

SOMERSET NHS FOUNDATION TRUST

STANDING ORDERS

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1. INTRODUCTION

- 1.1. The Somerset NHS Foundation Trust (the "Trust") (previously known as the Somerset Partnership NHS Foundation Trust) became a Public Benefit Corporation on 1 May 2008 following authorisation by Monitor pursuant to the National Health Service Act 2006 (the "2006 Act") and this Authorisation is of unlimited duration.
- 1.1. The principal place of business of the Trust is currently at Yeovil District Hospital, Higher Kingston, Yeovil, Somerset, BA21 4AT.
- 1.2. The Trust is governed by the 2006 Act, its Constitution and the terms of its Provider Licence granted by NHS Improvement (Monitor) (the Regulatory Framework). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Trust Board and the Council of Governors of the Trust to adopt SOs for the regulation of its proceedings and business.
- 1.3. The Trust applies the principles of the NHS Foundation Trust Code of Governance, most recently revised in July 2014, which is based upon the principles of the UK Corporate Governance Code issues in 2012.
- 1.4. The SOs, Scheme of Delegation and SFIs provide a comprehensive business framework. All Executive Directors and Non-Executive Directors, all members of staff, and Governors should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.
- 1.5. As a Public Benefit Corporation, the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.
- 1.6. The Trust has a number of wholly and partially owned corporate entities. These corporate entities are separate, distinct legal entities for commercial purposes and have distinct taxation, regulatory and liability obligations. As separate, independent corporate entities, they are subject to their own governance arrangements, which are the responsibility of the relevant entity's management structure, and therefore these Standing Orders are not applicable. For avoidance of doubt, any matter reserved to the Trust in relation to such corporate entities will be treated as an item of the Trust and will be considered in accordance with these Standing Orders.

- 1.7. 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 Wicks Committee) and that they will adhere to the principles set out within the Independent Commission's Good Governance Standard for Public Service, and the Care Quality Commission's Fit and Proper Person regulations. They will also ensure that they follow the best practice advice set out in the NHS Foundation Trust Code of Governance 2006 (the "Code") published by Monitor that sets out the overarching framework for compliance with the Regulatory Framework.

- 1.8. The Trust shall deal with NHS England/Improvement (Monitor) in an open and co-operative manner and shall promptly notify NHS England/Improvement (Monitor) of anything relating to the Trust of which NHS England/Improvement (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 Provider Licence or any financial or performance thresholds which NHS England/Improvement (Monitor) may specify from time to time.

ANNEX 1 - STANDING ORDERS FOR THE COUNCIL OF GOVERNORS

(Ref. Paragraphs 19, 20 and 21)

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1. DEFINITIONS

1.1. In these Standing Orders:

Annual Meeting

means a general meeting of the Council of Governors at which the annual accounts, annual report and external auditors' opinions are presented to the Council of Governors.

Clear Day

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

Code of Conduct

means any code which the Trust may publish from time to time to govern or guide the conduct of the Council of Governors, Directors and Officers of the Trust.

Appointments Panel

means the Panel established in accordance with Annex 3.

Officer

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

Returning Officer

means an employee of the Trust or any other person holding a paid appointment or office with the Trust who is administering and counting the e-mail votes for the issue(s) to be voted upon.

2. INTERPRETATION

- 2.1. Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these SOs shall bear the same meaning as in the constitution.
- 2.2. for the purposes of these SOs, the "board" means the Board of Directors and the "Council" means the Council of Governors.

3. THE COUNCIL OF GOVERNORS

- 3.1. The roles and responsibilities of the Governors as set out in paragraph 24 of the Constitution also have effect as if incorporated into the SOs. 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 23, 24, 26 and 50.

- 3.2. The roles and responsibilities of the Council are to be carried out in accordance with the Regulatory Framework include the following:
 - 3.2.1. to hold the Board to account for the performance of the Trust;
 - 3.2.2. to respond as appropriate when consulted by the Board in accordance with the Constitution; and
 - 3.2.3. to prepare and from time to time review the Trust's membership strategy.
- 3.3. The Council and each Governor individually shall at all times seek to comply with the Trust's Code of Governance and the Code of Conduct for the Council.

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. The Chairman shall give such directions as he thinks fit (including a decision to expel or exclude any member of the public and/or press if the individual in question is interfering with or preventing the proper conduct of the meeting).
- 4.1.3. Nothing in these SOs 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 Chairman.
- 4.1.4. Matters to be dealt with by the Board or the Council following the exclusion of the public and representatives of the press under SO 4.1.1 above shall be confidential to the Governors.

Members of the Council and others in attendance at the request of the person chairing the meeting shall not reveal or disclose the content of papers or reports presented, or any discussion on these generally, which take place while the public and press are excluded, without the express permission of the Chairman.

- 4.1.5. The Chairman (or Deputy Chairman) will decide what arrangements and terms and conditions they feel are appropriate to offer in extending an invitation to observers, advisors and others to attend and address any meeting of the Board or the Council (as relevant), and may change, alter or vary these terms and conditions as it deems fit.

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 (four) meetings in any year including:

4.2.1.1. an annual meeting no later than the 30 September in each 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. Not less than 8 (eight) Governors may by notice in writing to the Secretary requisition an extraordinary meeting of the Council of Governors and on receipt of such notice the Secretary shall cause such a meeting to be called within 5 (five) working days of receipt of the notice.

- 4.2.3. The Council of Governors may invite the Chief Executive, member of the Board of Directors or a representative of the financial auditor or other advisors to attend a meeting of the Council of Governors.

- 4.2.4. The Council of Governors may agree that its Governors can participate in its meetings by telephone or video link. Participation in a meeting in this manner shall be deemed to be exceptional but shall constitute presence in person at the meeting for the purposes of SO 4.16 (Quorum).

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 their behalf, shall be delivered to, or sent by post to the usual place of residence of every Governor, so as to be available to them at least four (4) 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 four (4) 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 five 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 or in the case of a notice being sent electronically, on the date of transmission.
- 4.3.4. In the case of a meeting called by Governors in default of the Secretary, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the requisition.

4.4. Setting the Agenda

- 4.4.1. 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.
- 4.4.2. A Governor 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 their request in writing to the Chairman at least 10 (ten) 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 (ten) Clear Days before a meeting may be included on the agenda at the discretion of the Chairman.

4.5. Petitions

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

4.6. **Written Motions**

- 4.6.1. In urgent situations and with the consent of the Chairman, business may be effected by a Governor's written motion to deal with business otherwise required to be conducted at a meeting of the Council of Governors.
- 4.6.2. If all Governors of the Council of Governors have been notified of the proposal and a simple majority of Governors entitled to attend and vote at a meeting of the Council of Governors confirms acceptance of the written motion either in writing or electronically to the Secretary within 5 (five) Clear Days of dispatch then the motion will be deemed to have been resolved, notwithstanding that the Governors have not gathered in one place.
- 4.6.3. The effective date of the resolution shall be the date that the last confirmation is received by the Secretary and, until that date, a Governor who has previously indicated acceptance can withdraw, and the motion shall fail.
- 4.6.4. Once the resolution has been passed, a copy certified by the Secretary shall be recorded in the minutes of the next ensuing meeting where it shall be signed by the person presiding at it.
- 4.6.5. Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six (6) calendar months shall bear the signature of the Governor or Director who gives it and also the signature of four (4) other Governors or Directors. When any such motion has been disposed of by the Council or the Board, it shall not be competent for any Governor or Director other than the Chairman to propose a motion to the same effect within six (6) months, however the Chairman may do so if he considers it appropriate.
- 4.6.6. The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.6.7. When a motion is under discussion or immediately prior to discussion it shall be open to a Governor or Director (as relevant) to move:
 - 4.6.7.1. An amendment to the motion.
 - 4.6.7.2. The adjournment of the discussion or the meeting.
 - 4.6.7.3. That the meeting proceed to the next business (*).
 - 4.6.7.4. The appointment of an ad hoc committee to deal with a specific item of business.

- 4.6.7.5. That the motion be now put to a vote (*).
- 4.6.7.6. That the public be excluded from the meeting in relation to the discussion concerning the proposition under SO 4.1.1.
- 4.6.8. In the case of SOs denoted by (*) above, to ensure objectivity motions may only be put by a Governor or a Director who has not previously taken part in the debate.
- 4.6.9. A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.
- 4.6.10. No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

4.7. Chairman of Meeting

- 4.7.1. At any meeting of the Council of Governors, 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 Deputy Chairman shall preside.
- 4.7.3. If the Deputy Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director shall preside.
- 4.7.4. Where it has been determined by the Chair that it is inappropriate for the Chairman or any non-executive director to chair the meeting, the Lead or Deputy Lead Governor shall preside.

4.8. Agenda

- 4.8.1. Where a Governor has requested inclusion of a matter on the agenda in accordance with SO 4.4.2 above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this SO 4.8 shall apply in respect of the proposition.
- 4.8.2. The Council may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted ("Standing Items").
- 4.8.3. 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 (three) Clear Days before the meeting, save in the case of emergencies. It is the responsibility of the Chairman to ensure that sufficient information is provided to Governors to ensure that rational discussion can take place.

4.8.4. 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 SO 4.3 shall not prevent the calling of or invalidate such meeting provided that every effort is made to contact Governors 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.

4.8.5. No business may be transacted at any meeting of the Council which is not specified in the notice of that meeting unless the Chairman, in his absolute discretion, agrees that the item and (where relevant) any supporting papers should be considered by the Council as a matter of urgency. A decision by the Chairman to permit consideration of the item in question and (where relevant) the supporting papers shall be recorded in the minutes of that meeting.

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 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 the 12 months prior to the commencement of the meeting they have:

4.11.2. made a declaration that they are a member of the constituency which elected them; or

4.11.3. if the Governor is an Appointed Governor, they are not prevented from being a governor of the Council

of Governors by paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution.

- 4.11.4. Such declaration will be in the form as set out in paragraph 18 of the Constitution.
- 4.11.5. Subject to SO 4.11.7 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.
- 4.11.6. 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 second or casting vote.
- 4.11.7. 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.
- 4.11.8. If at least one-third of the Governors present so request, the voting (other than by paper ballot or e-mail vote) on any question may be recorded to show how each Governor present voted or abstained.
- 4.11.9. If a Governor so requests, their vote shall be recorded by name upon any vote (other than by paper ballot or e-mail vote).
- 4.11.10. Subject to SO 4.17, 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 but a Governor is considered to have been present at the meeting if they took part by telephone or video link and so is therefore entitled to vote. For the avoidance of doubt, SO 4.11.11 does not apply if an e-mail vote is required under SO 4.17.
- 4.11.11. In certain circumstances, 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 the elected Governors, approve the resolution in writing within the timescale imposed in such a notice.

4.12. Minutes

- 4.12.1. The minutes of the proceedings of a meeting shall be drawn up by the Secretary or a Nominated Officer and submitted for agreement at the next ensuing meeting of the

Council of Governors where they will be signed by the Chairman presiding at it.

- 4.12.2. No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 4.12.3. Minutes of meetings shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of SO 4.1.1 above.

4.13. Suspension of Standing Orders

- 4.13.1. Except where this would contravene any statutory provision or any guidance or best practice advice issued by NHS England/Improvement (Monitor), any one or more of the SOs 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.

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

- 4.13.1.2. A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Chairman and Governors.

- 4.13.1.3. No formal business may be transacted while the SOs are suspended.

- 4.13.1.4. The Audit Committee shall review every decision to suspend SOs.

4.14. Variation and Amendment of Standing Orders

- 4.14.1. Subject always to paragraph 54 of the Constitution, these SOs shall be amended only if:

- 4.14.1.1. a notice of proposal under SO 4.4.2 has been given; and

- 4.14.1.2. no fewer than half the total number of Governors vote in favour of amendment; and

- 4.14.1.3. no fewer than half of the total number of Governors is present; and

4.14.1.4. the variation proposed has been approved by the Council of Governors and does not contravene a statutory provision or guidance issued by NHS England/Improvement (Monitor) or the Constitution.

4.15. Record of Attendance

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

4.16. Quorum

4.16.1. No business shall be transacted at a meeting unless at least half of the Governors are present, and of these not less than half shall be Governors elected from the Public or appointed by non Health Service Bodies.

4.16.2. 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 period of 5 (five) Clear Days and upon reconvening, those present shall constitute a quorum.

4.16.3. 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 SO 6, they 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.

4.16.4. At all times all questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined in the first instance by oral expression or by a show of hands, unless the Chairman uses their discretion under SO 4.17 to hold an e-mail vote. At all times, no Governor may vote by proxy.

4.16.5. Chairman's discretion to hold an e-mail vote may be exercised at any time, and for any reason in consultation with the Lead Governor.

4.16.6. If the Chairman exercises their discretion to hold an e-mail vote, then the Governors must vote by e-mail by sending their e-mail vote back to the Returning Officer by the Deadline Date (as prescribed under SO 4.17 and as agreed

with the Lead Governor). For the avoidance of doubt, if the Chairman exercises their discretion to hold an e-mail vote, this e-mail vote will form the only method of voting.

4.16.7. Individual Governor may only cast one vote on the issue(s) to be voted on unless a second further vote is required owing to any previous vote not being passed in accordance with SO 4.11.5. Once an e-mail vote has been cast by a Governor in accordance with SO 4.17, the vote cannot be revoked or altered in any way.

4.17. Protocol for Voting by e-mail

4.17.1. The Returning Officer is to e-mail a notice of the e-mail vote stating:

4.17.1.1. The details of the issue(s) to be voted upon.

4.17.1.2. The date and time at which the e-mail votes are required to be sent out to the Governors.

4.17.1.3. The e-mail address for return of e-mail votes including the date and time by which they must be received by the Returning Officer (“Deadline Date”) and

4.17.1.4. The contact details of the Returning Officer.

4.17.2. As soon as is reasonably practicable on or after the e-mail of the notice of the e-mail vote, the Returning Officer is to e-mail to the valid e-mail address of every Governor, the following information:

4.17.2.1. A ballot paper attachment in accessible electronic format with clear instructions as to how to cast their vote by e-mail.

4.17.2.2. A Declaration of Eligibility form (if required). This form may be combined with the ballot paper.

4.17.2.3. Information about the issue(s) to be voted upon.

4.17.2.4. A covering e-mail providing:

4.17.2.4.1. The e-mail address for return of the ballot paper.

4.17.2.4.2. Clear instructions instructing the voter as to how to return their e-mail vote to the Returning Officer by the

Deadline Date (“e-mail voting information”).

5. COMMITTEES

- 5.1. Subject to any guidance as may be issued by NHS England/Improvement (Monitor), the Council of Governors may and, if directed by NHS England/Improvement (Monitor), shall appoint committees of the Council of Governors consisting wholly or partly of its members to assist it in the proper performance of its functions under the Regulatory Framework.
- 5.2. The Council may not delegate any of its powers to a committee or sub-committee, but it may appoint committees consisting of its members, Directors and other persons to assist the Council in carrying out its functions. The Council may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.
- 5.3. All decisions taken in good faith at the meeting of the Council of Governors or at any meeting of a committee shall be valid even if it is subsequently discovered that there was a defect in the calling of the meeting or the appointment of the Governors attending the meeting.
- 5.4. A committee appointed under SO 5 may, subject to such directions as may be given by the Council of Governors, appoint sub-committees consisting wholly or partly of members of the committee.
- 5.5. These SOs, 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.
- 5.6. 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 guidance or best practice advice issued by NHS England/Improvement (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.
- 5.7. 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.

- 5.8. Any committee or sub-committee established under this SO 5 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 in paragraph 53 of the Constitution.
- 5.9. The Council of Governors shall approve the appointments to each of the committees which it has formally constituted.
- 5.10. 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 NHS England/Improvement (Monitor).
- 5.11. 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 NHS England/Improvement (Monitor).
- 5.12. The Council of Governors may appoint Governors to serve on joint committees with the Board of Directors or committees of the Board of Directors.
- 5.13. In making any recommendations, a committee of the Council must have due regard to the established policies of the Council and shall not depart from them without due reason and consideration. Any such departure and the reason for it shall be drawn to the attention of the Council at the earliest opportunity. The Council requires its committee to refer back to them for a decision.
- 5.14. In consideration of any recommendation, a committee of the Council must comply with:
- 5.14.1. The Trust's Standing Financial Instructions, SOs and written procedures and specific reference to the relevant sections of these documents should be made.
- 5.14.2. Any statutory provisions or requirements.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

6.1. Declaration of Interests

- 6.1.1. The Regulatory Framework requires each Governor to declare to the Secretary:
 - 6.1.1.1. any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in SO 6.2.1; and
 - 6.1.1.2. any actual or potential pecuniary interest, direct or indirect, in any matter concerning the Trust, as described in SOs 6.2.3 and 6.2.4; and
 - 6.1.1.3. any actual or potential family interest, direct or indirect, of which the Governor is aware, as described in SO 6.2.6.
- 6.1.2. 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, and in a form prescribed by the Secretary which shall be included as Schedule A to these SOs.
- 6.1.3. 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, they 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.
- 6.1.4. If a Governor has a pecuniary interest, whether direct or indirect, or any material non-financial interest in any contract, proposed contract or other matter which is under consideration by the Council of Governors, they shall disclose that to the rest of the Council of Governors as soon as they are aware of it.
- 6.1.5. At the time the interests are declared, they should be recorded in the Council of Governors meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 6.1.6. Subject to SO 6.2.5, if a Governor has declared a pecuniary interest (as described in SO 6.2.3 and 6.2.4 they shall not take part in the consideration or discussion of the matter.
- 6.1.7. This SO 6 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 they are also a Governor).

- 6.1.8. The interests of Governors in companies likely or possibly seeking to do business with the NHS should be published in the Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

6.2. Nature of Interests

- 6.2.1. Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by NHS England/Improvement (Monitor):
- 6.2.1.1. directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies); or
 - 6.2.1.2. ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS; or
 - 6.2.1.3. majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS; or
 - 6.2.1.4. a position of authority in a charity or voluntary organisation in the field of health and social care; or
 - 6.2.1.5. any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or
 - 6.2.1.6. 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.
- 6.2.2. For the avoidance of doubt, the following shall not be considered relevant and material for the purposes of these SOs:
- 6.2.2.1. Shares not exceeding 2% of the total share in issue held in any company whose shares are listed on any public exchange.
 - 6.2.2.2. An employment contract held by Staff Governors.
 - 6.2.2.3. An employment contract with the relevant local authority held by a Local Authority Governor.

- 6.2.2.4. An employment contract with a Partnership Organisation held by a Partnership Governor.
- 6.2.3. A Governor shall be treated as having indirectly a pecuniary interest in a matter, if:
 - 6.2.3.1. They, or a nominee of them, 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
 - 6.2.3.2. They are 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.
- 6.2.4. A Governor shall not be treated as having a pecuniary interest in any matter by reason only:
 - 6.2.4.1. of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body; or
 - 6.2.4.2. of an interest in any company, body or person with which they are 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
 - 6.2.4.3. of any travelling or other expenses or allowances payable to a Governor in accordance with the Constitution.
- 6.2.5. Where a Governor:
 - 6.2.5.1. has an indirect pecuniary interest in a matter by reason only of a beneficial interest in securities of a company or other body, and
 - 6.2.5.2. 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
 - 6.2.5.3. if the share capital is of more than one class, the total nominal value of shares of any one class in which they have 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 their duty to disclose their interest.

6.2.6. A family interest is an interest of an Immediate Family Member of a Governor which if it were the interest of that Governor would be a personal interest or a pecuniary interest of them.

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

6.3. Register of Governors

6.3.1. 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.

6.4. Register of Governors' Interests

6.4.1. 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.

7. STANDARDS OF BUSINESS CONDUCT

7.1. Governors of the Council of Governors shall comply with the NHS Foundation Trust Code of Governance, the Council of Governors' Code of Conduct and any guidance or best practice advice issued by NHS England/Improvement (Monitor).

8. APPOINTMENTS AND RECOMMENDATIONS

8.1. A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this SO 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.

- 8.2. Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee in question.
- 8.3. 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 them liable to instant dismissal.
- 8.4. The Chairman and every Governor shall disclose to the Chief Executive or their delegated officer any relationship between themselves and a candidate of whose candidature that Governor or Officer is aware. It shall be the duty of the Chief Executive or their delegated Officer to report to the Council of Governors any such disclosure made.
- 8.5. On appointment, Governors of the Council of Governors should disclose to the Council of Governors whether they are related to any other Governor of the Council of Governors or holder of any office in the Trust.
- 8.6. Where the relationship to a Governor of the Council of Governors of the Trust is disclosed, SO 6 shall apply.

9. MISCELLANEOUS

- 9.1. The Secretary shall provide a copy of these SOs to each Governor and endeavour to ensure that each Governor understands their responsibilities within these SOs.
- 9.2. These SOs including all documents having effect as if incorporated in them shall be reviewed annually by the Board of Directors and the Council of Governors.
- 9.3. If for any reason these SOs 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 SOs to the Chairman as soon as possible.

Schedule A

Prescribed Form of Declaration of Interests

Declaration to the Secretary of Somerset NHS Foundation Trust

Date [insert]

To the Secretary of Somerset NHS Foundation Trust

Dear [insert]

In fulfilment of the obligations imposed on me by paragraph 16 of the Constitution of the Somerset NHS Foundation Trust and the provisions of Standing Order 6 of the Standing Orders for the Council of Governors generally, 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 Trust's register of interests of the Governors of the Council of Governors.

Yours faithfully

[name]

ANNEX 2 - BOARD OF DIRECTORS STANDING ORDERS
(Ref. Paragraph 32)

CONTENTS:

1. INTERPRETATION
2. THE TRUST BOARD
3. MEETINGS OF THE TRUST
4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION
5. COMMITTEES
6. INTERFACE BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS
7. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS
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9. CUSTODY OF SEAL AND SEALING OF DOCUMENTS
10. SIGNATURE OF DOCUMENTS
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1 INTERPRETATION

- 1.1 Save as otherwise permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of SOs (on which they should be advised by the Chief Executive and Secretary).
- 1.2 Any expression to which a meaning is given in the 2006 Act or any regulations or orders made under the 2006 Act shall have the same meaning in these SOs and, in addition, defined terms used in these SOs have the same meaning as in the Constitution unless the context requires otherwise, or a contrary intention is evident.
- 1.3 Words importing the singular shall include the plural and vice-versa.
- 1.4 In these SOs:

“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 is shall be the Chief Executive.

“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 Deputy Chairman or any other non-executive appointed in accordance with paragraph 26 of the Constitution 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.

“Concode”

means a code of procedure for building and engineering contracts for the NHS.

“Constitution”

means the Constitution of the Trust, together with the Annexes and Appendices attached hereto as approved by NHS England/Improvement (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 Director of Finance 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 to the 2006 Act. Such funds may or may not be charitable.

“Member”

means a member of the Trust.

"Motion”

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

“NHS England/Improvement”

means the body corporate known as NHS England/Improvement (Monitor), the successor body of Monitor, as provided by Section 61 of the 2012 Act.

"Nominated Officer"

means an Officer charged with the responsibility for discharging specific tasks within the SOs and the SFIs.

“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 to the Trust”

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 regulatory guidance.

“SFIs”

means Standing Financial Instructions.

“SOs”

means these Standing Orders.

“the 2006 Act”

means the National Health Service Act 2006.

“Trust”

means the Somerset NHS Foundation Trust.

“Trust Headquarters”

means 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.

2 THE TRUST BOARD

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 All funds received in trust shall be in the name of the Trust as corporate trustee.
- 2.3 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 the Trust.
- 2.4 The Trust has the functions conferred on it by its Provider Licence issued by NHS Improvement (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 the Charity Commission. Accountability for non-charitable Funds held on Trust is only to NHS England/Improvement (Monitor).
- 2.5 The powers of the Trust established under statute shall be exercised by the Board of Directors meeting in public/ private session except as otherwise provided for in SO 4.

2.6 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 SOs.

2.7 **Composition of the Board of Directors**

2.7.1 In accordance with the Constitution, the Board of Directors is to comprise:

2.7.1.1 The following Non-Executive Directors:

2.7.1.1.1 the Chairman, and up to a maximum of 9 (nine) other Non-Executive Directors.

2.7.1.2 the following Executive Directors:

2.7.1.2.1 the Chief Executive who shall be the Accounting Officer, the Finance Director, and up to a maximum of 6 (six) other Directors as set out in paragraph 31 of the Constitution.

2.7.2 At meetings of the Board of Directors, 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 their absence, the Deputy Chairman) shall have a second or casting vote.

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

2.7.3.1 They are a member of the Public Constituency, and

2.7.3.2 They are not eligible by virtue of paragraph 34 of the Constitution or disqualified by virtue of paragraph 35.

2.7.4 The validity of any act of the Board of Directors is not affected by any vacancy among the Directors or any defect in the appointment of a Director.

2.7.5 The Chairman (in consultation with the Council of Governors) will appoint a Non-Executive Director as the "senior independent director", for such period not exceeding the remainder of their term as a Non-Executive Director as they may specify on appointing them.

2.7.6 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 Chairman (in consultation with the Council of Governors) will thereupon appoint another Non-Executive Director as "senior independent director" in accordance with the provisions in SO 2.7.5.

2.7.7 The "senior independent director" shall perform the role set out in the Code of Governance.

2.8 Register of Directors

2.8.1 In accordance with paragraphs 41 and 42 of the Constitution, the 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.

2.9 Appointment and Removal of the Chairman and other Non-Executive Directors

2.9.1 The Chairman and other Non-Executive Directors are to be appointed by the Council of Governors following a formal, rigorous and transparent procedure. 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 in Annex 3 for appointing the Chairman and the Non-Executive Directors.

2.9.2 The provisions of paragraph 32 of the Constitution apply to the removal of the Chairman or other Non-Executive Directors.

2.10 Remuneration and Terms of Office of the Chairman and Non-Executive Directors

2.10.1 The Chairman and the Non-Executive Directors are to be appointed for a period of office determined by the Council of Governors at a general meeting of the Council of Governors.

2.10.2 At the general meeting of the Council of Governors referred to at SO 2.10.1 the Council of Governors shall decide the:

2.10.2.1 period of office;

2.10.2.2 remuneration and allowances; and

2.10.2.3 other terms and conditions of office, including the job description, of the Chairman and other Non-Executive Directors.

2.11 Appointment and Powers of Deputy Chairman

2.11.1 For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman and in accordance with paragraph 36 of the Constitution, the Council of Governors shall appoint a Non-Executive Director to be Deputy Chairman for such period, not exceeding the remainder of their term as Non-Executive Director, as the Council of Governors may specify on appointing them.

2.11.2 Any Non-Executive Director so appointed may at any time resign from the office of Deputy Chairman by giving notice in writing to the Council of Governors. The Council of Governors may thereupon appoint another Non-Executive Director as Deputy Chairman in accordance with the provisions of SO 2.11.1.

2.11.3 Where the Chairman of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chairman owing to illness or any other cause, the Deputy Chairman will be "acting chairman" until a new Chairman is appointed or the existing Chairman resumes their duties, as the case may be; and references to the Chairman in these SOs shall, so long as there is no Chairman able to perform their duties, be taken to include references to the Deputy Chairman. Where both the Chairman and Deputy 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.

2.12 Remuneration and Terms of Office of the Chief Executive and Executive Directors

2.12.1 The Trust shall establish a committee of Non-Executive Directors in accordance with SO 33 to decide the:

2.12.1.1 remuneration and allowances; and

2.12.1.2 the other terms and conditions of office of the Chief Executive and other Executive Directors.

2.13 Disqualification

2.13.1 Directors are subject to the disqualification criteria included at paragraphs 34 and 35 of the Constitution.

3 MEETINGS OF THE TRUST

3.1 Admission of the Public and the Press

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 practicable after holding the meeting, the Board of Directors will send a copy of the minutes of the meeting to the Council of Governors. Want of service of the agenda and minutes of the Board meeting on any Governor shall not affect the validity of a meeting.

3.1.3 The public and representatives of the press shall be afforded facilities to attend public meetings of the Board of Directors 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”.

3.1.4 The Chairman shall give such directions as they 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.

3.1.5 Nothing in these SOs shall require the Board of Directors to allow members of the public or representative 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 Board of Directors.

3.1.6 Matters to be dealt with by the Board following the exclusion of the public and representatives of the press under SO 3.1.4

above shall be confidential to the Directors. Members of the Board and others in attendance at the request of the person chairing the meeting shall not reveal or disclose the content of papers or reports presented, or any discussion on these generally, which take place while the public and press are excluded, without the express permission of the Chairman.

- 3.1.7 The Chairman (or Deputy Chairman) will decide what arrangements and terms and conditions they feel are appropriate to offer in extending an invitation to observers, advisors and others to attend and address any meeting of the Board, and may change, alter or vary these terms and conditions as they deem fit.

3.2 Calling Meetings

- 3.2.1 Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.
- 3.2.2 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 them, or if, without so refusing, the Chairman does not call a meeting within 7 (seven) days after such requisition has been presented to them, such one third or more members of the Board of Directors may forthwith call a meeting.

3.3 Notice of Meetings

- 3.3.1 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 their behalf, shall be delivered to every Director, or sent by post and where possible by email to the usual place of residence of every Director, so as to be available to them at least 4 (four) Clear Days before the meeting.
- 3.3.2 Want of service of the notice on any member of the Board of Directors shall not affect the validity of a meeting.
- 3.3.3 In the case of a meeting called by the Directors in default of the Chairman, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.

- 3.3.4 Failure to serve such a notice on more than 3 (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.
- 3.3.5 In the event of an emergency giving rise to the need for an immediate meeting, SOs 3.3.1 to 3.3.4 shall not prevent the calling of such a meeting without the requisite 4 (four) 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.

3.4 Agendas

- 3.4.1 Agendas will be dispatched by post and by email to members of the Board of Directors 4 (four) Clear Days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than 3 (three) 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 dispatch.
- 3.4.2 Before each meeting of the Board of Directors (where SO 3.1.2 applies), a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's Headquarters at least 3 (three) Clear Days before the meeting.
- 3.4.3 No business may be transacted at any meeting of the Board of Directors which is not specified in the notice of that meeting unless the Chairman, in his absolute discretion, agrees that the item and (where relevant) any supporting papers should be considered by the Board as a matter of urgency. A decision by the Chairman to permit consideration of the item in question and (where relevant) the supporting papers shall be recorded in the minutes of that meeting.

3.5 Setting the Agenda

- 3.5.1 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.
- 3.5.2 A Director desiring a matter to be included on an agenda shall make their request in writing to the Chairman at least 10 (ten) Clear Days before the meeting, subject to SO 3.3. Requests

made less than 10 (ten) Clear Days before a meeting may be included on the agenda at the discretion of the Chairman. Agendas will be sent to Directors before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than 3 (three) Clear Days before the meeting, save in the case of emergencies. 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.

3.6 Petitions

3.6.1 Where a petition has been received by the Trust, the Chairman shall include the petition as an item for the agenda of the next meeting of the Board of Directors.

3.7 Chairman of Meeting

3.7.1 At any meeting of the Board of Directors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Deputy Chairman, if there is one and they are present, shall preside. If the Chairman and Deputy Chairman are absent such Non-Executive Director as the members of the Board of Directors present shall choose, shall preside.

3.7.2 If the Chairman is absent temporarily on the grounds of a declared conflict of interest, the Deputy-Chairman, if present, shall preside. If the Chairman and Deputy-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.

3.8 Chairman's Ruling

3.8.1 Statements of Directors made at meetings of the Trust shall be relevant to the matter under discussion at the material time, and subject to SO 1.1 the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

3.9 Notices of Motion

3.9.1 Subject to the provisions of SO 3.11 ('Motions: procedure at and during a meeting') and SO 3.12 ('Motion to rescind a resolution'), a member of the Board of Directors wishing to move or amend a motion shall send a written notice to the Chairman.

3.9.2 The notice shall be delivered at least 10 (ten) 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 SOs. Subject to SO 3.3.3, this SO shall not prevent any motion being moved without notice on any business mentioned on the agenda for the meeting.

3.10 Emergency Motions and Written Motions

3.10.1 Emergency Motions

3.10.1.1 Subject to the agreement of the Chairman, and subject also to the provision of SO 3.11 ('Motions: procedure at and during a meeting'), a member of the Board of Directors 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 of Directors at the commencement of the business of the meeting as an additional item included in the agenda. The Chairman's decision to include the item shall be final.

3.10.2 Written Motions

3.10.2.1 In urgent situations and with the consent of the Chairman, business may be effected by a Director's written motion to deal with business otherwise required to be conducted at a meeting of the Board of Directors.

3.10.2.2 If all members of the Board of Directors have been notified of the proposal and a simple majority of Directors entitled to attend and vote at a meeting of the Board of Directors confirms acceptance of the written motion either in writing or electronically to the Secretary within 5 (five) Clear Days of dispatch then the motion will be deemed to have been resolved notwithstanding that the Directors have not gathered in one place.

3.10.2.3 The effective date of the resolution shall be the date that the last confirmation is received by the Secretary and, until that date a Director who has previously indicated acceptance can withdraw and the motion shall fail.

3.10.2.4 Once the resolution is passed, a copy certified by the Secretary shall be recorded in the minutes of the next ensuing meeting where it shall be signed by the person presiding at it.

3.11 Motions: Procedure at and during a meeting

3.11.1 Who may propose

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

3.11.2 Contents of motions

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

3.11.2.1.1 the reception of a report;

3.11.2.1.2 consideration of any item of business before the Board of Directors;

3.11.2.1.3 the accuracy of minutes;

3.11.2.1.4 that the Board of Directors proceed to next business;

3.11.2.1.5 that the Board of Directors adjourn;

3.11.2.1.6 that the question be now put.

3.11.3 Amendments to motions

- 3.11.3.1 A motion for amendment shall not be discussed unless it has been proposed and seconded.

- 3.11.3.2 Amendments to motions shall be moved relevant to the motion and shall not have the effect of negating the motion before the Board of Directors.

- 3.11.3.3 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.

- 3.11.3.4 No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

3.11.4 Rights of reply to motions

3.11.4.1 Amendments

- 3.11.4.1.1. 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.

3.11.4.2 Substantive/original motion

- 3.11.4.2.1. The Director who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

3.11.5 Withdrawing a motion

- 3.11.5.1 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.

3.11.6 Motions once under debate

- 3.11.6.1 When a motion is under debate, no motion may be moved other than:
- 3.11.6.1.1. an amendment to the motion;
 - 3.11.6.1.2. the adjournment of the discussion, or the meeting;
 - 3.11.6.1.3. that the meeting proceed to the next business;
 - 3.11.6.1.4. that the question should be now put;
 - 3.11.6.1.5. the appointment of an 'ad hoc' committee to deal with a specific item of business;

3.11.6.1.6. a motion under SO 3.1.3 resolving to exclude the public (including the press); and

3.11.6.1.7. that a member be not further heard.

3.11.6.2 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 of Directors who has not taken part in the debate and who is eligible to vote.

3.11.6.3 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.

3.11.6.4 The mover of a motion shall have a maximum of 5 (five) minutes to move and 5 (five) 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 (five) minutes.

3.12 Motion to Rescind a Resolution

3.12.1 Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 (six) calendar months shall bear the signature of the member of the Board of Directors who gives it and also the signature of 4 (four) other members of the Board of Directors, and before considering any such motion of which notice shall have been given, the Board of Directors may refer the matter to any appropriate committee or the Chief Executive for recommendation.

3.12.2 When any such motion has been dealt with by the Board of Directors, it shall not be competent for any member of the Board of Directors other than the Chairman to propose a motion to the same effect within 6 (six) months however the Chairman may do so if he considers it appropriate. This SO shall not apply to motions moved in pursuance of a report or recommendations of a committee or the Chief Executive.

3.13 Voting

3.13.1 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. For any avoidance of doubt, for voting, there must not be more Executive Directors voting than Non-Executive Directors.

3.13.2 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.

3.13.3 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.

3.13.4 If a Director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).

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

3.13.6 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.

3.14 Minutes

3.14.1 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.

3.14.2 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.

3.14.3 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.

3.15 Suspension of Standing Orders

3.15.1 Except where this would contravene any statutory provision or any guidance or best practice advice issued by NHS England/Improvement (Monitor), any one or more of the SOs 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.

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

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

3.15.4 No formal business may be transacted while the SOs are suspended.

3.15.5 The Audit Committee shall review every decision to suspend the SOs.

3.16 Variation and Amendment of Standing Orders

3.16.1 Subject always to paragraph 38 of the Constitution, these SOs shall be amended only if:

3.16.1.1 relevant notice of a meeting has been served in accordance with SO 3.3;

3.16.1.2 a notice of motion under SO 3.9 has been given;

3.16.1.3 no fewer than half the total of the Non-Executive Directors vote in favour of amendment;

3.16.1.4 at least two-thirds of the Directors are present; and

3.16.1.5 the variation proposed does not contravene the Regulatory Framework, any statutory provisions or any guidance issued by Monitor.

3.17 Record of Attendance

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

3.18 Quorum

3.18.1 No business shall be transacted, where a vote is required, at a meeting of the Board of Directors unless at least two Executive Directors, two Non-Executive Directors and the Chairman, or nominated Deputy Chairman for the purpose of this meeting, are present and to be properly constituted the number of Non-Executive Directors (including the Chairman) voting must exceed the number of Executive Directors. This paragraph should be read in conjunction with paragraph 3.13.1.

3.18.2 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

3.18.3 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)7 they 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 two Executive Directors to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Nomination and Remuneration Committee).

3.19 Joint Directors

3.19.1 Where a post of Executive Director is shared by more than one person:

3.19.1.1 both persons shall be entitled to attend meetings of the Board;

3.19.1.2 either of those persons shall be eligible to vote in the case of an agreement between them;

3.19.1.3 in the case of disagreements between them no vote shall be cast; and

3.19.1.4 the presence of either or both of those person shall count as one person for the purposes of SO 3.13.

3.20 Meetings: Electronic Communication

3.20.1 In this SO, “communication” and “electronic communication” shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.

3.20.2 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 they have the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.

3.20.3 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.

3.20.4 Meetings held in accordance with this SO are subject to SO 3.18 (Quorum). For such a meeting to be valid, a quorum MUST be present and maintained throughout the meeting.

3.20.5 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.

4 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

4.1 Subject to SO 2.6 and such guidance as may be issued by NHS England/Improvement (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 4.3 below or by a Director or an Officer in each case subject to such restrictions and conditions as the Board of Directors considers appropriate.

4.2 Emergency Powers

4.2.1 The powers which the Board of Directors has retained to itself within these SOs 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.

4.3 Delegation to committees

- 4.3.1 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.
- 4.3.2 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.

4.4 Delegation to Officers

- 4.4.1 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 they will perform personally and shall nominate Officers to undertake the remaining functions for which they will still retain accountability to the Board of Directors.
- 4.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying their 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.
- 4.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Finance Director or other Executive Director to provide information and advise the Board of Directors in accordance with any statutory requirements. Outside these statutory requirements the Finance Director shall be accountable to the Chief Executive for operational matters.
- 4.4.4 The arrangements made by the Board of Directors as set out in the Scheme of Delegation shall have effect as if incorporated in these SOs.

4.5 Delegation of Powers – Scheme of Delegation

4.5.1 Under the SOs 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 5.1.1 or by an Officer of the Trust, in each case subject to such restrictions and conditions as the Board of Directors thinks fit. Delegated Powers are covered in a separate document (the Scheme of Delegation). That document has effect as if incorporated into the SOs.

4.6 Duty to Report Non-Compliance with Standing Orders

4.6.1 If for any reason these SOs 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 all Officers have a duty to disclose any non-compliance with these SOs to the Secretary as soon as possible.

5 COMMITTEES

5.1 Appointment of Committees

5.1.1 Subject to SO 2.6, the Regulatory Framework and such guidance issued by NHS England/Improvement (Monitor), the Board of Directors may and, if directed by NHS England/Improvement (Monitor), shall appoint committees of the Trust consisting wholly or partly of Directors or other Health Service Bodies or wholly of persons who are not Directors of the Trust or other Health Service Bodies.

5.1.2 A committee appointed under SO 5.1.1 may, subject to the Regulatory Framework and such guidance and/or best practice advice as may be issued by NHS England/Improvement (Monitor) or the Board of Directors or other Health Service Bodies in question, appoint sub-committees or sub-groups consisting wholly or partly of Directors or wholly of persons who are not Directors of the Trust, the committee of the Trust or the other Health Service Bodies in question.

5.1.3 The SOs, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-groups 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.)

- 5.1.4 Each such committee, sub-committee or sub-group 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/or regulations and/or such guidance or best practice advice issued by Monitor. Such terms of reference shall have effect as if incorporated into the SOs.
- 5.1.5 Where committees are authorised to establish sub-committees or sub-groups they may not delegate executive powers to the sub-committee/group unless expressly authorised by the Board of Directors.
- 5.1.6 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 the Regulatory Framework. 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.
- 5.1.7 Where the Board of Directors is required to appoint persons to a committee and/or undertake statutory functions as required by the Secretary of State and/or NHS England/Improvement (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 NHS England/Improvement (Monitor).
- 5.1.8 Where the Board determines, and legislation, regulations and directions or guidance issued by NHSI permit that persons who are not Directors of the Trust shall be appointed to a committee of the Board, the terms of such appointment shall be determined by the Board. The Board shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses.

5.1.9 The committees established by the Board of Directors are:

- 5.1.9.1 Audit Committee;
- 5.1.9.2 Nomination and Remuneration Committee;
- 5.1.9.3 Charity Committee;
- 5.1.9.4 Finance Committee;
- 5.1.9.5 Quality and Governance Assurance Committee;
- 5.1.9.6 People Committee; and
- 5.1.9.7 Mental Health Act Committee

5.1.10 The terms of reference of those committees and sub-groups shall be agreed by the Board of Directors.

5.1.11 Notwithstanding the provisions of SO 5.1.9 above, the Board of Directors may establish other committees and sub-groups from time to time at its discretion.

5.2 Confidentiality

5.2.1 A member of a committee, sub-committee or joint 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.

5.2.2 A Director or a member of a committee, sub-committee or joint 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.

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

6.1 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.

- 6.2 The Directors, having regard to the views of the Council of Governors, are to prepare the Forward Plan in respect of each Financial Year to be given to NHS England/Improvement (Monitor).
- 6.3 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.
- 6.4 The Annual Report is to give:
- 6.4.1 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;
 - 6.4.2 information on each non-executive director determining whether each is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement, with particular reference to paragraph 40 of the Constitution; and
 - 6.4.3 any other information which NHS England/Improvement (Monitor) requires.
- 6.5 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 42 – 44 of the Constitution is included on the agenda for a meeting of the Board of Directors.
- 6.6 If the Council of Governors so desires such a matter as described within SO 6.5 to be included on an agenda item, they shall make their request in writing to the Chairman at least 10 (ten) 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 10 (ten) Clear Days before a meeting may be included on the agenda at the discretion of the Chairman.

7 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 7.1 The Regulatory Framework requires members of the Board of Directors to declare to the Secretary:
- 7.1.1 any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter which is under

consideration concerning the Trust or is to be considered by the Board of Directors; and

- 7.1.2 any interests including but not limited to any personal or family interests which are relevant and material to the business of the Trust, irrespective of whether those interests are direct or indirect, actual or potential'
- 7.2 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.
- 7.3 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 SOs and delivering it to the Secretary on appointment or as soon thereafter as the interest arises, but within 7 (seven) Clear Days of becoming aware of the existence of a relevant and material interest.
- 7.4 If a declaration under SO 7.1 or 7.2 above provided 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 whether the director is not aware of the transaction or arrangement in question.
- 7.5 A Director need not declare an interest:
 - 7.5.1 if, it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 7.5.2 if, or to the extent that, the Directors are already aware of it;
 - 7.5.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered by:
 - 7.5.4 a meeting of the Board of Directors, or
 - 7.5.5 by a committee of the Directors appointed for the purpose.
- 7.6 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, they 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.
- 7.7 If a Director has declared a pecuniary interest in accordance with SO 7.8 below they 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.

7.8 Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by NHS England/Improvement (Monitor):

7.8.1 Directorships, including Non-Executive directorships held in private companies or PLCs (with the exception of those of dormant companies);

7.8.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;

7.8.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;

7.8.4 a position of authority in a charity or voluntary organisation in the field of health and social care;

7.8.5 any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services;

7.8.6 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.

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

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

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

7.11.1 they, or a nominee of theirs, 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

7.11.2 they are 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.

7.12 For the avoidance of doubt, the following shall not be considered relevant and material for the purposes of these SOs:

7.12.1.1 Shares not exceeding 2% of the total share in issue held in any company whose shares are listed on any public exchange;

7.12.1.2 An employment contract held by Staff Governors;

7.12.1.3 An employment contract with the relevant local authority held by a Local Authority Governor;

7.12.1.4 An employment contract with a Partnership Organisation held by a Partnership Governor.

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

7.13.1 of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body; or

7.13.2 of an interest in any company, body or person with which they are 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.

7.14 Where a Director:

7.14.1 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

7.14.2 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

7.14.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which they have 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 their duty to disclose their interest.

- 7.15 In the case of Immediate Family members, the interest of one Immediate Family member shall, if known to the other, be deemed for the purposes of the Constitution and the SOs to be also an interest of the other.
- 7.16 If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Secretary. 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.
- 7.17 Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 18 to Schedule 7 of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this SO.
- 7.18 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 they are also a Director) and will need to be read in conjunction with the applicable policy.

7.19 Register of Interests

7.19.1 The register of interests of Directors shall contain the names of each Director, whether they have declared any interests and, if so, the interests declared in accordance with the Constitution or these SOs.

7.19.2 It is the obligation of the Director to inform the Secretary in writing within 7 (seven) Clear Days of becoming aware of the existence of a relevant or material interest. The Secretary must amend the appropriate register of interests of Directors upon receipt of new or amended information as soon as is practical and, in any event, within 14 (fourteen) days.

7.19.3 The register of interests of Directors will be available to the public and the Chairman will take reasonable steps to bring the existence of the register of interests of Directors to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the register of interests of Directors 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.

7.19.4 The details of Directors' interests recorded in the register of interests of Directors will be kept up to date by means of a

regular review as necessary of the register of interests of Directors by the Chief Executive or Secretary during which any changes of interests recently declared will be incorporated.

8 STANDARDS OF BUSINESS CONDUCT

8.1 Policy

8.1.1 Directors and Officers should comply with the NHS Foundation Trust Code of Governance, the Nolan Principles, Standards for Members of NHS Boards and Clinical Commissioning Group governing bodies in England and any guidance and best practice advice issued by NHS England/Improvement (Monitor). This section of the SOs should be read in conjunction with these documents.

8.1.2 Directors and Officers should also comply with provisions of the Trust's Fraud Response Plan and Anti Bribery Policy.

8.2 Interest of Directors and Employees in Contracts

8.2.1 If it comes to the knowledge of Director or an Officer that a contract in which they have any pecuniary interest not being a contract to which they are themselves a party, has been, or is proposed to be, entered into by the Trust they shall, at once, give notice in writing to the Chief Executive or Secretary of the fact that they are interested therein. In the case of Immediate Family Members, the interest of one Immediate Family Member shall, if known to the other, be deemed to be also the interest of that Immediate Family Member.

8.2.2 A Director or Officer must also declare to the Chief Executive or Secretary any other employment or business or other relationship of their, or of an Immediate Family Member, 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 interests of Directors.

8.3 Canvassing of, and Recommendations by, Directors in Relation to Appointments

8.3.1 Canvassing of Directors or members of any committee, sub-committee or joint 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 SOs shall be included in application forms or otherwise brought to the attention of candidates.

8.3.2 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 SO 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.

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

8.4 Relatives of Directors or Officers

8.4.1 Directors and Officers shall bear in mind that 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 them liable to instant dismissal.

8.4.2 The Directors and Officers shall disclose to the Chief Executive any relationship between themselves and a candidate of whose candidature that Director or Officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.

8.4.3 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Board of Directors whether they are related to any other member of the Board of Directors or holder of any office in the Trust.

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

8.5 External Consultants

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

9 CUSTODY OF SEAL AND SEALING OF DOCUMENTS

9.1 Custody of Seal

9.1.1 The Common Seal of the Trust shall be kept by the Secretary to the Trust or Nominated Officer in a secure place.

9.2 Sealing of Documents

9.2.1 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.

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

9.3 Register of Sealing

9.3.1 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).

10 SIGNATURE OF DOCUMENTS

10.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.

10.2 The Chief Executive or Nominated Officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document (not 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.

11 MISCELLANEOUS

11.1 Standing Orders to be given to Members and Officers

11.1.1 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 the SOs and the SFIs. 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 SOs.

11.2 Documents having the standing of Standing Orders

11.2.1 The SFIs and the Scheme of Delegation shall have the effect as if incorporated into the SOs.

11.3 Review of Standing Orders

11.3.1 The SOs shall be reviewed annually by the Trust. The requirement for review extends to all documents having the effect as if incorporated in SOs. For the avoidance of doubt, any changes to the SFIs and Scheme of Delegation only requires Board of Directors' approval.

11.4 Corporate Documents

11.4.1 Any corporate documents specific to the setting up of the Trust shall be held in a secure place by the Chief Executive.

ANNEX 3 - STANDING ORDERS
TENDERING AND CONTRACT PROCEDURE

CONTENTS:

1. DUTY TO COMPLY WITH STANDING ORDERS
2. DISPOSALS
3. IN-HOUSE SERVICES

1 DUTY TO COMPLY WITH STANDING ORDERS

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

1.2 EU Directives and Acts Governing Public Procurement

1.2.1 Directives by the Council of the European Union promulgated by the Department of Health (DH) prescribing procedures for awarding all forms of contracts shall have effect as if incorporated in these SOs.

1.2.2 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 SOs.

1.2.3 The Trust shall adopt as good practice the requirements of the NHS England Business Case Approvals Process for Capital Investment, Property, Equipment and ICT 14 August 2013 Publications Gateway Reference: 00324 and Health Building Note 00-08 Part A: Strategic framework for the efficient management of healthcare estates and facilities and associated relevant guidance issued by Monitor/NHS England/Improvement (Monitor) in respect of capital investment and estate and property transactions, including the "Capital Regime, Investment and Property Business Case Approval Guidance for NHS Trusts and Foundation Trusts November 2016.

1.2.4 In the case of management consultancy contracts the Trust shall adopt, as far as is practicable, the NHS Executive guidance "The Procurement and Management of Consultants within the NHS". The Trust will also comply with the Guidance from NHS England/Improvement (Monitor) entitled "Best Practice in Making Investments" and the Regulatory Framework.

1.2.5 The Trust should have policies and procedures in place for the control of all tendering activity.

1.3 Formal Competitive Tendering

1.3.1 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 or other regulatory organisations); for the design, construction and maintenance of building and engineering works (including construction and concession contracts); and for disposals.

1.3.2 Formal tendering procedures may be waived by officers to whom powers have been delegated by the Chief Executive without reference to the Chief Executive where:

1.3.2.1 the estimated expenditure or income does not, or is not reasonably expected to, exceed £50,000 excl VAT (this figure to be reviewed annually); Or

1.3.2.2 the supply is proposed under special arrangements negotiated by the Department of Health and Social Care in which event the said special arrangements must be complied with;

1.3.2.3 where the requirement is covered by an existing national, regional or local contract or framework

1.3.2.4 where provided for in regulatory guidance.

1.3.3 Formal tendering procedures may be waived by Officers to whom powers have been delegated by the Chief Executive:

1.3.3.1 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 circumstance are detailed in an appropriate Trust record;

1.3.3.2 where the timescale genuinely precludes competitive tendering (failure to plan the work properly is not a justification for single tender);

1.3.3.3 where it is apparent from the specification that specialist expertise is required to meet it and the expertise is only available from one source;

1.3.3.4 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

- 1.3.3.5 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.
- 1.3.4 The waiving of competitive tendering procedures should not be used:
 - 1.3.4.1 to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure;
 - 1.3.4.2 for building and engineering construction works, and maintenance (other than in accordance with Concode or other relevant regulatory guidance) without Departmental of Health and Social Care approval.
- 1.3.5 Where it is decided that competitive tendering is not applicable and should be waived by virtue of SO 1.3.3.1 to SO 1.3.3.4 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 Audit Committee.
- 1.3.6 Except where SO 1.3.2 and SO 10.3.3, or a requirement under SO 1.2, 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 where possible, no less than three firms/individuals, having regard to their capacity to supply the goods or materials or to undertake the services or works required.
- 1.3.7 Items estimated to be below the limit 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.
- 1.3.8 The Board of Directors shall review the Tendering Procedure at least every two years.

1.4 **Invitation to tender**

- 1.4.1 All invitations to tender shall state the date and time as being the latest time for the receipt of tenders.

- 1.4.2 All invitations to tender shall be by an e-tendering software package. The suppliers response shall be completed on-line and uploaded into a secure electronic mailbox until the opening time.
- 1.4.3 Every tender for goods, materials, manufactured articles supplied as part of a works contract and services shall embody such of the main contract conditions as may be appropriate in accordance with the contract forms described in SO 1.4.4 and 1.4.5 below.
- 1.4.4 Every tender for goods, materials, services or disposals shall embody such of the NHS Standard Contract Conditions as are applicable. Every tenderer must have given or give a written undertaking not to engage in collusive tendering or other restrictive practice.
- 1.4.5 Every tender for building or engineering works (except for maintenance work, when Estatecode or other relevant regulatory 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. The standard documents should be amended to comply with Concode and, in minor respects, to cover special features of individual projects. Tendering based on other forms of contract may be used only after prior consultation with the Department of Health and Social Care or modified and/or amplified to accord with guidance issued by NHS England and the Department of Health and Social Care and, in minor respects, to cover special features of individual projects.
- 1.4.6 Each significant member of Trust staff involved in the tendering process must declare any interests relating to the project they are overseeing.

1.5 Receipt and safe custody of Formal tenders

- 1.5.1 The tender documents will be stored in the electronic mailbox until the closing date and time. An audit log within the e-tendering system will record the data and time the offer

documents are received.

1.6 Opening Formal tenders

1.6.1 Where an electronic tendering package is used the tender documents will be opened electronically by two independent professionals from the procurement service.

1.6.2 Each significant member of staff involved in the tendering process is to declare any interests relating to the project they are overseeing. Where an electronic tendering package is used the details of the persons opening the documents will be recorded in the audit trail together with the date and time of the document opening.

1.6.3 All actions by both procurement staff and suppliers shall be recorded within the system audit reports.

1.7 Admissibility

1.7.1 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.

1.7.2 Where only one tender is sought and/or received, the Chief Executive and Chief Finance Officer shall, as far practicable, ensure that the price to be paid is fair and reasonable and will ensure value for money for the Trust.

1.8 Late tenders

1.8.1 Tenders received after the due time and date, but before the opening of the other tenders, may be considered only if the Chief Executive or their Nominated Officer decides that there are exceptional circumstances, eg where significant financial, technical or delivery advantages would accrue, and is satisfied that there is no reason to doubt the bona fides of the tenders concerned.

1.8.2 The Chief Executive or Nominated Officer shall decide whether such tenders are admissible and whether re-tendering is desirable. Re-tendering may be limited to those tenders reasonably in the field of consideration in the original competition. If the tender is accepted the late arrival of the tender shall be reported to the Board at its next meeting.

- 1.8.3 Technically late tenders (ie those despatched in good time but delayed through no fault of the tenderer) may at the discretion of the Chief Executive be regarded as having arrived in due time.
- 1.8.4 Incomplete tenders (ie those from which information necessary for the adjudication of the tender is missing) and amended tenders (ie those amended by the tenderer upon their own initiative either orally or in writing after the due time for receipt) will be dealt with in the same way as late tenders.
- 1.8.5 Where examination of tenders reveals errors or incompleteness which would affect the tender figure, the tenderer is to be given details of such errors and afforded the opportunity of confirming or withdrawing their offer.
- 1.8.6 While decisions as to the admissibility of late, incomplete or amended tenders are under consideration, the tender documents shall be kept strictly confidential, and the process of evaluation shall not be started.

1.9 **Acceptance of formal tenders**

- 1.9.1 Any discussions with a tenderer which are deemed necessary to clarify technical aspects of their tender before the award of a contract will not disqualify the tender.
- 1.9.2 A tender other than the lowest whole life cost (if payment is to be made by the Trust), or other than the highest (if payment is to be received by the Trust) shall not be accepted unless for good and sufficient reason and the decision and reason recorded as a written record using the appropriate Tender Acceptance Authorisation Form.
- 1.9.3 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.
- 1.9.4 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.
- 1.9.5 The use of these procedures must demonstrate that the award of the contract was:
 - 1.9.5.1 not in excess of the going market rate/price current at the time the contract was awarded, and

1.9.5.2 achieved best value for money.

1.9.6 In considering which tender to recommend, if any, the designated officers shall have regard to whether value for money will be obtained by the Trust and whether the number of tenders received provides adequate competition. This will take the form of an official evaluation process involving a consideration of both commercial and technical aspects, any key stakeholders involved in the tender process. In cases of doubt they shall consult the Chief Executive via the completion of a Recommendation Report. The Chief Executive or Chief Finance Officer, see SO 1.16.1.1 for authorisation levels, shall approve acceptance of the tender in writing to the responsible officer. (Larger tenders ie those exceeding a total value of £1,000,000 (inc Vat) shall be referred to the Trust Board for approval).

1.9.7 Where the form of contract includes a fluctuation clause all applications for price variations must be submitted in writing by the tenderer and shall be approved by the Chief Executive or nominated officer.

1.9.8 All tenders shall be treated as confidential and shall be retained for inspection.

1.10 Tender reports to the Trust Board

1.10.1 Reports to the Board of Directors will be made on an exceptional circumstance basis only.

1.11 List of approved firms

1.11.1 Building and Engineering Construction Works

1.11.1.1 Invitations to tender shall be made only to firms included on either an approved list of tenderers compiled by the Trust or by neighbouring Trusts-or on the Construction Line, NHS Supply Chain or other national or regional purchasing framework list.

1.11.1.2 Firms included on 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.

1.11.1.3 Firms shall conform at least with the requirements of the Health and Safety at Work Act 1974 (as

amended) 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 Officer a copy of its safety policy and evidence of the safety of plant and equipment, when requested.

1.11.2 Financial Standing and Technical Competence of Contractors

1.11.2.1 The Chief Finance Officer may make or institute any enquiries he 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.

1.12 **Exceptions to using approved contractors**

1.12.1 If in the opinion of the Chief Executive and the Chief Finance Officer or the Director with lead responsibility for clinical governance it is impractical to use a potential contractor from a list of approved firms/individuals (for example where specialist services or skills are required and there are insufficient suitable potential contractors on a list), or where a list for whatever reason has not been prepared, the Chief Executive shall ensure that appropriate checks are carried out as to the technical and financial capability of those firms that are invited to tender or quote.

1.12.2 An appropriate record in the contract file shall be made of the reasons for inviting a tender or quote other than from an approved list.

1.13 **Competitive Quotations**

1.13.1 Quotations are required to be obtained where formal tendering procedures have been waived under SOs 1.3.2 or 1.3.3 and where the intended expenditure or income exceeds, or is reasonably expected to exceed the limits defined in the Scheme of Delegation and/or the SFIs.

1.13.2 Where quotations are obtained under SO 1.14 they shall 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.

1.13.3 Quotations shall be in writing.

1.13.4 All quotations shall be treated as confidential and shall be retained for inspection.

1.13.5 The Chief Executive or their Nominated Officer shall evaluate the quotations and select the one which gives value for money. If this is not the lowest quotation then this fact and the reasons why the lowest quotation was not chosen shall be recorded in a permanent record and a Quotation Acceptance Authorisation Form completed.

1.14 **Non-Competitive Quotations**

1.14.1 Formal quotation procedures may be waived by officers to whom powers have been delegated by the Chief Executive without reference to the Chief Executive where:

1.14.2 the estimated expenditure or income does not, or is not reasonably expected to, exceed £10,000 excl VAT (this figure to be reviewed annually); Or

1.14.3 the supply is proposed under special arrangements negotiated by the Department of Health and Social Care in which event the said special arrangements must be complied with;

1.14.4 where the requirement is covered by an existing national, regional or local contract or framework

1.14.5 where provided for in regulatory guidance.

1.14.6 Formal quotation procedures may be waived by Officers to whom powers have been delegated by the Chief Executive:

1.14.7 in very exceptional circumstances where the Chief Executive decides that formal quotation procedures would not be practicable or the estimated expenditure or income would not warrant formal competitive procedures, and the circumstance are detailed in an appropriate Trust record;

1.14.8 where the timescale genuinely precludes competitive quotations (failure to plan the work properly is not a justification for single quotation);

1.14.9 where it is apparent from the specification that specialist expertise is required to meet it and the expertise is only available from one source;

1.14.10 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

1.14.11 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 competition.

1.14.12 The waiving of competitive quotation procedures should not be used:

1.14.13 to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure;

1.14.14 for building and engineering construction works, and maintenance (other than in accordance with Concode or other relevant regulatory guidance) without Departmental of Health and Social Care approval.

1.14.15 Where it is decided that competitive quotations are not required and should be waived by virtue of SO 1.14.2.1 to SO 1.14.2.5 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 Audit Committee.

1.15 Quotations to be within Financial Limits

1.15.1 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 SOs except with the authorisation of either the Chief Executive or Chief Finance Officer.

1.16 Authorisation of Tenders and Competitive Quotations

1.16.1 Providing all the conditions and circumstances set out in these SOs have been fully complied with, formal authorisation and awarding of a contract may be decided in accordance with the Financial Limits set out in Tables 4 and 5 of Appendix 1 'Financial Limits' of the Trust Standing Financial Instructions.

1.16.2 These levels of authorisation may be varied or changed from time to time by the Board of Directors and need to be read in conjunction with the Scheme of Delegation and/or SFIs.

1.16.3 Formal authorisation must be put in writing. In the case of authorisation by the Board of Directors this shall be recorded in their minutes.

1.17 Instances where formal competitive tendering or competitive quotation is not required

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

1.17.1.1 the Trust shall use the NHS supply chain for procurement of all goods and services unless the Chief Executive or their Nominated Officer deem it inappropriate. The decision to use alternative sources must be documented;

1.17.1.2 if the Trust does not use the NHS supply chain (where tenders or quotations are not required, because expenditure is below £10,000 excluding VAT), the Trust shall procure goods and services in accordance with procurement procedures approved by the Chief Finance Officer.

1.18 Private Partnership

1.18.1 The Trust should normally market-test for "Private Partnership" 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 shall apply:

1.18.1.1 The Chief Executive and Chief Finance Officer shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector.

1.18.1.2 Where the sum exceeds delegated limits, a business case must be referred to NHS England and/or Department of Health and Social Care for approval or treated as per current guidelines.

1.18.1.3 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.

1.18.1.4 The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.

1.19 Compliance Requirements for all Contracts (including lease contracts)

1.19.1 The Board of Directors may only enter into contracts on behalf of the Trust within its statutory powers and within the Regulatory Framework and shall comply with:

1.19.1.1 these SOs;

1.19.1.2 the SFIs;

1.19.1.3 the Trust's Provider Licence;

1.19.1.4 statutory provisions including those giving effect to EU Directives;

1.19.1.5 such of the NHS Standard Contract Conditions as are applicable;

1.19.1.6 appropriate NHS guidance;

1.19.2 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.

1.19.3 Contracts shall include lease and hire purchase agreements.

1.19.4 In all contracts made by the Trust, the Board of Directors shall endeavour 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.

1.20 Personnel and Agency or Temporary Staff Contracts

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

1.21 Healthcare Services Agreements

1.21.1 Healthcare Services contracts made between two Health Service Bodies for the supply of healthcare services, will be legally binding contracts and are subject to the provisions of the 2006 Act and any other relevant legislation.

1.21.2 The Chief Executive shall nominate Officers with power to negotiate for the provision of healthcare services from providers of healthcare services.

1.22 Cancellation of Contracts

1.22.1 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:

1.22.1.1 the contractor has 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

1.22.1.2 the contractor has shown or foreborne favour or disfavour to any person in relation to the contracts or any other contract with the Trust, or if the like acts shall have been done by any person employed by them or acting on their behalf (whether with or without the knowledge of the contractor); or

1.22.1.3 in relation to any contract with the Trust the contractor or any person employed by them or acting on their behalf shall have committed any offence under the Prevention of Corruption Acts 1989 and 1916, the Prevention of Corruption (Amendment) Act 2018, Bribery Act 2010, and other appropriate legislation.

1.23 Determination of Contracts for Failure to Deliver Goods or Material

1.23.1 There shall be inserted in every written contract for the supply of goods or materials entered into by the Trust 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 such default.

1.23.2 The clause referred to at SO 1.23.1 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.

1.24 **Contracts Involving Funds held on Trust**

1.24.1 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.

1.24.2 SO 1.24.1 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.

2 **DISPOSALS**

2.1 **Competitive** Tendering or Quotation procedures shall not apply to the disposal of:

2.1.1 any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in a reserve) by the Chief Executive or their Nominated Officer;

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

2.1.3 items to be disposed of with an estimated sale value as set out in the Scheme of Delegation;

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

2.1.5 land or buildings concerning which Department of Health and Social Care guidance has been issued but subject to compliance with such guidance; or

2.1.6 any matter which NHS England has issued alternate specific guidance and/or best practice advice in relation to.

3 **IN-HOUSE SERVICES**

3.1 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.

- 3.2 In all cases where the Trust determines that in-house services should be subject to competitive tendering the following groups shall be set up:
- 3.2.1 "specification group", comprising the Chief Executive or Nominated Officer(s) and specialist(s).
 - 3.2.2 "in-house tender group", comprising representatives of the in-house team, a nominee of the Chief Executive and appropriate technical support.
 - 3.2.3 "evaluation group", comprising normally a specialist Officer, a supplies Officer and Chief Finance Officer representative. For services having a likely annual expenditure exceeding £500,000 a non-Officer member should be a member of the evaluation team.
- 3.3 All groups referred to in SO 3.2.1 to 3.2.3 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.
- 3.4 The "evaluation group" shall make recommendations to the Board of Directors.

4. REVIEW OF THE TENDERING AND CONTRACT PROCEDURE

- 4.1 For the avoidance of doubt, the Tendering and Contracting Procedure form part of the Standing Orders but any changes to the procedure only require Board of Directors' approval.

ANNEX 4 - FURTHER PROVISIONS

1. REPRESENTATIVE MEMBERSHIP

1.1. 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:

1.1.1. 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 at least every three years.

1.1.2. The Council of Governors shall present to each Annual Meeting:

1.1.2.1. 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;

1.1.2.2. the progress of the membership strategy; and

1.1.2.3. any changes to the membership strategy.

2. CO-OPERATION WITH HEALTH SERVICE AND OTHER BODIES

2.1. 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.

2.2. Notwithstanding the provisions of paragraph 2.1 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.

3. RESPECTS FOR RIGHTS OF PEOPLE

3.1. 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.

4. APPOINTMENT OF CHAIRMAN AND NON-EXECUTIVE DIRECTORS

4.1. Decisions and processes regarding the appointment and reappointment of the Chairman and Non-Executive Directors of the

Trust are solely within the purview of the Council of Governors.

- 4.2. The Nominations and Remuneration Committee has delegated powers from the Council of Governors to consider the Non-Executive Director or Chairman vacancies due in the next 12 months and make recommendations to the Council of Governors.
- 4.3. The Nominations and Remuneration Committee shall:
 - 4.3.1. recommend the re-appointment of an existing Non-Executive Director/Chairman or if applicable the recruitment process for the Chairman and Non-Executive Directors (as may be the case).
 - 4.3.2. take advice, as necessary, from the Director of People and Organisational Development and the Trust Secretary or other internal or external sources
 - 4.3.3. report its recommendations regarding the re-appointment of the Non-Executive Director or Chairman as an agenda item in a timely manner at a Council of Governors meeting for decision, or:
 - 4.3.4. report its recommendations regarding the recruitment process for the Non-Executive Director or Chairman post as an agenda item in a timely manner to the Council of Governors meeting for decision.
 - 4.3.5. make recommendations to the Council of Governors meeting in relation to pay and tenure of Non-Executive Directors/Chairman for the Council of Governors' decision. Each period of appointment (or re-appointment) will be to a maximum of three years, and any re-appointment over six years will be subject to particularly rigorous review. Any re-appointment over six years will be subject to annual re-appointment to provide assurance that the Non-Executive Director seeking re-appointment retains their independence of character and judgement.
 - 4.3.6. ensure that a formal, rigorous and transparent procedure is followed, which takes into account the needs of the organisation, the balance of expertise and experience on the Board, eligibility of existing Non-Executive Directors or Chairman to stand for a further term, and any other relevant factors. This is not an exhaustive list of the matters which may need to be considered by the Nominations and Remuneration Committee, but is merely intended to act as a guide.
- 4.4. Subject to the provisions of paragraph 4.3.1 above, the process for

appointing new Non-Executive Directors and the Chairman, including the potential re-appointment of the Chairman and Non-Executive Directors, will be as follows:

- 4.4.1. No later than six months before the end of the term of office of the Chairman or a Non-Executive Director (as the case may be), the Nominations and Remuneration Committee will consider, paying due regard to the provisions set out in paragraph 4.3.1, the formal performance evaluation for the Non-Executive Director or Chairman for the previous two years, skills and experience and eligibility of existing Non-Executive Directors prepared to stand for re-appointment. The reason for considering the performance of existing Non-Executive Directors will be to inform the decisions made regarding the re-appointment of the Non-Executive Director or Chairman, or the recruitment process to be followed. However, nothing within this paragraph will preclude the Nominations and Remuneration Committee from considering other relevant circumstances when deciding on the recruitment process as outlined in paragraph 4.3.1 above. Having due regard to the needs of the composition of the Board, the Nominations and Remuneration Committee may either 1) recommend to the Council of Governors that 1) an external recruitment process is followed or 2) recommend the re-appointment, pay, length of term of an existing Non-Executive Director. For the avoidance of doubt, if the recommendation to re-appoint a Non-Executive Director or Chairman is approved by the Council of Governors, there is no requirement to set up an Appointments Panel, unless this is specifically requested by the Council of Governors.
- 4.4.2. Following a recommendation to follow an external recruitment process, and subject to the Council of Governors' agreement, the Council of Governors will appoint an Appointments Panel to undertake the recruitment process. The Appointments Panel will be constituted in accordance with paragraphs 4.4.4 and 4.4.5 below.
- 4.4.3. The current Chairman or a Non-Executive Director may stand for reappointment, subject to the conditions at paragraph 4.4 above.
- 4.4.4. The Appointments Panel for the Chairman will consist of the Senior Independent Director, or if the Senior Independent Director is standing for appointment a Non-Executive Director who is not standing for appointment, two Elected Governors, and one Appointed Governor. If the number of Elected/Appointed Governors prepared to serve on the Appointments Panel is greater than the number of places available, the Panel members will be selected by election by

the Elected/Appointed Governors respectively. A Public Governor will chair the Appointments Panel. Each member of the Appointments Panel will have one vote. The chairman of another NHS foundation trust will be invited to act as an independent assessor to the Appointments Panel.

4.4.5. The Appointments Panel for Non-Executive Directors will consist of the Chairman, two Elected Governors, and one Appointed Governor. If the number of Elected/Appointed Governors prepared to serve on the Appointments Panel is greater than the number of places available, the Panel members will be selected by election by the Elected/Appointed Governors respectively. The Chairman will chair the Appointments Panel. Each member of the Appointments Panel will have one vote.

4.4.6. Appropriate candidates (not more than 5 (five) for each vacancy) will be identified by an Appointments Panel.

4.4.7. The Appointments Panel constituted under paragraphs 4.4.4 and 4.4.5 above will be supported by appropriate advice from the Trust's Director of People and Organisational Development on the qualifications, skills and experience required for each position. They may also work with an external organisation recognised as expert at appointments to identify the qualifications, skills and experience required for Non-Executive Directors.

4.4.8. The Council of Governors will not consider nominations for the Chairman and other Non-Executive Directors other than those made by the appropriate Appointments Panel.

4.4.9. The Appointments Panel will make recommendations to the Council of Governors meeting about the preferred candidate to be appointed to the Non-Executive Director or Chairman post for the Council of Governors' decision.