal of the Trust shall be kept by the Chief Executive or Nominated Officer in a secure place.

Part II Sealing of Documents

- 1 The Common Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board of Directors or of a committee, thereof or where the Board of Directors has delegated its powers.
- 2 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Finance Director (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).

Part III Register of Sealing

- 1 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Board of Directors at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

SCHEDULE 13 SIGNATURE OF DOCUMENTS

Part I 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.

Part II The Chief Executive or Nominated Officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Directors or committee or sub-committee to which the Board of Directors has delegated appropriate authority.

SCHEDULE 14 MISCELLANEOUS

Part I Standing Orders to be given to Members and Officers

- 1 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 of the Standing Orders.

Part II Documents having the standing of Standing Orders

- 1 Standing Financial Instructions and the Scheme of Delegation shall have the effect as if incorporated into the Standing Orders.

Part III Review of Standing Orders

- 1 Standing Orders shall be reviewed annually by the Trust. The requirement for review extends to all documents having the effect as if incorporated into the Standing Orders.

Part IV Corporate Documents – **Specific to the setting up of the Trust shall be held in a secure place by the Chief Executive.**

ANNEX 8 - FURTHER PROVISIONS

(Paragraphs 3, 7, 9, 12, 13, 21 and 40)

Appendix 1:

NHS and Trust Core Principles

1 NHS Core Principles

- 1.1 The NHS will provide a universal service for all based on clinical need, not ability to pay.
- 1.2 The NHS will provide a comprehensive range of services.
- 1.3 The NHS will shape its services around the needs and preferences of individual patients, their families and their carers.
- 1.4 The NHS will respond to different needs of different populations.
- 1.5 The NHS will work continuously to improve the quality of services and to minimise errors.
- 1.6 The NHS will support and value its staff.
- 1.7 The NHS will work together with others to ensure a seamless service for patients.
- 1.8 The NHS will help keep people healthy and work to reduce health inequalities.
- 1.9 The NHS will respect the confidentiality of individual patients and provide open access to information about services, treatment and performance.

2 Trust Core Principles

The Vision for Taunton and Somerset NHS Trust is: “To provide a high level of service and quality previously unknown in this country.”

In achieving this vision the Trust will strive to put the following values at the heart of what it does and how this is done:

- **Compassion**

The Trust will put the needs of the patient at the centre of what it does

- **Partnership**

The Trust will work in partnership with patients, staff and stakeholders based on trust, honesty and fairness

- **Respect**

The Trust will have respect for the diversity and individuality of all people

- **Safety**

The Trust will make patient and staff safety its top priority for improvement

- **Stewardship**

The Trust will manage and improve the use of its resources and contribute to improving public health for the benefit of future generations

- **Excellence**

The Trust will seek to learn and continuously improve the service and quality of what it provides

- **Honesty**

The Trust will conduct itself in an open and honest manner in its relationships with the public and colleagues.

The strategic objectives of the Trust will be guided by the service principles below:

Quality

- Patient safety is at the heart of all decision-making within the hospital
- Patient outcomes match those of the best European standards
- Patients and carers experience the highest standards of care with services that are designed to meet their holistic needs at every stage of their journey

Access

- Patients can access services easily and without delay, and
- The hospital is seen as the first choice for the population served

Efficiency

- Services are provided that make the most efficient and effective use of available resources, including the expertise and experience of all staff.

3 Representative Membership

3.1 The Trust shall at all times strive to ensure that, taken as a whole, its actual membership is representative of those eligible for membership. To this end:

3.1.1 The Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors and shall be reviewed by them from time to time and at least every three years.

3.1.2 The Council of Governors shall present to each annual Members meeting:

3.1.2.1 a report on steps taken to secure that, taken as a whole, the actual membership of its constituencies and the classes of constituencies is representative of those eligible for such membership;

3.1.2.2 the progress of the membership strategy;

3.1.2.3 any changes to the membership strategy.

4 Co-operation with health service and other bodies

4.1 In exercising its functions the Trust shall co-operate with Health Service Bodies and any local authority with which the Trust has a Local Authority Partnership Agreement.

4.2 Notwithstanding the provisions of paragraph 4.1 above, the Trust shall co-operate with any specific third party body that it has a duty (statutory, contractual or otherwise) to co-operate with.

5 Respects for rights of people

5.1 In conducting its affairs, the Trust shall respect the rights of the members of the community it serves, its employees and people dealing with the Trust as set out in the Human Rights Act 1998.

Appendix 2:

Membership

1 Disqualification from membership of the Trust

- 1.1 A person may not be a Member of the Trust if they are under 16 years of age.
- 1.2 A person may not become or remain a Member of the Trust if he has demonstrated aggressive or violent behaviour at any Hospital and following such behaviour he has been asked to leave, has been removed or excluded from any Hospital in accordance with the relevant Trust policy for withholding treatment from violent/aggressive patients.
- 1.3 A person may not become or remain a Member of the Trust if they have been confirmed as a 'vexatious complainant' in accordance with the relevant Trust policy for handling complaints.
- 1.4 A person may not become or remain a Member of the Trust if they have been removed as a member from another NHS Foundation Trust.
- 1.5 A person may not become or remain a Member of the Trust if they are deemed to have acted in a manner contrary to the interests of the Trust.
- 1.6 Where the Trust is on notice that a Member may be disqualified from membership, or may no longer be eligible to be a Member the Secretary shall give the Member 14 days written notice to show cause why his name should not be removed from the register of Members. On receipt of any such information supplied by the Member, the Secretary may, if he considers it appropriate, remove the Member from the register of Members. In the event of any dispute the Secretary shall refer the matter to the Council of Governors to determine.
- 1.7 All Members of the Trust shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a Member.

2 Expulsion from membership of the Trust

- 2.1 A Member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted:
 - 2.1.1 Any Member may complain to the Secretary that another Member has acted in a way detrimental to the interests of the Trust, or is otherwise disqualified as set out in paragraph 1 above.
 - 2.1.2 If a complaint is made, the Council of Governors may itself consider the complaint, having taken such steps as it considers appropriate, to ensure that each Member's point of view is heard and may either:
 - 2.1.2.1 dismiss the complaint and take no further action; or
 - 2.1.2.2 arrange for a resolution to expel the Member complained of to be considered at the next meeting of the Council of Governors.

3 Termination of Membership

3.1 A Member shall cease to be a Member on:

3.1.1 death;

3.1.2 resignation by notice in writing to the Secretary;

3.1.3 ceasing to fulfil the requirements of paragraphs 7 or 8 of the Constitution, as the case may be;

3.1.4 being disqualified pursuant to paragraph 1 above, or being expelled pursuant to paragraph 2 above.

Appendix 3:

Board of Directors – Further Provisions

1 Appointment of Chairman and non-executive Directors

- 1.1 The Council of Governors shall appoint as the initial Chairman and non-executive Directors of the Trust, the chairman and non-executive Directors of the Applicant NHS Trust for the unexpired period of their respective terms of office as chairman or non-executive Director of the Applicant NHS Trust, or twelve months whichever is the longer unless they notify the Council of Governors that they do not wish to be appointed.
- 1.2 Subject to the provisions of paragraph 1.1 of Appendix 3 above, the process for appointing new non-executive Directors and the Chairman will be as set out in paragraphs 1.2.1 – 1.2.8 below. For the re-appointment of a Chair or Non-Executive for a second term of office see also para 1.3 below:
 - 1.2.1 The Chairman and other non-executive Directors are to be appointed by the Council of Governors following a process of open competition. The current Chairman or a non-executive Director may stand for reappointment
 - 1.2.2 Six months before the end of the term of office of the Chairman or a non-executive Director (as the case may be), the Council of Governors will appoint an Appointment Committee to seek a suitable replacement. The Appointment Committee will be constituted in accordance with paragraphs 1.2.5 and 1.2.6 of Appendix 3 below.
 - 1.2.3 Notwithstanding the provisions of paragraph 1.2.2 of Appendix 3 above, the post will be advertised save for in the case of re-appointment for a second term where the conditions for appointment have been met. See 1.3 below.
 - 1.2.4 The Appointment Committee will make recommendations to the Council of Governors, including recommendations about pay.
 - 1.2.5 The Appointment Committee for the Chairman will consist of three Public Governors, one Staff Governor, and one Appointed Governor. If the number of Governors prepared to serve on the Appointment Committee is greater than the number of places available, the committee members will be selected by election by their peer Governors. The Senior Independent Director will chair the Appointment Committee. Each member of the Appointment Committee will have one vote with the exception of the Senior Independent Director.
 - 1.2.6 The Appointment Committee for the non-executive Directors will consist of the Chairman, two Public Governors, one Staff Governor, and one Appointed Governor. The Chief Executive will attend in an advisory capacity only. If the number of Governors prepared to serve on the Appointment Committee is greater than the number of places available, the committee members will be selected by election by their peer Governors. The Chairman will chair the Appointment Committee. Each member of the Appointment Committee will have one vote.

- 1.2.7 The Appointment Committees constituted under paragraphs 1.2.5 and 1.2.6 of Appendix 3 above will be supported by appropriate advice from the Trust's Director for Staff.
- 1.2.8 The Council of Governors will not consider nominations for membership of the Board of Directors other than those made by the appropriate Appointment Committee.
- 1.3 Subject to the provisions of paragraph 1.2 above, the process for the re-appointment of a Chair or non-executive Director for a second term should be as follows:
- 1.3.1 The Chair of non-executive Director will be considered for re-appointment for a second term of three years unless one of the following applies:
- (i) One or more unsatisfactory appraisals
 - (ii) The Chair/non-executive Director does not wish to be considered for a second term.
- 1.3.2 The Appointment Committee, as set out in paragraphs 1.2.5-1.2.7 above, shall consider the re-appointment of the Chair or non-executive Director, taking into account the job description and person specification and the Trust Board's recommendation on the balance of skills on the Board, and make a recommendation to the Council of Governors to appoint or to undertake a recruitment and selection process as set out in para 1.2 above.
- 1.4 Non-Executive Directors, including the Chairman, may serve longer than six years subject to annual re-appointment and this requirement for annual re-appointment makes it clear that this should be the exception rather than the norm.
- 1.5 The Council of Governors and Appointment Committee should together agree a clear process for re-appointing existing Non-Executive Directors, including the Chairman, and this process should include receiving appropriate advice from within the Board of Directors.
- 1.6 As part of the appointment / re-appointment process, the Council of Governors should consider:
- (i) The requirements of the Trust's Constitution, regarding the number of non-executive directors;
 - (ii) The independence of non-executive directors;
 - (iii) Any specific skills and experience requirements;
 - (iv) The balance of executive and independent non-executive directors on the Board of Directors.

The Council of Governors should also consider and agree that exceptional circumstances apply in relation to the annual re-appointment of a NED who has already served two terms.

- 1.7 The procedure for all appointments or re-appointments for a non-executive Director, including the Chairman, must be formal, rigorous and transparent. The Appointment Committee should at all times take into account the best practice contained in the

Monitor NHS Foundation Trust Code of Governance when determining the governance arrangements of the Trust.

Appendix 4:

Further Provisions – General

1 Indemnity

- 1.1 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 functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 1.2 The Trust may take out insurance either through the NHS Litigation Authority or otherwise in respect of directors and officers liability, including liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

2 Dispute Resolution Procedures

- 2.1 In the event of any dispute about the entitlement to membership the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the Member or applicant (as the case may be) is aggrieved at the decision of the Secretary he may appeal in writing within 14 days of the Secretary's decision to the Council of Governors whose decision shall be final.
- 2.2 In the event of dispute between the Council of Governors and the Board of Directors:
 - 2.2.1 in the first instance the Chairman on the advice of the Secretary, and such other advice as the Chairman may see fit to obtain, shall seek to resolve the dispute;
 - 2.2.2 if the Chairman is unable to resolve the dispute he shall appoint a special committee comprising equal numbers of Directors and Governors to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute;
 - 2.2.3 if the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Chairman may refer the dispute back to the Board of Directors who shall make the final decision.