

AUTHORISATION

of

NORTH ESSEX PARTNERSHIP NHS FOUNDATION TRUST

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



Signature: William Kemp

1 October 2007

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PART 1 Authorisation

1. Monitor ("Monitor"), the Independent Regulator of NHS Foundation Trusts, in exercise of the powers conferred by section 35 of the National Health Service 2006 ("**the Act**") and all other powers exercisable by Monitor, hereby authorises North Essex Mental Health Partnership NHS Trust to become an NHS Foundation Trust ("**the Trust**"), subject to the Conditions set out in Part 3 hereof.
2. This Authorisation shall come into force on 1 October 2007.
3. Subject to the provisions of sections 54 and 55 of the Act, this Authorisation shall be of unlimited duration.
4. This Authorisation is not assignable.
5. Monitor may vary the Conditions of this Authorisation.

PART 2 Interpretation and construction

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

PART 3 Conditions

1. Principal Purpose

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

2. General duty

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

3. Constitution

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

4. Compliance and enforcement

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

5. Governance

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

6. Health care and other standards

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

7. Mandatory Services

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

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

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

8. Authorised Services

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

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

9. Protection of property

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

10. Private health care

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

11. Limit on borrowing

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

12. Financial viability

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

13. Dividend payments on Public Dividend Capital

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

14. Information

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

15. Entry and inspection of premises

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

16. Fees

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

17. Representative membership

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

18. Co-operation with other bodies

(1) The Trust shall co-operate with Primary Care Trusts, Strategic Health Authorities, Special Health Authorities, the Commission for Health Care Audit and Inspection, NHS foundation trusts, other NHS trusts and other health authorities and organisations in accordance with the Act and any future guidance to be published by Monitor.

(2) The Trust shall co-operate with the Commission for Social Care Inspection, the Mental Health Act Commissioners, the National Oversight Group for High Security Hospitals and such other bodies (as may be specified in any future guidance to be published by Monitor) which have a remit covering activities related to the provision of mental healthcare services.

(3) The Trust shall co-operate with local authorities in the exercise of its own functions and in the exercise by the local authorities of their respective functions.

19. Emergency planning

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

20. Information technology

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

21. Audit committee

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

22. Audit

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

23. Public interest reporting

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

24. Notification

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

25. Information given to Parliament and to Members of Parliament

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

AUTHORISATION OF NORTH ESSEX PARTNERSHIP NHS FOUNDATION TRUST

Schedule 1

The Constitution (and Annexures)

North Essex Partnership NHS FoundationTrust

Foundation Trust Constitution

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CONSTITUTION

1. NAME

The name of the foundation trust is North Essex Partnership NHS Foundation Trust ('the Trust').

2. PRINCIPAL PURPOSE

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

3. POWERS

- 3.1. The powers of the Trust are set out in the 2006 Act, subject to any restrictions in the Terms of Authorisation. These powers include the provision of education and training, research and the provision of accommodation and goods and services for purposes related to the provision of healthcare.
- 3.2. The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 3.3. Subject to paragraph 3.4 below, any of these powers may be delegated to a committee of directors or to an executive director.
- 3.4. Where the Trust is exercising the functions of the managers referred to in section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorised by the Board of Directors, each of whom must be neither an executive director of the Board of Directors nor an employee of the Trust.

4. MEMBERSHIP AND CONSTITUENCIES

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

- 4.1. The eleven Public Constituencies set out in Annex 1
- 4.2. The Staff Constituency

5. APPLICATION FOR MEMBERSHIP

- 5.1. An individual who is eligible to become a member of the Trust may do so on application to the Trust.
- 5.2. An applicant will become a member when the Trust has received the application, and the name of the applicant has been entered into the register of members

6. PUBLIC CONSTITUENCY

- 6.1. Subject to paragraphs 8 and 9, an individual who lives in one of the eleven areas specified in Annex 1 as an area for a Public Constituency may become or continue as a member of the Trust.

- 6.2. Those members (excluding those eligible to become members of the Staff Constituency) who live in any of the areas specified as public constituencies are referred to collectively as a Public Constituency. The minimum number of members in each Public Constituency is specified in Annex 1.

7. STAFF CONSTITUENCY

- 7.1. Subject to paragraphs 8 and 9, an individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
 - 7.1.1. he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 7.1.2. he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 7.2. Subject to paragraphs 8 and 9, individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may be invited by the Trust to become members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 7.3. Any individual who although employed or exercising functions for the Trust is not eligible to become a member of the Staff Constituency by reason of the provisions in 7.1 and 7.2 may if eligible become a member of the Public Constituency until he becomes eligible to be a member of the Staff Constituency
- 7.4. Those members who are eligible for membership of the Trust by reason of the provisions in 7.1 and 7.2 are referred to collectively as the Staff Constituency.
- 7.5. The Staff Constituency shall be divided into five classes. Each class is described in Annex 2 and is a separate class of the Staff Constituency.
- 7.6. The minimum number of members in each of the five classes of the Staff Constituency is specified in Annex 2.
- 7.7. An individual who is:
 - 7.7.1. eligible to become a member of the Staff Constituency, and
 - 7.7.2. invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,shall become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so within 28 days of being invited to become a member.
- 7.8. An individual who is eligible to become a member of the Staff Constituency pursuant to paragraph 7.1 above and who has previously opted out or has not been invited to become a member may nonetheless become a member by applying in writing to the Trust to become a member.

8. RESTRICTION ON MEMBERSHIP

- 8.1. An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 8.2. An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 8.3. An individual may not become a member of the Trust unless he has attained the age of 14 years

9. TERMINATION OF MEMBERSHIP

An individual will cease to be a member of the Trust if he:

- 9.1. gives notice in writing to the Secretary that he no longer wishes to be a member, or
- 9.2. dies, or
- 9.3. is expelled from membership by resolution of the Council of Governors, or
- 9.4. ceases to be eligible for membership under the terms of this constitution.

If in the reasonable opinion of the Secretary, an individual ceases to be eligible for membership under the terms of this constitution, the Secretary will give the relevant individual 14 days written notice to show cause why his name should not be removed from the register of members. On receipt of any such information, the Secretary may, if he considers it appropriate, remove the member from the register of members. If the individual continues to dispute his removal, the Secretary will refer the matter to the Council of Governors as provided by paragraph 31.6 below.

10. COUNCIL OF GOVERNORS – COMPOSITION

- 10.1. The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 10.2. The composition of the Council of Governors is specified in Annex 3.
- 10.3. The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.
- 10.4. Elected governors shall be elected in accordance with paragraph 11 below and appointed governors shall be appointed as provided in paragraph 12 below

11. COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS

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

- 11.2. The Model Rules for Elections, as may be varied from time to time, and as adapted to reflect the Trust's decisions as to options within the rules form part of this constitution and are attached at Annex 4.
- 11.3. A variation of the Model Rules for Elections, other than a unilateral variation by the Trust, shall not constitute a variation of the terms of this constitution.
- 11.4. An election, if contested, shall be by secret ballot in accordance with the Model Rules for Elections.
- 11.5. The forms of declaration required by Section 60 of the 2006 Act are set out in Annex 7

12. COUNCIL OF GOVERNORS - TENURE

- 12.1. The initial terms of office for those governors elected or appointed at the date of adoption of this constitution by the Trust are set out in Annex 3. Subject to paragraph 14 below, the terms of office of all governors subsequently elected will be a period of 3 years.
- 12.2. An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 12.3. An elected governor shall be eligible for re-election at the end of his initial term of office, as set out in Annex 3, for a further term of 3 years up to a maximum 6 years in total.
- 12.4. The appointed governors shall be chosen by the relevant sponsoring organisation referred to in Annex 3.
- 12.5. The appointed governors shall be appointed by written notice to the Trust delivered or sent to the Trust's head office signed by the chief officer of the body or organisation appointing him or in the case of a joint appointment by the chief officers of a majority of those bodies or organisations. The initial term of office for each appointed governor will be as set out in Annex 3 and all subsequent terms of office will be for a period of 3 years.
- 12.6. An appointed governor may be removed as a governor by written notice from his appointing body or organisation in the manner referred to in paragraph 12.5 or by written notice from the Trust if he ceases to be eligible to continue as an appointed governor pursuant to paragraph 13.3. In both cases, another governor may be appointed in his place for the remainder of his term of office in the manner set out in paragraph 12.5. Any removal or appointment of an appointed governor shall take effect upon its receipt by the Trust in accordance with paragraph 13.3.
- 12.7. Upon election or appointment each governor shall sign an undertaking agreeing to be bound by the Code of Conduct for governors as varied from time to time.

13. COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL

- 13.1. The following may not become or continue as a member of the Council of Governors:

- 13.1.1. a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 13.1.2. a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
 - 13.1.3. a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 13.2. Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.
- 13.3. Subject to the procedure set out at paragraphs 13.4 to 13.7 below a governor shall cease to be a governor only upon the passing by the Council of Governors in general meeting of a resolution confirming that he has ceased to be a governor except in the case of his written resignation or his removal as an appointed governor by written notice from his appointing body or organisation given under paragraph 12.6 which in either case shall take effect upon its being delivered or sent to the Trust Secretary at the Trust's head office.
- 13.4. If the Secretary shall recommend to the Council of Governors that a resolution confirming that a governor has ceased to be a governor shall be put to the next general meeting of the Council of Governors and a resolution to that effect is not put to or is not passed at that meeting the Chairman of the Trust may by written notice to all the governors require a panel to be set up to review the continuation of that governor as a governor.
- 13.5. A panel established under paragraph 13.4 (the Panel) shall have as its members two independent non-executive directors and a governor who is not a member of the same Public Constituency or of the same class of the Staff Constituency or is not appointed by the same body as the governor whose continuation is to be reviewed.
- 13.6. The Panel shall consider the evidence submitted to it whether verbally or in writing, including but not limited to any evidence submitted orally or in writing by the governor whose continuation is being reviewed, and the decision of the Panel or of a majority of the members of the Panel if not unanimous, shall be final and binding upon the Trust, the Council of Governors and the governor whose continuation is being reviewed.
- 13.7. The decision of the Panel shall be recorded in writing and a copy of it shall be sent or delivered to the Trust, the Council of Governors and the governor whose continuation was reviewed and shall take effect in the case of the governors removal upon its receipt by the Trust

14. VACANCIES OF ELECTED GOVERNORS

14.1. Subject to paragraph 14.2, if the seat of an elected governor (the "first governor") falls vacant for any reason before the end of his term of office, a new governor (the "new governor") will not be elected to fill that seat until the time at which the first governor would have been eligible for re-election.

14.2. An election to fill the first governor's seat will be held immediately if:

14.2.1. there would otherwise be no elected governor to represent the first governor's class in his constituency; or

14.2.2. the total number of governors elected by the Public Constituency would cease to represent more than half of the members of the Council of Governors.

14.3. A new governor elected to fill the first governor's vacancy pursuant to paragraph 14.2 will hold office only for the remainder of the first governor's term of office. At the time at which the first governor would have been eligible for re-election, the new governor will be eligible for re-election provided that he may not hold office for more than a maximum of 6 years in total.

15. COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS

15.1. The Chairman of the Trust or, in his absence the Vice Chairman, shall preside at meetings of the Council of Governors except as otherwise provided pursuant to the Standing Orders to be adopted under paragraph 16 below.

15.2. Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

16. COUNCIL OF GOVERNORS – STANDING ORDERS

The Council of Governors shall adopt standing orders for the practice and procedure of the Council, which are included in Annex 6. These standing orders may be altered from time to time as the Board of Directors after consultation with the Council of Governors and with the approval of Monitor, may decide.

17. COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS

If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The standing orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of, or any right to vote upon the matter in respect of which an interest has been disclosed.

18. COUNCIL OF GOVERNORS – TRAVEL EXPENSES

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

19. BOARD OF DIRECTORS

- 19.1. The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.
- 19.2. The Board of Directors is to comprise:
- 19.2.1. a non-executive Chairman
 - 19.2.2. not more than 7 other non-executive directors; and
 - 19.2.3. not more than 7 executive directors.
- but so that the number of the non-executive directors including the Chairman shall always be equal to or exceed the number of executive directors.
- 19.3. One of the executive directors shall be the Chief Executive.
- 19.4. The Chief Executive shall be the Accounting Officer.
- 19.5. One of the executive directors shall be the Finance Director.
- 19.6. One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 19.7. One of the executive directors is to be a registered nurse or a registered midwife.

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

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

- 20.1. he is a member of the Public Constituency, or
- 20.2. where any of the Trust’s hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university

and in either case he is not disqualified by virtue of paragraph 26 below.

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

- 21.1. The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chairman of the Trust and the other non-executive directors.
- 21.2. Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.
- 21.3. The initial chairman and the initial non-executive directors are to be appointed in accordance with paragraph 22 below.
- 21.4. The Council of Governors shall adopt a procedure for appointing the Chairman and the non-executive directors which shall provide for the process to be open and fair and in accordance with any guidance issued by Monitor

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

- 22.1. The Chairman of the applicant NHS Trust shall be appointed as the initial Chairman of the Trust if he wishes to be appointed.
- 22.2. The power of the Council of Governors to appoint the other non-executive directors of the Trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the Trust any of the non-executive directors of the applicant NHS Trust (other than the Chairman) who wish to be appointed. In the case of any vacancies paragraph 21.1 shall apply.
- 22.3. The criteria for qualification for appointment as a non-executive director set out in paragraph 20 above (other than disqualification by virtue of paragraph 26 below) do not apply to the appointment of the initial chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.
- 22.4. An individual appointed as the initial chairman or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chairman or (as the case may be) non-executive director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

23. BOARD OF DIRECTORS – APPOINTMENT OF VICE CHAIRMAN

The Board of Directors may appoint a Vice Chairman of the Board in the manner specified in the standing orders of the Trust.

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

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

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

- 25.1. The chief officer of the applicant NHS Trust shall be appointed as the initial Chief Executive of the Trust if he wishes to be appointed.
- 25.2. The appointment of the chief officer of the applicant NHS Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Governors.

26. BOARD OF DIRECTORS – DISQUALIFICATION

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

- 26.1. A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 26.2. A person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
- 26.3. A person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 26.4. A person who is a non-executive director, but not the initial Chairman nor an initial non-executive Director, and who is not a member of the Public Constituency.
- 26.5. A person whose tenure of office as a Chairman or as a Member or Director of a health service or local authority body has been terminated on the grounds that his appointment is not in the interests of public service, or for non attendance at meetings, or for non disclosure of a pecuniary interest.
- 26.6. A person who has had his name removed from any list prepared under section 91, 106, 123 or 146 of the 2006 Act, and has not subsequently had his name included in such a list.
- 26.7. A person who has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health retirement, from any paid employment with a health service body or local authority body.
- 26.8. A person who is a member of the Council of Governors.
- 26.9. A person who has failed to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Code of Conduct for Directors.
- 26.10. A person who is an executive or non executive director or governor of another NHS body.
- 26.11. A person who has acted in a manner inconsistent with the Terms of authorisation, the standing orders or standing financial instructions of the Trust, or the Code of Conduct for Directors.
- 26.12. A person who has failed to comply with the provisions of the standing orders of the Trust as to a conflict of interests.
- 26.13. A person where disclosures revealed by a Criminal Records Bureau check against such person are such that it would be inappropriate for him to become or continue as a director or would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute.
- 26.14. A person who is the subject of a Sexual Offenders Order under the Sexual Offences Act 2003.
- 26.15. A person who is disqualified from acting as a company director under the Company Directors Disqualification Act 1986.

27. BOARD OF DIRECTORS – STANDING ORDERS

The Board of Directors shall adopt standing orders for the practice and procedure of the Board of Directors, which are included in Annex 6. These standing orders may be altered from time to time as the Board of Directors with the approval of Monitor, may decide.

28. BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS

If a director has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Board of Directors, the director shall disclose that interest to the members of the Board of Directors as soon as he becomes aware of it. The standing orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a director declaring any interest from any discussion or consideration of or any right to vote upon the matter in respect of which an interest has been disclosed.

29. BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE

- 29.1. The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.
- 29.2. A non executive director shall not hold office for a term of more than three years but shall be eligible for reappointment unless the aggregate of his terms of office from the date of the Trust's establishment as a Foundation Trust exceeds or would exceed nine years.
- 29.3. The Board of Directors shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors, and until that committee is established the existing Remuneration and Terms of Service Committee of the Trust shall continue to decide upon such matters

30. REGISTERS

The Trust shall have:

- 30.1. A register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 30.2. A register of members of the Council of Governors;
- 30.3. A register of interests of governors;
- 30.4. A register of directors; and
- 30.5. A register of interests of the directors.

31. ADMISSION TO CHANGE OF AND REMOVAL FROM THE REGISTERS

- 31.1. The Trust shall nominate a person to act as the Secretary to the Trust ('the Secretary') who shall be responsible for the obligations of the Trust which are set out in paragraphs 30, 31, 32 and 33 of this Constitution
- 31.2. The entry of the name of a person as a member of the Trust in the register of members shall be conclusive evidence of that person's membership of the Trust at a particular time and of the constituency and of the class of the constituency of which that person is then a member
- 31.3. Any inadvertent failure by the Trust to give notice to any member of any proposed meeting or election shall not invalidate the proceedings at that meeting or that election
- 31.4. The entry of the name of a person as a member of the Council of Governors in the register of members of the Council shall be conclusive evidence of that person's membership of the Council of Governors at a particular time and of the manner of his or her election appointment or nomination
- 31.5. Any inadvertent failure by the Trust to give notice to any member of the Council of Governors of any proposed meeting shall not invalidate the proceedings at that meeting
- 31.6. The Secretary shall make such changes to the registers referred to in paragraph 30 based on such information or evidence as the Secretary shall in his discretion decide including but not limited to the addition or removal of the name of any person from the register of members or the register of the Council of Governors and all such changes shall be reported to the next meeting of the Council of Governors who shall confirm that change or direct the Secretary to make a further change
- 31.7. Any change made by the Secretary to any of the registers (other than the removal of a Governor from the register of members of the Council of Governors) whether made prior to or following a direction by a meeting of the Council of Governors shall take effect from the moment it is made
- 31.8. Any change made by the Secretary to the register of members of the Council of Governors which involves the removal of a Governor from that register shall not take effect until the passing by the Council in general meeting of a resolution confirming that that Governor has ceased to be a Governor or on the receipt by the Trust of the written decision of the Panel under paragraph 13.7 above to that effect except in the case of the written resignation of a Governor or the removal of an Appointed Governor by written notice given under paragraph 12.6 which in either case shall take effect upon such resignation or notice being delivered or sent to the Secretary at the Trust's head office
- 31.9. Each Governor and each Director shall advise the Secretary as soon as practicable of anything which may come to his attention and which might affect the accuracy of the matters recorded in any of the registers referred to in paragraph 30.

32. REGISTERS – INSPECTION AND COPIES

- 32.1. The Trust shall make the registers specified in paragraph 30 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 32.2. The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if the member so requests.
- 32.3. So far as the registers are required to be made available:
 - 32.3.1. They are to be available for inspection free of charge at all reasonable times; and
 - 32.3.2. A person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 32.4. If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

33. DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

- 33.1. The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
 - 33.1.1. A copy of the current constitution;
 - 33.1.2. A copy of the current authorisation
 - 33.1.3. A copy of the latest annual accounts and of any report of the auditor on them
 - 33.1.4. A copy of the latest annual report
 - 33.1.5. A copy of the latest information as to its forward planning
 - 33.1.6. A copy of any notice given under sections 52 or 53 of the 2006 Act
 - 33.1.7. Membership strategy and information about membership
 - 33.1.8. Information relating to the Council of Governors
 - 33.1.9. A statement of the objectives of the NHS foundation trust and an explanation of how interests of patients, the local community and other stakeholders will be balanced
 - 33.1.10. The terms of reference of the Nominations, Remuneration and Audit Committees explaining their role and the authority delegated to them by the boards
 - 33.1.11. A description of each director's expertise and experience
 - 33.1.12. A clear statement about the Board of Directors balance, completeness and appropriateness

- 33.1.13. The terms and conditions of appointment of non – executive directors
 - 33.1.14. Where remuneration consultants are appointed a statement of whether they have any connection with the NHS Foundation trust
 - 33.1.15. The policy on the involvement of members, patients and the local community at large, including a description of the kind of issues on which they will be consulted
 - 33.1.16. Contact procedures for members that wish to communicate with governors and /or directors
- 33.2. Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 33.3. If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.
- 33.4. Nothing in this clause shall require the Trust to make available for inspection by members of the public any part of its registers which shows details of any member of the Trust if that member so requests.

34. AUDITOR

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

35. AUDIT COMMITTEE

The Trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

36. ANNUAL ACCOUNTS

- 36.1. The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the HM Treasury direct.
- 36.2. The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

37. ANNUAL REPORT AND FORWARD PLANS

- 37.1. The Trust shall prepare an Annual Report and send it to Monitor.
- 37.2. The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 37.3. The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 37.4. In preparing the document, the directors shall have regard to the views of the Council of Governors.

38. MEETING OF COUNCIL OF GOVERNORS TO CONSIDER ANNUAL ACCOUNTS AND REPORTS

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

- 38.1. The annual accounts
- 38.2. Any report of the auditor on them
- 38.3. The annual report.

39. INSTRUMENTS

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

40. INDEMNITIES

The Trust shall give a limited indemnity to the Directors in respect of certain legal claims in such terms as the Board of Directors may from time to time decide and a limited indemnity to the Governors in respect of certain legal claims in such terms as the Board of Directors after consultation with the Council of Governors may from time to time decide. The terms of such indemnities may be reviewed by the Trust in the light of any change in the law or of any guidance issued by Monitor

41. AMENDMENTS TO THIS CONSTITUTION

The Trust may amend this constitution, with the consent of Monitor.

42. INTERPRETATION AND DEFINITIONS

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006. Words importing the masculine gender only shall include the feminine gender, and words importing the singular shall import the plural and vice-versa in each case.

The **applicant NHS Trust** is North Essex Mental Health Partnership NHS Trust.

The **2006 Act** is the National Health Service Act 2006.

Monitor is the Independent Regulator of NHS Foundation Trusts, established under Section 31 of the 2006 Act.

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

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

The **Accounting Officer** for the Trust is the Chief Executive of the Trust.

The **Model Rules for Election** are the rules for elections for Foundation Trusts published from time to time by the Department of Health

Clear Day is a day of the week which is not a Saturday Sunday or public holiday

ANNEXES

ANNEX 1 – THE PUBLIC CONSTITUENCIES

There shall be eleven Public Constituencies as follows:-

Name of the constituency	Area of the constituency	Number of governors to be elected	Minimum number of members
Colchester	The district council area of Colchester	4	4
Tendring	The district council area of Tendring	4	4
Braintree	The district council area of Braintree	4	4
Chelmsford	The district council area of Chelmsford	4	4
Maldon	The district council area of Maldon	2	4
Harlow	The district council area of Harlow	2	4
Epping Forest	The district council area of Epping Forest	3	4
Uttlesford	The district council area of Uttlesford	2	4
Suffolk	The district council areas of Babergh, Ipswich, St Edmundsbury, Forest Heath, Mid Suffolk, Suffolk Coastal, and Waveney	1	4
East Hertfordshire	The electoral wards in the district of East Hertfordshire of Bishop's Stortford central, Ware Christchurch, Hoddesdon Town, Sawbridgeworth and Much Hadham	1	4
South Essex	The district council areas of Basildon, Brentwood, Castle Point, and Rochford, and the unitary authorities of Thurrock and Southend	1	4

ANNEX 2 – THE STAFF CONSTITUENCY

The Staff Constituency will be divided into five classes as follows:

Class	Description	Minimum Number of members
Nursing Staff	All qualified and unqualified nursing staff including healthcare assistants	544
Doctors	All Medical Staff except those doctors on training grades	56
Other clinical staff	This will include Psychologists, Psychological Therapists, Occupational Therapists, Arts Therapists and all other clinical staff who do not fall into the category covered by the Doctor or Nursing class above	91
Social Care staff	Those individuals seconded from Essex County Council, registered and unregistered staff	86
Non clinical staff	Associate Directors, Team Leaders, Admin and Clerical Staff, Technical staff including IT, Human Resources, Medical Records, Estates, Ancillary Support staff, Finance and Supplies	223

The minimum membership of the Staff Constituency will be 1,000.

ANNEX 3 – COMPOSITION OF THE COUNCIL OF GOVERNORS

The Council of Governors will comprise the following Elected and Appointed Governors:

Public (Elected) Governors - 28		Appointed Governors - 21	
Public Constituency			
Colchester constituency	4	PCT Governors: 1 appointed by Mid Essex PCT; 1 appointed by North East Essex PCT; 1 appointed by West Essex PCT.	3
Tendring constituency	4	Local Authority Governors: 1 appointed by Colchester Borough Council and 2 appointed by Essex County Council.	3
Braintree constituency	4	Other Partnership Governors from the following organisations:	
Chelmsford constituency	4	Anglia Ruskin University	1
Maldon constituency	2	Interact	1
Uttlesford constituency	2	Alzheimers Society	1
Harlow constituency	2	MIND	1
Epping Forest constituency	3	Essex Respite Association	1
East Hertfordshire constituency	1	Essex Police	1
Suffolk constituency	1	HM Prison & Young Offenders Institute Chelmsford	1
South Essex constituency	1	BBC Essex	1
		Institute of Directors	1
Staff Constituency Governors - 5		Essex Drug and Alcohol Team	1
Nursing staff constituency	1	GP's	3
Doctors constituency	1	Princess Alexandra Hospital Trust	1
Other Clinical staff constituency	1	Essex Racial Equality Council	1
Social Care staff constituency	1		
Non Clinical staff constituency	1		

The term of office for each governor named below shall run from the date of his election, either by votes cast at an election held under this Constitution, or in default of sufficient competing nominations at such an election, until the date shown opposite his name in the second column below, and then if reelected or reappointed for the period shown in the third column below:

Governor	Expiry Date of Initial Term of Office	Subsequent Term of Office
Public Constituency (28)		
Braintree Constituency Matthew Mills Jacqueline Watts David Beattie Dr. Peter Blenkinsop	31 March 2010 31 March 2010 31 March 2009 31 March 2009	Three years for each governor
Chelmsford Constituency Trevor Ingrouille Alexander Morris Steven Pruner Keith Tindley	31 March 2010 31 March 2010 31 March 2010 31 March 2010	Three years for each governor
Colchester Constituency Ray Cole Margaret Colyer Patrick Mills Linda Wonnacott	31 March 2010 31 March 2010 31 March 2009 31 March 2009	Three years for each governor
East Hertfordshire Constituency Michael Waller	31 March 2010	Three years
Epping Forest Constituency Sheila Jackman MBE Andrew Smith Brian Spinks	31 March 2010 31 March 2010 31 March 2009	Three years for each governor
Harlow Constituency David Bamber Charles Jackson	31 March 2010 31 March 2010	Three years for each governor
Maldon Constituency Tom Kelly Brian Loader	31 March 2010 31 March 2010	Three years for each governor
South Essex Constituency David Fairweather	31 March 2010	Three years
Suffolk Constituency Maggie Shackell	31 March 2010	Three years

Governor	Expiry Date of Initial Term of Office	Subsequent Term of Office
Tendring Constituency David Woods Dan Kessler Angela Barnes Alison Moore	31 March 2010 31 March 2010 31 March 2009 31 March 2009	Three years for each governor
Uttlesford Constituency Pamela Jenner Alf Jackson	31 March 2010 31 March 2009	Three years for each governor
Staff Constituency Governors (5)	Expiry Date of Initial Term of Office	Subsequent term of Office
Nursing staff Nazir Shivji	31 March 2010	Three years
Medical staff Andries Bisdee	31 March 2010	Three years
Other Clinical staff Hazel Fox	31 March 2010	Three years
Social Care staff Graham Field	31 March 2010	Three years
Non Clinical staff Nicola Colston	31 March 2010	Three years
Appointed Governors (21)	Initial Term of Office	Subsequent Term of Office
Mid Essex PCT David Barron	From the date of appointment until 31 March 2010	Three years
North East Essex PCT Paul Zollinger-Read	From the date of appointment until 31 March 2010	Three years
West Essex PCT Vacancy	From the date of appointment until 31 March 2010	Three years
Colchester Borough Council Nigel Chapman	From the date of appointment until 31 March 2010	Three years
Essex County Council Jenny Owen Cllr Mavis Webster	From the date of appointment until 31 March 2010	Three years for each governor
Anglia Ruskin University Steve Wood	From the date of appointment until 31 March 2010	Three years
Interact Adrian Faiers	From the date of appointment until 31 March 2010	Three years
Alzheimers Society Gaye Farrar	From the date of appointment until 31 March 2010	Three years

Governor	Expiry Date of Initial Term of Office	Subsequent Term of Office
MIND Clive White	From the date of appointment until 31 March 2010	Three years
Essex Respite Association Hazel Ruane	From the date of appointment until 31 March 2010	Three years
Essex Police Roger Baker	From the date of appointment until 31 March 2010	Three years
HM Prison & Young Offenders Institute Chelmsford Vicky Blakeman	From the date of appointment until 31 March 2010	Three years
BBC Essex David Monk	From the date of appointment until 31 March 2010	Three years
Institute of Directors Vacancy	From the date of appointment until 31 March 2010	Three years
Essex Drug and Alcohol Action Team Steve Leverett	From the date of appointment until 31 March 2010	Three years
GPs Dr. Miranda Roberts Dr. Gary Sweeny Vacancy	From the date of appointment until 31 March 2010	Three years for each governor
Princess Alexandra Hospital Trust Robert Powell	From the date of appointment until 31 March 2010	Three years
Essex Racial Equality Council Clive Mardner	From the date of appointment until 31 March 2010	Three years

ANNEX 4 –THE MODEL RULES FOR ELECTIONS

Part 1 - Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning officer

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

Part 5 – Contested elections

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

Action to be taken before the poll

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

The poll

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

Procedure for receipt of envelopes

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

Part 6 - Counting the votes

36. Interpretation of Part 6
37. Arrangements for counting of the votes
38. The count
39. Rejected Ballot Papers
40. First stage
41. The quota
42. Transfer of votes
43. Supplementary provisions on transfer
44. Exclusion of candidates

45. Filling of last vacancies
46. Order of election of candidates

Part 7 – Final proceedings in contested and uncontested elections

47. Declaration of result for contested elections
48. Declaration of result for uncontested elections

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll
50. Delivery of documents
51. Forwarding of documents received after close of the poll
52. Retention and public inspection of documents
53. Application for inspection of certain documents relating to election

Part 9 – Death of a candidate during a contested election

54. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

55. Expenses incurred by candidates
56. Expenses incurred by other persons
57. Personal, travelling, and administrative expenses

Publicity

58. Publicity about election by the corporation
59. Information about candidates for inclusion with voting documents
60. Meaning of “for the purposes of an election”

Part 11 – Questioning elections and irregularities

61. Application to question an election

Part 12 – Miscellaneous

- 62. Secrecy
- 63. Prohibition of disclosure of vote
- 64. Disqualification
- 65. Delay in postal service through industrial action or unforeseen event

Part 1 - Interpretation

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

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

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

“the regulator” means the Independent Regulator for NHS foundation trusts; and

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

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

Part 2 – Timetable for election

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

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

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

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

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

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

Part 3 – Returning officer

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

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

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

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

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

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination papers may be obtained;
- (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer, and
- (h) the date and time of the close of the poll in the event of a contest.

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

(2) The returning officer-

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

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

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

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

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

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

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

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

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

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

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

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

- (a) decides that the candidate is not eligible to stand,
- (b) decides that the nomination paper is invalid,
- (c) receives satisfactory proof that the candidate has died, or

(d) receives a written request by the candidate of their withdrawal from candidacy.

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

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

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

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

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

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

(2) The statement must show –

- (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing,

as given in their nomination paper.

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

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

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

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

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

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

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

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

- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

Part 5 – Contested elections

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

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

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

(2) Every ballot paper must specify –

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) instructions on how to vote,
- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (g) the contact details of the returning officer.

(3) Each ballot paper must have a unique identifier.

(4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

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

- (a) that the voter is the person to whom the ballot paper was addressed,
- (b) that the voter has not marked or returned any other voting paper in the election, and
- (c) for a member of the public constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.

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

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter's signature, and
- (d) the date that the declaration was made by the voter.

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

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

Action to be taken before the poll

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

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

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

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

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

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

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

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

(2) The covering envelope is to have –

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

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

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

The poll

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

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

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

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

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

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

- (a) is satisfied as to the voter's identity, and
- (b) has ensured that the declaration of identity, if required, has not been returned.

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

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

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

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

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

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

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot paper– (1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

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

- (a) the name of the voter, and

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

31. Declaration of identity for replacement ballot papers (public constituency) – (1) In respect of an election for a public constituency a declaration of identity must be issued with each replacement ballot paper.

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

- (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
- (b) of the particulars of that member's qualification to vote as a member of the public constituency, or class within a constituency, for which the election is being held.

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

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter's signature, and
- (d) the date that the declaration was made by the voter.

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

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

Procedure for receipt of envelopes

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

- (a) covering envelope, or
- (b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.

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

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

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

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

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

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

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

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

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

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

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

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

Part 6 - Counting the votes

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

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

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

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

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

“non-transferable vote” means a ballot paper –

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule 44(4) below,

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

- (a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,
- (b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and
- (c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the

figure “3” or any mark or word which clearly indicates a third preference, and so on,

“quota” means the number calculated in accordance with rule 41 below,

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

“stage of the count” means –

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

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

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

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

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

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

- (a) count and record the number of ballot papers that have been returned, and
- (b) count the votes according to the provisions in this Part 6 of the rules.

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

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

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

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

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

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

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

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

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

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

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

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

(3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule 44 has been complied with.

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

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

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

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

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

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

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

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

(6) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

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

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

whichever is the less.

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

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

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

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

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

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

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

(2) The returning officer shall, on each transfer of transferable papers under rule 42 above –

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

(3) All ballot papers transferred under rule 42 or 44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule 42 or 44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

44. Exclusion of candidates – (1) If—

- (a) all transferable papers which under the provisions of rule 42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule 45 below, one or more vacancies remain to be filled,

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

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

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

(3) The returning officer shall, in accordance with this rule and rule 43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

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

(5) If, subject to rule 45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

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

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

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

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

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

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

(11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule 42 and rule 43.

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

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

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes

and the candidate with the lowest number of votes at that stage shall be excluded, and

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

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

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

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

46. Order of election of candidates – (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule 42(10) above.

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

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

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

47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to—

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected—
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the North Essex Partnership NHS Foundation

Trust by section 33(4) of the 2006 Act, to the chairman of the Foundation Trust, or

- (ii) in any other case, to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

(2) The returning officer is to make –

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule 39(1),

available on request.

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

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

Part 8 – Disposal of documents

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

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

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

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

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

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

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

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

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued,

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

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

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

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

53. Application for inspection of certain documents relating to an election – (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,
- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters,

by any person without the consent of the Regulator.

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

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

- (a) persons,
- (b) time,
- (c) place and mode of inspection,
- (d) production or opening,

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

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

- (a) in giving its consent, the regulator, and
- (b) and making the documents available for inspection, the corporation,

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

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

Part 9 – Death of a candidate during a contested election

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

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

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

Part 10 – Election expenses and publicity

Election expenses

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

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

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

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

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

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

Publicity

58. Publicity about election by the corporation – (1) The corporation may –

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

as it considers necessary.

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

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

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

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

(2) The information must consist of –

- (a) a statement submitted by the candidate of no more than 250 words, and
- (b) a photograph of the candidate.

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

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

Part 11 – Questioning elections and the consequence of irregularities

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

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

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

- (a) a person who voted at the election or who claimed to have had the right to vote, or
- (b) a candidate, or a person claiming to have had a right to be elected at the election.

(4) The application must –

- (a) describe the alleged breach of the rules or electoral irregularity, and
- (b) be in such a form as the Regulator may require.

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

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

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

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

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

Part 12 – Miscellaneous

62. Secrecy – (1) The following persons –

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

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

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

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

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

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

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

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

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

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

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

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

In addition to the provisions of paragraph 13.1 above a person is not eligible to become or to continue to be a Governor if:

- He refuses to sign a declaration in the form specified by the Secretary of particulars of his qualification to vote as a member of the Trust and that he is not prevented from being a member of the Council of Governors.
- He has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health retirement, from any paid employment with a health service body, or a Local Authority body.
- He is a person whose tenure of office as the chairman or as a member or director of a health service body has been terminated on the grounds that his appointment is not in the interests of the health service or for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
- He is an executive or non-executive director of the Trust, or a governor, non-executive director, chairman, chief executive or other executive director of another NHS Foundation Trust.
- He is under 16 years of age.
- He is a registered sex offender pursuant to the Sex Offenders Act 2003.
- He is undergoing a period of disqualification from a statutory health or social care register.
- He resigns in writing to the Secretary.
- He fails to attend two consecutive meetings of the Council of Governors unless the other governors are satisfied that:
 - the absences were due to reasonable causes; and
 - he will be able to start attending meetings of the Trust again within such a period as the other governors consider reasonable.
- In the case of an elected governor, he ceases to be a member of the constituency or class of the constituency by which he was elected.
- In the case of an appointed governor, the appointing organisation terminates the appointment of the individual.
- He has refused, without reasonable cause, to undertake training which the Council of Governors requires all governors to undertake.
- He has failed to sign and deliver to the Secretary a statement, in the form required by the Secretary, confirming acceptance of the Code of Conduct for governors.
- He ceases to meet the qualification for being a governor following a change in his circumstances.
- He fails to discharge his responsibilities as a governor.
- He refuses to sign a statement of continued eligibility to act as governor within 7 Clear Days prior to each Council of Governors meeting.
- He has failed to abide by the Trust's Code of Conduct and standing orders for governors in such form as the Trust may publish from time to time.
- In the case of Public Governors, he has been employed by the Trust in the previous 12 months

- He is a member of the Patients Forum for the Trust
- He is from the same household as another governor
- He has had his name removed from any list prepared under sections 91,106,123, or 146 of the 2006 Act, and has not subsequently had their name included in such a list.
- The Chairman of the Council of Governors and the Council of Governors resolves that disclosures revealed by a Criminal Records Bureau check are such that it would be inappropriate for him to become or continue as a governor or would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute
- He is a member of the Local Authority Overview and Scrutiny Committee for Health

ANNEX 6 –STANDING ORDERS FOR THE COUNCIL OF GOVERNORS AND BOARD OF DIRECTORS

ANNEX 7 – DECLARATIONS REQUIRED BY SECTION 60 OF THE 2006 ACT

Declaration pursuant to S60(1) of entitlement to vote in an election for the Public Constituency

“I hereby declare that I am at the date of this declaration a member of the Public Constituency, by reason of living at [] in the constituency for which this election is being held “

Declaration pursuant to S60(2) of entitlement to stand as a governor

I hereby declare that I am at the date of this declaration a member of the Public Constituency by reason of living at [] in the constituency for which this election is being held and I am not prevented from being a member of the Council of Governors by reason of any of the matters set out in paragraph 13 or Annex 5 of the Constitution of the Trust

Declaration to be made by Governors prior to governors meetings pursuant to S60(3)

Declaration to the Secretary of North Essex Partnership NHS Foundation Trust

I hereby declare that at the date of this declaration I am not prevented from being a member of the Council of Governors under the provisions in the Constitution.

Note: These provisions are set out in paragraph 13.1 and Annex 5 above which are reproduced as Schedule C to the Standing Orders for the Council of Governors

**NORTH ESSEX PARTNERSHIP NHS
FOUNDATION TRUST**

STANDING ORDERS

FOR

THE COUNCIL OF GOVERNORS

NORTH ESSEX PARTNERSHIP NHS FOUNDATION TRUST
STANDING ORDERS FOR THE COUNCIL OF GOVERNORS

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1 INTRODUCTION

- 1.1 The North Essex Partnership NHS Foundation Trust (“the Trust”) became a Public Benefit Corporation on 1 October 2007 following authorisation by the Independent Regulator of NHS Foundation Trusts (the “Independent Regulator” and the office now known as Monitor) pursuant to the National Health Service Act 2006 (“the 2006 Act”).
- 1.2 The principal place of business of the Trust is currently at Stapleford House, 103 Stapleford Close, Chelmsford, Essex CM2 0QX.
- 1.3 The Trust is governed by the 2006 Act, its Constitution and its Authorisation granted by the Independent Regulator (the Regulatory Framework). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Council of Governors of the Trust to adopt Standing Orders for the regulation of its proceedings and business and to adhere at all times to the Code of Conduct for Governors.

2 DEFINITIONS

- 2.1 In these Standing Orders:

Council

means the Council of Governors of the Trust as constituted in accordance with the Constitution.

Board

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

Chairman

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

Chief Executive

means the Chief Executive of the Trust.

Clear Day

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

Constitution

means the Constitution of the Trust.

Deputy Chairman

means the Lead Governor or in his absence another Governor appointed by the Council of Governors, either generally or for a specific meeting, to preside at a meeting of the Council of Governors in the circumstances referred to in Standing Order 4.7.4 below

Governor

means a Governor of the Trust elected or appointed as provided by the Constitution but does not include the Chairman.

Lead Governor

means the Lead Governor appointed under Standing Order 5 below.

Non-Executive Director

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

Officer

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

Secretary

means a person appointed by the Trust in accordance with the Constitution to be the Trust Secretary to act independently of the Council of Governors to provide advice on Corporate Governance issues to the Council of Governors and the Chairman and monitor the Trust's compliance with the Regulatory Framework and these Standing Orders

Vice Chairman

means a Non-Executive Director appointed by the Board to preside at a meeting of the Council in the absence of the Chairman.

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

3 THE COUNCIL OF GOVERNORS

- 3.1 Certain powers and decisions may only be exercised by the Council in formal session. These powers and decisions are set out in the Constitution and have effect as if incorporated into the Standing Orders. A list of these powers is contained in Schedule B to these Standing Orders.

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

The public and representatives of the Press shall be afforded facilities to attend all formal meetings of the Council except where it resolves:

- 4.1.1 That members of the public and representatives of the Press be excluded from the remainder of a meeting having regard to the confidential nature of the business to be transacted or as a result of any publicity which would be prejudicial to the Trust or its business or any of its employees or service users or carers or contractors, to the extent that the Council believes that in the circumstances these are special reasons for

excluding the public from the meeting in accordance with the Constitution; and/or

- 4.1.2 That in the interests of public order the meeting adjourn for a period to be specified and continue thereafter without the presence of the public to enable the Council to complete its business.

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

4.2 **Calling Meetings**

- 4.2.1 Meetings of the Council shall be held at such times and places as the Council may determine and there shall be at least 4 meetings in any year including an annual meeting and any other meetings required of the Governors in order to fulfil their functions in accordance with the Constitution.

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

4.3 **Notice of Meetings**

- 4.3.1 Before each meeting of the Council, a notice of the meeting, specifying so far as possible the business proposed to be transacted at it, and signed by the Chairman or by an officer authorised by the Chairman to sign on his behalf, shall be delivered to, or sent by post to the usual place of residence of every Governor, so as to be available to him at least 15 Clear Days before the meeting save in the case of emergencies.

- 4.3.2 Want of service of the notice on any one Governor shall not affect the validity of a meeting but failure to serve such a notice on more than three Governors will invalidate the meeting. A notice shall be presumed to have been served where manually delivered on the next Clear Day following the day of delivery and in any other case on the second Clear Day after the day of dispatch.

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

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

4.4 **Annual Meeting**

4.4.1 The Council shall hold an annual meeting of the Council in every calendar year so that there is no more than fifteen calendar months between one meeting and the next and shall present to that meeting:

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

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

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

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

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

4.5 **Setting the Agenda**

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

4.5.2 A Governor desiring a matter to be included on an agenda, including a formal proposition for discussion and voting on at a meeting, shall make his request in writing to the Chairman at least 10 Clear Days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10

Clear Days before a meeting may be included on the agenda at the discretion of the Chairman.

- 4.5.3 A matter may be included on the agenda and a proposition may be moved only if it relates to an issue arising from and relevant to the role and responsibilities of the Council which are set out in the Code of Conduct for Governors

4.6 **Petitions**

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

4.7 **Chairman of Meeting**

- 4.7.1 At any Council meeting, the Chairman, if present, shall preside.
- 4.7.2 If the Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the Vice Chairman shall preside.
- 4.7.3 If the Vice Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, a Non-Executive Director as shall be appointed by the Board shall preside
- 4.7.4 If both the Chairman and Vice Chairman and a Non-Executive Director appointed in accordance with Standing Order 4.7.3 are absent from the meeting or are absent temporarily on the grounds of a declared conflict of interest the Deputy Chairman shall preside.

4.8 **Agenda Proposals**

Where a Governor has requested inclusion of a matter on the agenda in accordance with Standing Order 4.5.2 above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this Standing Order 4.8 shall apply in respect of the proposition:

- 4.8.1 The mover of the proposition shall have a right of reply at the close of any discussion on the proposition or any amendment thereto.
- 4.8.2 When a proposition is under discussion or immediately prior to discussion it shall be open to a Governor to move:
 - 4.8.2.1 an amendment to the proposition;
 - 4.8.2.2 the adjournment of the discussion or the meeting;

- 4.8.2.3 that the meeting proceed to the next business;
- 4.8.2.4 the appointment of an ad hoc committee to deal with a specific item of business;
- 4.8.2.5 that the proposition now be put;
- 4.8.2.6 that the public be excluded from the meeting in relation to the discussion concerning the proposition under Standing Order 4.1.1.
- 4.8.3 No amendment to the proposition shall be admitted if, in the opinion of the chairman of the meeting, the amendment negates the substance of the proposition.
- 4.8.4 The mover of a proposition shall have a maximum of five minutes to move and three minutes to reply. Once a proposition has been moved, no Governor shall speak more than once or for more than three minutes.

4.9 Chairman's Ruling

- 4.9.1 Statements of Governors made at meetings of the Council shall be relevant to the matter under discussion at the material time and the decision of the chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

4.10 Voting

- 4.10.1 A Governor may not vote at a meeting of the Council unless within 7 Clear Days prior to the commencement of the meeting he has made a declaration in the form specified in Schedule A of these Standing Orders.
- 4.10.2 Subject to clause 4.10.4 below, every question at a meeting shall be determined by a majority of the votes of the chairman of the meeting and the Governors present and voting on the question.
- 4.10.3 Whoever is chairman of the meeting of the Council shall in the case of an equality of votes on any question or proposition have a casting vote.
- 4.10.4 A resolution for the removal of the Chairman or a Non-Executive Director shall be passed only if three quarters of the total number of Governors vote in favour of it.
- 4.10.5 All questions put to the vote shall, at the discretion of the chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.

- 4.10.6 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 4.10.7 If a Governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.10.8 A Governor may only vote if present at the time of the vote.

4.11 Suspension or Termination of Office of a Governor:

- 4.11.1 The Chairman shall be authorised to take such action as may be immediately required, including the exclusion of the Governor concerned from a meeting so that any allegation made against a Governor on the following grounds can be investigated:
 - 4.11.1.1 any non-compliance with the Regulatory Framework, Code of Conduct, or these Standing Orders; or
 - 4.11.1.2 any misconduct detrimental to the Trust; or
 - 4.11.1.3 if any other of the circumstances set out in paragraph 13 and/or Annex 5 of the Constitution relating to the disqualification or removal of a Governor are applicable.
- 4.11.2 Where any grounds within this clause are alleged, it shall be open to the Council to decide, by a simple majority of those present and voting, to lay a formal charge of non-compliance or misconduct.
- 4.11.3 The Governor in question will be notified in writing of the allegations, detailing the specific behaviour which is considered to be detrimental to the Trust, and inviting and considering his/her response within a defined appropriate and reasonable timescale.
- 4.11.4 The Governor may be invited to address the Council in person if the matter cannot be resolved satisfactorily through correspondence.
- 4.11.5 The Governors, by a simple majority of those present and voting can decide whether to uphold the charge of non-compliance or misconduct detrimental to the Trust.
- 4.11.6 The Governors can impose such sanctions as shall be deemed appropriate and as shall be in accordance with the Constitution. Such sanctions will range from the issuing of a written warning as to the Governor's future conduct and consequences, non-payment of expenses and removal of the Governor from office.

4.12 Minutes

- 4.12.1 The Minutes of the proceedings of a meeting shall be drawn up by the Secretary and submitted for agreement at the next meeting 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.

4.13 Suspension of Standing Orders

- 4.13.1 Except where this would contravene any statutory provision, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the 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.
- 4.13.2 A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.
- 4.13.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairman and Governors.
- 4.13.4 No formal business may be transacted while Standing Orders are suspended.

4.14 Variation and Amendment of Standing Orders

- 4.14.1 These Standing Orders may be amended only if and to the extent that the Board after consultation with the Council and with the approval of the Independent Regulator so decide. The Board shall consider a request for amendment of these Standing Orders if :
- 4.14.1.1 a notice of proposal under Standing Order 4.5.2 has been given; and
- 4.14.1.2 no fewer than one third of the total number of Governors voted in favour of amendment; and
- 4.14.1.3 the variation proposed does not contravene a statutory provision.

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 there are present at least 10 governors of which at least 5 shall be members of the public constituency, at least 1 shall be a member of the staff constituency and at least 2 shall be appointed governors.
- 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, if called on requisition, shall be dissolved but otherwise shall stand adjourned for 5 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 Standing Order 7 he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

5. LEAD GOVERNOR AND DEPUTY LEAD GOVERNOR

- 5.1 The Governors shall appoint a Lead Governor and a Deputy Lead Governor at the first meeting of the Council and at each annual meeting of the Council thereafter.

- 5.2 These appointments shall be made from those Governors who have been elected as Governors from the public constituency of members.
- 5.3 The Lead Governor and the Deputy Lead Governor so appointed shall hold office until the next annual meeting of the Council but shall be eligible for re-appointment at that time.
- 5.4 Applications for nomination for appointment as Lead Governor and Deputy Lead Governor shall be sent out with the papers for the first meeting or annual meeting of the Council as the case may be. Each nomination shall be made in writing by the Governor seeking appointment and must be returned to the principal place of business of the Trust addressed to the Secretary to arrive 2 Clear Days before the meeting.
- 5.5. There shall be separate forms of nomination for appointment to the position of Lead Governor and the position of Deputy Lead Governor and eligible Governors may be nominated for both positions.
- 5.6 In the event of there being two or more nominations for either appointment a secret ballot or secret ballots shall be held of all the Governors present at the meeting with each Governor present having one vote for each contested appointment.
- 5.7 A ballot for the position of Lead Governor shall be held first and the result of that ballot shall be announced to the Governors present before any ballot for the position of Deputy Lead Governor is held.
- 5.8 A ballot for the position of Deputy Lead Governor shall be held after the name of the appointed Lead Governor has been announced and any nomination of the Lead Governor for the position of Deputy Lead Governor shall become invalid.
- 5.9 The meeting shall adjourn while a ballot is taken and the Governor whose nomination receives the largest number of votes for the position in question shall be appointed.
- 5.10 In the event of an equality of votes the chairman of the meeting shall have a casting vote.
- 5.11 Without prejudice to the right of any Governor to communicate directly with the Chairman, the Lead Governor shall be responsible for receiving from Governors and communicating to the Chairman any comments, observations and concerns expressed to him by Governors regarding the performance of the Trust or any other serious or material matter relating to the Trust or its business, and communicating to a Governor or Governors observations which the Chairman may wish him to communicate to him or them from time to time, and chairing meetings of the Council in the circumstances referred to in Standing Order 4.7.4
- 5.12 The Deputy Lead Governor shall be responsible for supporting the Lead Governor in his role and for performing the responsibilities of the Lead Governor whenever he is known to be unavailable.

- 5.13 Each Governor shall communicate any comment, observation or concern which he may have to the Lead Governor in the first instance and only to the Deputy Lead Governor if the Lead Governor is known to be unavailable.
- 5.14 Any comment observation or concern received by the Lead Governor as to the Chairman shall be communicated to the Vice Chairman

6 COMMITTEES

- 6.1 The Council may appoint committees of the Council to assist it in the proper performance of its functions under the Constitution and the Regulatory Framework, consisting wholly or partly of the Chairman and Governors.
- 6.2 A committee appointed under Standing Order 6 may, subject to such directions as may be given by the Council, appoint sub-committees consisting wholly or partly of members of the committee.
- 6.3 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council with the terms “chairman” to be read as a reference to the chairman of the committee, and the term “Governor” to be read as a reference to a member of the committee as the context permits.
- 6.4 Each such committee shall have such terms of reference and powers and be subject to such conditions as the Council shall decide and shall be in accordance with the Regulatory Framework and any guidance issued by the Independent Regulator but the Council shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council at a formal meeting. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 6.5 Where committees are authorised to establish sub-committees they may not delegate their powers to the sub-committee unless expressly authorised by the Council.
- 6.6 The Council shall approve the appointments to each of the committees which it has formally constituted.
- 6.7 Where the Council is required to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Council, such appointments shall be made in accordance with applicable statute and regulations and with guidance issued by the Independent Regulator.
- 6.8 Where the Council 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 subject to the payment of travelling expenses and other

allowances being in accordance with such sum as may be determined by the Board or the Independent Regulator.

7 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

7.1 Declaration of Interests

7.1.1 The Regulatory Framework and the Constitution require each Governor to declare to the Secretary:

7.1.1.1 any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in Standing Order 7.2.1; and

7.1.1.2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, of which the Governor knows or ought reasonably to have known, subject to Standing Orders 7.2.2 and 7.2.3; and

7.1.1.3 any actual or potential family interest, direct or indirect, of which the Governor is aware, as described in Standing Order 7.2.5.

7.1.2 Such a declaration shall be made either at the time of the Governor's election or appointment or as soon thereafter as the interest arises, but within 5 Clear Days of the Governor becoming aware of the existence of that interest, and in such manner as the Secretary may prescribe from time to time.

7.1.3 In addition, if a Governor is present at a meeting of the Council and has an interest (other than an interest referred to in Standing Orders 7.2.3 or 7.2.4) in any contract, proposed contract or matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of, or vote on any question with respect to the contract, proposed contract or matter.

7.1.4 When a governor declares an interest pursuant to Standing Order 7.1.3, it shall be recorded at the time in the Governors' meeting minutes. Any change in any interest already declared pursuant to Standing Orders 7.1.2 and 7.1.3 shall also be declared at the next relevant meeting following the change occurring.

7.1.5 This Standing Order 7 applies to any committee, sub-committee or joint committee of the Council and applies to any member of any such committee, sub-committee, or joint committee (whether or not he is also a Governor).

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

7.2 Nature of Interests

7.2.1 Interests which shall be regarded as "relevant and material to the business of the Trust" are as follows and are to be interpreted in accordance with guidance issued by the Independent Regulator:

7.2.1.1 any directorship in a limited company whether public or private, except a directorship in a dormant company; or

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

7.2.1.3 majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS; or

7.2.1.4 derivation of more than one-fifth of a Governor's total gross income from commission and/or bonuses received for sales to NHS organisations; or

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

7.2.1.6 any employment by or managerial position in a voluntary or other organisation contracting for NHS services or commissioning NHS services; or

7.2.1.7 any employment by an organisation, entity or company (including, but not limited to, lenders or banks) which the Governor knows, or ought reasonably to have known, is considering entering into or has entered into a financial agreement with the Trust.

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

7.2.2.1 he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

7.2.2.2 he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

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

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

7.2.3.2 of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or

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

7.2.4 An interest in the securities of a company or other body shall for the purposes of subparagraph 7.2.3.2 above be regarded as remote or insignificant if

7.2.4.1 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and

7.2.4.2 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class

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

7.2.6 Each Governor shall also disclose to the Secretary any relationship such as is mentioned in Standing Order 7.2.5 which he may have to any other Governor or holder of any office in the Trust.

7.2.7 Each Governor in considering the relevance or materiality of any potential interest, shall take account of any influence rather than the immediacy of any relationship and of the interests of any partner in a professional partnership with him, and if in doubt shall discuss the matter with the Chairman

7.3 Register of Interests

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

8 STANDARDS OF BUSINESS CONDUCT

Each Governor shall comply with the Trust's Code of Conduct and any guidance issued by the Independent Regulator.

9 APPOINTMENTS AND RECOMMENDATIONS

9.1 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this paragraph of this Standing Order shall not preclude a Governor from

giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.

- 9.2 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 9.3 The Trust shall require candidates for any staff appointment under the Trust, when making such an application, to disclose in writing to the Trust whether they are related to any Governor or the holder of any office within the Trust, and shall advise them that failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 9.4 The Chairman and every Governor shall disclose to the Chief Executive or his delegated officer any relationship between himself and a candidate of whose candidature that Governor or Officer is aware. It shall be the duty of the Chief Executive or his delegated officer to report to the Council any such disclosure made.

10 MISCELLANEOUS

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

Schedule A

Declaration to the Secretary of North Essex Partnership NHS Foundation Trust

I hereby declare that at the date of this declaration I am not prevented from being a member of the Council of Governors under the provisions in the Constitution, which are reproduced in Schedule C.

Schedule B

Formal Powers of Council of Governors

(to be exercised by the Council in general meeting)

- The appointment of the chairman and the non executive directors of the Trust
- Decisions regarding the remuneration allowances and other terms and conditions of office of the chairman and non executive directors but not the length of the period of office of the initial chairman and the initial non executives.
- The approval or rejection of the appointment of the chief executive of the Trust proposed by its non executive directors but not that of the initial chief executive.
- The removal of the chairman or any non executive director of the Trust subject to the provisions of these Standing Orders of the Council
- The appointment and or removal of the external auditors of the Trust
- The approval and review of the membership strategy of the Trust after it has been determined by the Board
- The receipt and consideration of the annual accounts of the Trust and the report of the external auditors on them and the annual report of the Trust
- The communication to the Trust of the views of the Council on the forward planning of the Trust

Schedule C

Paragraphs 13.1 & 13.2 and Annex 5 of the Constitution

13. COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL

- 13.1 The following may not become or continue as a member of the Council of Governors:
- 13.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 13.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
 - 13.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 13.2 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5 of the Constitution.

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

In addition to the provisions of paragraph 13.1 above a person is not eligible to become or to continue to be a Governor if:

- He refuses to sign a declaration in the form specified by the Secretary of particulars of his qualification to vote as a member of the Trust and that he is not prevented from being a member of the Council of Governors.
- He has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health retirement, from any paid employment with a health service body, or a Local Authority body.
- He is a person whose tenure of office as the chairman or as a member or director of a health service body has been terminated on the grounds that his appointment is not in the interests of the health service or for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
- He is an executive or non-executive director of the Trust, or a governor, non-executive director, chairman, chief executive or other executive director of another NHS Foundation Trust.
- He is under 16 years of age.
- He is a registered sex offender pursuant to the Sex Offenders Act 2003.
- He is undergoing a period of disqualification from a statutory health or social care register.

- He resigns in writing to the Secretary.
- He fails to attend two consecutive meetings of the Council of Governors unless the other governors are satisfied that:
 - the absences were due to reasonable causes; and
 - he will be able to start attending meetings of the Trust again within such a period as the other governors consider reasonable.
- In the case of an elected governor, he ceases to be a member of the constituency or class of the constituency by which he was elected.
- In the case of an appointed governor, the appointing organisation terminates the appointment of the individual.
- He has refused, without reasonable cause, to undertake training which the Council of Governors requires all governors to undertake.
- He has failed to sign and deliver to the Secretary a statement, in the form required by the Secretary, confirming acceptance of the Code of Conduct for governors.
- He ceases to meet the qualification for being a governor following a change in his circumstances.
- He fails to discharge his responsibilities as a governor.
- He refuses to sign a statement of continued eligibility to act as governor within 7 clear days prior to each Council of Governors meeting.
- He has failed to abide by the Trust's Code of Conduct and standing orders for governors in such form as the Trust may publish from time to time.
- In the case of Public Governors, he has been employed by the Trust in the previous 12 months.
- He is a member of the Patients Forum for the Trust.
- He is from the same household as another governor.
- He has had his name removed from any list prepared under sections 91, 106, 123 or 146 of the 2006 Act, and has not subsequently had their name included in such a list.
- The Chairman of the Council of Governors and the Council of Governors resolves that disclosures revealed by a Criminal Records Bureau check are such that it would be inappropriate for him to become or continue as a governor or would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute.
- He is a member of the Local Authority Overview and Scrutiny Committee for Health.

NORTH ESSEX PARTNERSHIP NHS FOUNDATION TRUST

**STANDING ORDERS
FOR THE
BOARD OF DIRECTORS**

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INTRODUCTION

Statutory Framework

The **NORTH ESSEX PARTNERSHIP NHS FOUNDATION TRUST** (the "Trust") became a Public Benefit Corporation on 1 October 2007 following authorisation by the Independent Regulator of NHS Foundation Trusts (Independent Regulator and the office now known as Monitor) pursuant to the National Health Service Act 2006 ('the 2006 Act').

The principal place of business of the Trust is at the Trust Headquarters.

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

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.

The "Directions on Financial Management in England" issued under HSG(96)12 in 1996, require Health Authorities to adopt Standing Financial Instructions (SFIs) setting out the responsibilities of individuals. These directions are not mandatory on NHS Foundation Trusts but the Board of Directors will continue to apply them as a key element of its financial governance arrangements.

The Standing Orders, Scheme of Delegation and Standing Financial Instructions provide a comprehensive business framework and shall have effect as if incorporated into the Standing Orders (SOs). All executive and non-executive Directors, and all members of staff, should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.

The Trust is also required to comply with the Compliance Framework (April 2007), the NHS Foundation Trust Code of Governance (September 2006), the Audit Code for NHS Foundation Trusts (December 2005), the Prudential Borrowing Code for NHS Foundation Trusts (March 2005), the NHS Foundation Trust Financial Reporting Manual 2006/2007 (December 2006) as updated from time to time and any other relevant guidance issued by Monitor or any other relevant body.

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

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

Delegation of Powers

Under the Standing Orders relating to the Arrangements for the Exercise of Functions by Delegation (SO 4) the Board of Directors makes arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee appointed by virtue of SO 5 or by another person or persons, in each case subject to SO 2.6 and 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 these Standing Orders.

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 Standing Orders on which he should be advised by the Chief Executive and the Secretary.
- 1.2 Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:

"Accounting Officer"

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

"Authorisation"

means the Terms of Authorisation provided by Monitor.

"Board of Directors"

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

"Council of Governors"

means the Council of Governors as constituted in accordance with the Constitution.

"Budget"

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

"Chairman"

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

"Chief Executive"

means the chief executive officer of the Trust.

"Clear Day"

means any day other than a Saturday Sunday or public holiday.

"Constitution"

means the Constitution of the Trust, as approved by Monitor.

"Director"

means a person appointed as a Director in accordance with the Constitution.

"Finance Director"

means the Director of Resources or the Director who may from time to time be the chief financial officer of the Trust.

"Funds held on Trust"

means those funds which the Trust held on the date of incorporation, receives on distribution by statutory instrument or chooses subsequently to accept under powers

derived under the 2006 Act and shall include the income and interest derived from the holding of such funds all or some of which may or may not be charitable.

“Member”

means a member of the Trust.

“Monitor”

means the Independent Regulator of NHS Foundation Trusts.

"Nominated Officer"

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

“Officer”

means an employee of the Trust or any other person who holds a paid appointment or office with the Trust including those whose appointment is seconded to the Trust and who are employees of third parties contracted to the Trust while in either case acting for the Trust.

“Scheme of Delegation”

means the Reservation of Powers to the Board of Directors and Delegation of Powers approved by the Board of Directors under SO 4.4.

"Secretary"

means a person appointed by the Trust in accordance with the Constitution 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 SOs, and NHS Executive guidance.

"SFIs”

means Standing Financial Instructions.

"SOs"

means these Standing Orders.

"the 2006 Act"

means the National Health Service Act 2006.

"Trust"

means the North Essex Partnership NHS Foundation Trust.

“Trust Headquarters”

means Stapleford House Stapleford Close Chelmsford CM2 0QX.

"Vice-Chairman"

means the non-executive Director appointed by the Board of Directors to be Vice Chairman under SO 2.10

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

1.4 Any reference to an Act shall where appropriate include any Act amending or consolidating that Act and any Regulation or Order made under any such Act

2 THE BOARD OF DIRECTORS

General

- 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 a Trust.
- 2.4 The Trust has the functions conferred on it by its Authorisation issued by Monitor. Directors acting on behalf of the Trust as corporate trustees are acting as quasi-trustees. Accountability for charitable Funds held on Trust is to be to the Charity Commission.
- 2.5 The powers of the Trust shall be exercised by the Board of Directors but except for those powers and decisions which the Board of Directors has resolved shall be reserved to itself, the Board of Directors may make arrangements for the exercise of any of its functions by a Director or Officer or other person as provided by SO 4 or by a committee or subcommittee as provided by SO 5
- 2.6 Those powers and decisions which the Board of Directors has resolved shall be reserved to itself and any functions not delegated under SO 4 or under SO 5, shall be exercised by the Board of Directors at a meeting duly convened and held as provided by SO 3 but subject always to the emergency powers conferred by SO 4.2.1

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: the Chairman, and a maximum of seven other non-executive Directors.
 - 2.7.1.2 the following executive Directors: the Chief Executive who shall be the Accounting Officer, the Finance Director, and a maximum of five other executive Directors, one of whom shall be a registered medical practitioner, and another of whom shall be a registered nurse or midwife

but so that the number of the non-executive Directors including the Chairman shall always be equal to or exceed the number of executive Directors.

- 2.7.2 Only a Member of a public constituency is eligible for appointment as a non-executive Director save that this shall not apply to the initial Chairman and the initial non-executive Directors

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

2.8 Appointment and Removal of the Chairman and other non-executive Directors

2.8.1 The Chairman and other non-executive Directors are to be appointed and removed in accordance with the Constitution of the Trust and the guidance issued by Monitor.

2.9 Terms of Office of the Chairman and non-executive Directors

2.9.1 An individual appointed as the initial Chairman or as an initial non-executive Director in accordance with the provisions of the 2006 Act shall be appointed for the unexpired period of their respective terms of office as chairman or non-executive Director of the Trust, or 12 months whichever is the longer. In the case of any vacancies SO 2.8.1 shall apply.

2.9.2 Subject to SO 2.9.1 the Chairman and the non-executive Directors shall be appointed in accordance with terms and conditions of office decided by the Council of Governors at a General Meeting.

2.10 Appointment and Powers of Vice-Chairman

2.10.1 For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman, the Board of Directors shall appoint a non-executive Director from amongst them to be Vice-Chairman for such period, not exceeding the remainder of his term as non-executive director, as it shall specify on appointing him.

2.10.2 The Vice Chairman so appointed may resign and the Board of Directors may remove the Vice Chairman so appointed at any time and in either event the Board of Directors may appoint another non-executive Director as Vice-Chairman in his place in accordance with the provisions of SO 2.10.1.

2.10.3 Where the Chairman of the Trust has died or has ceased to hold office, or where he is unable to perform his duties as Chairman owing to illness or any other cause, the Vice-Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes his duties, as the case may be; and references to the Chairman in these SOs shall, so long as there is no Chairman able to perform his duties, be taken to include references to the Vice-Chairman.

2.10.4 Where both the Chairman and Vice-Chairman are unable to perform their duties owing to illness, conflict of interest or any other cause, such other non-executive Director as may be appointed by the Board of Directors, shall act as Chairman.

2.11 Disqualification

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

3 MEETINGS OF THE BOARD OF DIRECTORS

3.1 Admission of the Public and the Press

- 3.1.1 The public and representatives of the press shall be afforded facilities to attend at least three meetings of the Board of Directors in any calendar year 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 on which would be prejudicial to the Trust or its business or any of its employees or service users or carers or contractors.

- 3.1.2 The Chairman shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board of Directors business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board of Directors resolving as follows:

“That in the interests of public order the meeting adjourn for (the period to be specified) and continue thereafter without the presence of the public to enable the Board to complete its business”.

- 3.1.3 Nothing in these SOs shall require the Board of Directors to allow any member of the public or representative of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place without the prior agreement of the Board of Directors.

3.2 Calling Meetings

- 3.2.1 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, or in his absence the Vice 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, has been presented to him, or if, without so refusing, the Chairman does not call a meeting within 5 Clear Days after such requisition has been presented to him, at the Trust's Headquarters, such one third or more 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 so far as possible the business proposed to be transacted at it, and signed by the Chairman or by an Officer of the Trust authorised by the Chairman to sign on his behalf shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him at least 3 Clear Days before the meeting save in the case of any emergency.
- 3.3.2 Want of service of the notice on any one Director shall not affect the validity of a meeting but failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served where manually delivered on the next Clear Day following the day of delivery and in any other case on the second Clear Day after the day of dispatch.
- 3.3.3 In the case of a meeting called by Directors in default of the Chairman, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.
- 3.3.4 An agenda of the business to be transacted with supporting papers will be sent to Directors before the meeting, whenever possible, but failure to do so shall not invalidate the proceedings of the meeting.

3.4 Setting the Agenda

- 3.4.1 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.
- 3.4.2 A Director desiring a matter to be included on an agenda shall make his request in writing to the Chairman at least 5 Clear Days before the meeting. The request shall include appropriate supporting information and in the case of a meeting to be held in public state whether the item of business is proposed to be transacted in the presence of the public. Requests made less than 5 Clear Days before a meeting may be included on the agenda at the discretion of the Chairman.

3.5 Petitions

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

3.6 Chairman of Meeting

- 3.6.1 At any meeting of the Board of Directors, the Chairman shall preside. If the Chairman is absent from the meeting or unable to preside owing to a conflict of interest, the Vice-Chairman shall preside. If the Vice-Chairman is also absent or unable to preside owing to a conflict of interest such non-executive Director as has no conflict of interest and is selected by the members of the Board of Directors present shall preside.

3.7 Resolutions

Where a Director has requested inclusion of a matter on the agenda in accordance with SO 3.4 as a resolution to be formally proposed for discussion and voting on at the meeting, the following provisions of this SO shall apply to the resolution:

- 3.7.1 the proposer of a resolution shall have a right of reply at the close of any discussion on the proposition or any amendment thereto.
- 3.7.2 when a resolution is under discussion or immediately prior to discussion it shall be open to a member of the Board of Directors to propose:
 - 3.7.2.1 an amendment to the resolution;
 - 3.7.2.2 the adjournment of the discussion or the meeting;
 - 3.7.2.3 that the meeting proceed to the next business;
 - 3.7.2.4 the appointment of an ad hoc committee to deal with a specific item of business;
 - 3.7.2.5 that the resolution be now put; or
 - 3.7.2.6 a resolution resolving to exclude the public (including the press).
- 3.7.3 No amendment to the resolution shall be admitted if, in the opinion of the Chairman, the amendment negates the substance of the resolution.
- 3.7.4 The mover of a resolution shall have a maximum of 3 minutes to move and 3 minutes to reply. Once a resolution has been proposed, no member of the Board of Directors shall speak more than once or for more than 3 minutes.

3.8 Chairman's Ruling

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

3.9 Voting

- 3.9.1 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 question or resolution being equal, the Chairman of the meeting shall have a second or casting vote.
- 3.9.2 All questions put to the vote shall, at the discretion of the Chairman, 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.

- 3.9.3 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.
- 3.9.4 If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.9.5 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.9.6 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.

3.10 **Minutes**

- 3.10.1 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.
- 3.10.2 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 Secretary's office.
- 3.10.3 Board minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public as required by Code of Practice on Openness in the NHS

3.11 **Suspension of Standing Orders**

- 3.11.1 Except where this would contravene any statutory provision, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Directors are present, including one executive Director and one non-executive Director, and that a majority of those present vote in favour of suspension.
- 3.11.2 A decision to suspend SOs shall be recorded in the minutes of the meeting.
- 3.11.3 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Directors.

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

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

3.12 **Variation and Amendment of Standing Orders**

3.12.1 These Standing Orders shall be amended only if:

3.12.1.1 relevant notice of the meeting has been served in accordance with SO 3.3;

3.12.1.2 a request under SO 3.4, for the inclusion of the resolution to amend on the agenda for the meeting, has been made;

3.12.1.3 no fewer than half the total of the Trust's non-executive Directors vote in favour of amendment;

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

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

3.13 **Record of Attendance**

3.13.1 The names of the Directors present at every meeting of the Board of Directors shall be recorded in the minutes.

3.14 **Quorum**

3.14.1 No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors are present including at least one executive Director and one non-executive Director

3.14.2 An Officer in attendance for an executive Director but without formal acting up status shall not count towards the quorum.

3.14.3 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 as provided in Standing Order 7 he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one executive Director to form part of the quorum shall not apply where the executive Directors are excluded from a meeting

3.15 **Meetings: Electronic Communication**

3.15.1 In this Standing Order "communication" and "electronic communication" shall have the meanings set out in the Electronic

Communications Act 2000 or any statutory modification or re-enactment thereof.

- 3.15.2 A Director in electronic communication with the Chairman and all other parties to a meeting of the Board of Directors or of a committee or sub-committee of the Directors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
- 3.15.3 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 is physically present.
- 3.15.4 Meetings held in accordance with this SO are subject to SO 3.14. For such a meeting to be valid, a quorum must be present and maintained throughout the meeting.
- 3.15.5 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 Except as provided in SO 2.6 and in SO 4.5 and in such guidance as may be given by Monitor, the Board of Directors may make arrangements for the exercise of any of its functions

4.1.1 by a committee or subcommittee appointed under SO 5.1 or 5.2; or

4.1.2 by a Director or an Officer of the Trust

in each case subject to such restrictions and conditions as the Board of Directors approves

4.2 Emergency Powers

4.2.1 The powers which the Board has resolved to retain to itself 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.

4.2.2 Any power exercisable whether solely or jointly with another or others, by the Chairman under these SOs, may if the Chairman is absent or unavailable for any reason, be exercised in an emergency by the Vice Chairman and any power exercisable whether solely or

jointly with another or others, by the Chief Executive under these SOs, may if the Chief Executive is absent or unavailable for any reason, be exercised in an emergency by the Officer who has been duly authorised to represent him.

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 subcommittees, and their specific executive powers shall be approved by the Board of Directors.

4.4 Delegation to Officers

4.4.1 Save as provided by SO 4.5 those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee or subcommittee or joint-committee shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate Officers to undertake the remaining functions for which he will still remain accountable to the Board of Directors.

4.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his proposals, which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as provided above.

4.4.3 Nothing in the Scheme of Delegation shall restrict or limit the responsibility of the Finance Director to provide information and advice to the Board of Directors in accordance with any statutory requirements, but subject to his discharge of these statutory requirements the Finance Director shall be accountable to the Chief Executive for the performance of his role

4.4.4 The arrangements in the Scheme of Delegation proposed by the Chief Executive and approved by the Board of Directors shall have effect as if incorporated in these SOs.

4.5 Mental Health Act managers

Where the Trust is exercising the functions of the managers referred to in section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorized by the Board of Directors, each of whom is neither an executive director of the Board nor an employee of the Trust.

4.6 Overriding Standing Orders

If for any reason these SOs are not complied with, full details of the non-compliance and any justification for noncompliance and the circumstances around the non-

compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All members of the Board of Directors and staff have a duty to disclose any non-compliance with these SOs to the Chief Executive as soon as possible.

5 COMMITTEES

5.1 Appointment of Committees

5.1.1 Subject to SO 2.6 and such guidance issued by Monitor the Board of Directors may appoint committees of the Trust consisting wholly or partly of Directors or wholly of persons who are not Directors of the Trust.

5.1.2 A committee appointed under SO 5.1.1 may, subject to such guidance as may be given by Monitor or the Board of Directors or other health service bodies in question, appoint sub-committees consisting wholly or partly of Directors (whether or not they are Directors of the Trust in question) or wholly of persons who are not Directors of the Trust or a committee of the Trust.

5.1.3 These SOs, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board of Directors, and in that 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. Meetings of committees, established by the Trust shall not be held in public.

5.1.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide. Such terms of reference shall have effect as if incorporated into these SOs.

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

5.1.6 The Board of Directors shall approve the persons appointed to each of the committees, which it has formally constituted, and may resolve at any meeting to remove any person so appointed by it, and to appoint another person in his place. 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. 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 The committees and sub-committees currently intended to be established by the Board of Directors are:

5.1.7.1 Audit Committee

- 5.1.7.2 Remuneration Committee
- 5.1.7.3 Nominations Committee

5.1.8 The committees so established shall have such responsibilities and duties as are set out in these SOs and in SFIs and in their terms of reference which shall have been approved by the Board of Directors

5.2 Confidentiality

5.2.1 A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.

5.2.2 A Director or a member of a committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

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 and in particular in relation to the matters which are specified in paragraphs 37 and 38 of the Constitution.

6.2 The annual report of the Trust shall include:

6.2.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of each Public Constituency is representative of those eligible for such membership; and

6.2.2 any other information which Monitor requires.

6.3 If the Council of Governors shall request by written notice to the Chairman received at the Trust Headquarters at least 7 Clear Days before a meeting of the Board of Directors that a matter which arises out of any document referred to paragraphs 37 or 38 of the Constitution shall be included on the agenda for that meeting then it shall be included on that agenda unless the Chairman shall decide that it is not an appropriate matter for inclusion. Requests made less than 7 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 Declaration of Interests

7.1.1 The Regulatory Framework and the Constitution require each Director to declare to the Secretary:

- 7.1.1.1 any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in Standing Order 7.2.1; and
- 7.1.1.2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, of which the Director knows or ought reasonably to know subject to Standing Orders 7.2.2 and 7.2.3; and
- 7.1.1.3 any actual or potential family interest, direct or indirect, of which the Director is aware, as described in Standing Order 7.2.5.
- 7.1.2 Such a declaration shall be made either at the time of the Director's appointment or as soon thereafter as the interest arises, but within 5 Clear Days of the Director's becoming aware of the existence of that interest, and in such manner as the Secretary may prescribe from time to time.
- 7.1.3 In addition, if a Director is present at a meeting of the Board of Directors and has an interest (other than an interest referred to in Standing Orders 7.2.3 or 7.2.4) in any contract proposed contract or matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of, or vote on any question with respect to the contract proposed contract or matter.
- 7.1.4 At the time the interest is declared, it shall be recorded in the meeting minutes of the Board of Directors. Any change in any interest shall be officially declared at the next relevant meeting following the change occurring.
- 7.1.5 This Standing Order 7 applies to any committee, sub-committee or joint committee of the Board of Directors and applies to any member of any such committee, sub-committee, or joint committee (whether or not he is also a Director).
- 7.1.6 The interests of Directors in companies likely or possibly seeking to do business with the NHS shall be published in the Trust's Annual Report. The information shall be kept up to date for inclusion in succeeding Annual Reports.

7.2 Nature of Interests

- 7.2.1 Interests which shall be regarded as "relevant and material to the business of the Trust" are as follows and are to be interpreted in accordance with guidance issued by the Independent Regulator:
 - 7.2.1.1 any directorship in a limited company whether public or private (except a directorship in a dormant company); or
 - 7.2.1.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS; or

- 7.2.1.3 majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS; or
- 7.2.1.4 derivation of more than one-fifth of a Director's total gross income from commission and or bonuses received for sales to NHS organisations; or
- 7.2.1.5 a position of authority in a charity or voluntary organisation in the field of health and social care; or
- 7.2.1.6 any employment by or managerial position in a voluntary or other organisation contracting for NHS services or commissioning NHS services; or
- 7.2.1.7 any employment by an organisation, entity or company (including but not limited to, lenders or banks) considering entering into or having entered into a financial agreement with the Trust.
- 7.2.2 A Director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
 - 7.2.2.1 he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 7.2.2.2 he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 7.2.3 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
 - 7.2.3.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body; or
 - 7.2.3.2 of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or
 - 7.2.3.3 of any travel or other expenses or allowances payable to him
- 7.2.4 An interest in the securities of a company or other body shall for the purposes of subparagraph 7.2.3.2 above be regarded as remote or insignificant if
 - 7.2.4.1 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and

- 7.2.4.2 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class
- 7.2.5 A family interest is an interest of the spouse or partner or any parent, child, brother or sister of a Director which if it were the interest of that Director would be a personal interest or a pecuniary interest of his.
- 7.2.6 A Director shall also disclose to the Secretary any relationship such as is mentioned in SO 7.2.5 which he may have to any other Director or holder of any office in the Trust and this Standing Order 7 shall apply accordingly
- 7.2.7 Each Director in considering the relevance or materiality of an interest, shall take account of any influence rather than the immediacy of any relationship and the interest of any partner in any professional partnership with him, and if in doubt shall discuss the matter with the Chairman

7.3 Register of Interests

- 7.3.1 The Register of Interests shall contain the names of each Director, whether he has declared any interests and, if so, the interests declared in accordance with the Constitution or these SOs.
- 7.3.2 The Register of Interests will be available to the public and the Chairman will take reasonable steps to bring the existence of the Register of Interests to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the Register of Interests must be provided to Members of the Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the Register of Interests.
- 7.3.3 In establishing, maintaining, updating and publicising the Register of Interests, the Trust shall comply with all guidance issued from time to time by Monitor. The details of Directors' interests recorded in the Register of Interests will be kept up to date by means of a regular review as necessary of the Register of Interests by the Chief Executive or Secretary during which any changes of interests recently declared will be incorporated.

8. STANDARDS OF BUSINESS CONDUCT

8.1 Policy

- 8.1.1 Directors and Officers should comply with the Department of Health Guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff" (contained in Appendix B) and the "Code of Conduct for NHS Managers 2002". This section of SOs should be read in conjunction with this document.

8.2 Interest of Directors and Employees in Contracts

- 8.2.1 If it comes to the knowledge of Director or an Officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he shall, at once, give notice in writing to the Chief Executive or Secretary of the fact that he is interested therein. In the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 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 his, or of a cohabiting spouse or partner, that conflicts, or might reasonably be predicted to conflict with the interests of the Trust in accordance with SO7. The Trust shall require such interests to be recorded in the register of Directors interests.

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

- 8.3.1 Canvassing of Directors or members of any committee of the Board of Directors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of these SOs shall be included in application forms or otherwise brought to the attention of candidates.
- 8.3.2 A Director 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.

8.4 Relatives of Directors or Officers

- 8.4.1 Candidates for any staff appointment shall when making application disclose in writing whether they are related to any Director or Officer. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
- 8.4.2 A Director and an Officer shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that Director or Officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.
- 8.4.3 On appointment, Directors (and prior to acceptance of an appointment in the case of executive Directors) shall disclose to the Board whether they are related to any Director or Officer .
- 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 and Contractors and their Employees

- 8.5.1 This SO 8 shall apply to all external consultants or other agents acting on behalf of the Trust and to all contractors with the trust and their employees.

9. TENDERING AND CONTRACT PROCEDURE

9.1 Duty to comply with Standing Orders

- 9.1.1 The procedure for making all contracts by or on behalf of the Trust shall comply with these SOs .

9.2 EU Directives Governing Public Procurement *and other Procedures*

- 9.2.1 European Union Directives on public sector purchasing promulgated by the Department of Health (under HSG(95)38) prescribing procedures for awarding all forms of contracts shall have effect as if incorporated in these SOs.

- 9.2.2 The Trust shall have policies and procedures in place for the control of all tendering activity carried out through Reverse eAuctions.

- 9.2.3 The Trust shall comply as far as is practicable with the requirements of the Department of Health "Capital Investment Manual" and "Estatecode" and associated relevant guidance issued by Monitor in respect of capital investment and estate and property transactions. In the case of management consultancy contracts the Trust shall comply as far as is practicable with Department of Health guidance "The Procurement and Management of Consultants within the NHS". The Trust will also comply with the Guidance from Monitor entitled "Best Practice in Making Investments" and the Regulatory Framework.

- 9.2.4 The Tendering and Contract Procedure is governed by the ranges of expenditure referred to in the Scheme of Delegation:

- 9.2.4.1 Formal Competitive Tendering Procedures are contained in SO 9.3.

- 9.2.4.2 Competitive Quotations Procedures are contained in SOs 9.4.1 to 9.4.3; and

- 9.2.4.3 Expenditure where Tendering or Competitive Quotations are not required is referred to in SO 10.

9.3 Formal Competitive Tendering

- 9.3.1 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); for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals.

- 9.3.2 Formal tendering procedures may be waived by Officers to whom powers have been delegated by the Chief Executive without reference to the Chief Executive (except where SOs 9.3.2.3 to 9.3.2.6 below apply) if:
- 9.3.2.1 the estimated expenditure or income does not, or is not reasonably expected to, exceed £50,000; or
 - 9.3.2.2 where the supply is proposed under special arrangements negotiated by the Department of Health in which event the said special arrangements must be complied with;
 - 9.3.2.3 the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender;
 - 9.3.2.4 specialist expertise is required and is available from only one source;
 - 9.3.2.5 the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate; or
 - 9.3.2.6 there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering; or
 - 9.3.2.7 where provided for in the Capital Investment Manual.
- 9.3.3 The limited application of the single tender rules should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.
- 9.3.4 Where it is decided that competitive tendering is not applicable and should be waived by virtue of SOs 9.3.2.3 to 9.3.2.6 above the fact of the waiver and the reasons should be documented and reported by the Chief Executive to the Board of Directors in a formal meeting.
- 9.3.5 Except where SO 9.3, or a requirement under SO 9.2, applies, the Board of Directors shall ensure that invitations to tender are sent to a sufficient number of firms/individuals to provide fair and adequate competition as appropriate, and in no case less than three firms/individuals, having regard to their capacity to supply the goods or materials or to undertake the services or works required.
- 9.3.6 The Board of Directors shall ensure that normally the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists referred to in Appendix 1. Where in the opinion of the Finance Director it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive.
- 9.3.7 The Tendering Procedure is set out in the Appendix 1.

9.4 Quotations

- 9.4.1 Quotations are required where formal tendering procedures are waived under SO 9.3.2.1 or SO 9.3.2.2 and where the intended expenditure or income exceeds, or is reasonably expected to exceed the limits defined in the Scheme of Delegation.
- 9.4.2 Where quotations are required under SO 9, they should be obtained from at least three firms or individuals based on specifications or terms of reference prepared by, or on behalf of, the Board of Directors.
- 9.4.3 Quotations should be in writing unless the Chief Executive or his Nominated Officer determine that it is impractical to do so in which case quotations may be obtained by telephone. Confirmation of telephone quotation should be obtained as soon as possible and the reasons why the telephone quotation was obtained should be set out in a permanent record.
- 9.4.4 All quotations should be treated as confidential and should be retained for inspection.
- 9.4.5 The Chief Executive or his Nominated Officer should evaluate the quotations and select the one which gives value for money. If this is not the lowest then this fact and the reasons why the lowest quotation was not chosen should be in a permanent record.
- 9.4.6 Non-competitive quotations in writing may be obtained for the following purposes:
 - 9.4.6.1 the supply of goods or services of a special character for which it is not, in the opinion of the Chief Executive or his Nominated Officer, possible or desirable to obtain competitive quotations;
 - 9.4.6.2 the goods or services are required urgently. The approval of the Finance Director or his Nominated Officer will be required for this course of action.
- 9.4.7 Where tenders or quotations are not required, because expenditure is below the limits set in the Scheme of Delegation, the Trust shall procure goods and services in accordance with procurement procedures approved by the Board of Directors.
- 9.4.8 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house.

9.5 Private Finance

- 9.5.1 When the Board of Directors proposes, or is required, to use finance provided by the private sector the following should apply:
 - 9.5.1.1 The Chief Executive and Finance Director shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector.

9.5.1.2 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.

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

9.6 **Contracts**

9.6.1 The Trust may only enter into contracts within its statutory powers and shall comply with:

9.6.1.1 these SOs;

9.6.1.2 the Trust's SFIs;

9.6.1.3 EU Directives and other statutory provisions;

9.6.1.4 any relevant directions including the Capital Investment Manual and guidance on the Procurement and Management of Consultants;

9.6.1.5 such of the NHS Standard Contract Conditions as are applicable.

9.6.1.6 the guidance from Monitor entitled "Best Practice in Making Investments"; and

9.6.1.7 any other relevant Monitor guidance.

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.

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

9.7 **Personnel and Agency or Temporary Staff Contracts**

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

9.8 **Healthcare Services Agreements**

9.8.1 Healthcare Services contracts made between two NHS organisations for the supply of healthcare services, will be legally binding contracts based on the models issued by the Department of Health.

9.8.2 The Chief Executive shall nominate Officers with power to negotiate for the provision of healthcare services with purchasers of healthcare.

9.9 **Cancellation of Contracts**

9.9.1 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:

9.9.1.1 the contractor shall have offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Trust; or

9.9.1.2 for showing or forbearing to show favour or disfavour to any person in relation to the contracts or any other contract with the Trust, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor); or

9.9.1.3 if in relation to any contract with the Trust the contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889 and 1916 and other appropriate legislation.

9.10 Determination of Contracts for Failure to Deliver Goods or Material

9.10.1 There shall be inserted in every written contract for the supply of goods or materials a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Trust may without prejudice determine the contract either wholly or to the extent of such default and purchase other goods, or material of similar description to make good (a) such default, or (b) in the event of the contract being wholly determined the goods or materials remaining to be delivered.

9.10.2 This clause shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor in respect of the goods or materials shall be recoverable from the contractor.

9.11 Contracts Involving Funds held on Trust

9.11.1 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.

10. DISPOSALS

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

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

- 10.1.2 obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust;
- 10.1.3 items to be disposed of with an estimated sale value of less than the amount specified in the Scheme of Delegation
- 10.1.4 items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;
- 10.1.5 land or buildings concerning which DoH guidance has been issued but subject to compliance with such guidance; or
- 10.1.6 any matter which Monitor has issued alternate specific guidance in relation to.

11. IN-HOUSE SERVICES

- 11.1 In all cases where the Trust determines that in-house services should be subject to competitive tendering the following groups shall be set up:
 - 11.1.1 Specification group, comprising the Chief Executive or an Officer or Officers nominated by him and specialist(s).
 - 11.1.2 In-house tender group, comprising representatives of the in-house team, a nominee of the Chief Executive and technical support.
 - 11.1.3 Evaluation group, comprising normally a specialist Officer, a supplies Officer and a Finance Director representative. For services having a likely annual expenditure exceeding £500,000, a nonexecutive Director should be a member of the evaluation team.
- 11.2 All groups should work independently of each other but individual Officers may be a member of more than one group. No member of the in-house tender group may, however, participate in the evaluation of tenders.
- 11.3 The evaluation group shall make recommendations to the Board of Directors.
- 11.4 The Chief Executive shall nominate an Officer to oversee and manage the contract.

12. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

12.1 Custody of Seal

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

12.2 Sealing of Documents

- 12.2.1 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.

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

12.3 Register of Sealing

12.3.1 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 sealings shall be made to the Board of Directors at least quarterly, and shall contain details of the seal number, the description of the document and date of sealing.

13. SIGNATURE OF DOCUMENTS

13.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chairman or 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.

13.2 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.

14. MISCELLANEOUS

14.1 Standing Orders to be given to Members and Officers

14.1.1 It is the duty of the Chief Executive to ensure that up to date copies of SOs SFIs and the Scheme of Delegation are readily available to all existing Directors and Officers and to all new appointees, and that any queries raised by any of them as to their responsibilities are answered promptly

14.2 Documents having the standing of Standing Orders

14.2.1 Standing Financial Instructions and the Scheme of Delegation shall have the effect as if incorporated into SOs.

14.3 Review of Standing Orders

14.3.1 Standing Orders shall be reviewed annually by the Trust. The requirement for review extends to all documents having the effect as if incorporated in SOs.

14.4 Corporate Documents

14.4.1 Corporate Documents specific to the setting up of the Trust shall be held in a secure place by the Chief Executive.

APPENDIX 1

TENDERING PROCEDURE

1 Invitation to Tender

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

2 Receipt, Safe Custody and Record of Formal Tenders

- 2.1 Formal competitive tenders shall be addressed to the Chief Executive, and sent to the Trust Headquarters.
- 2.2 The date and time of receipt of each tender shall be endorsed on the unopened tender envelope/package. Opened envelopes/packages will be retained for 12 months for audit purposes.
- 2.3 The Chief Executive shall designate an officer or officers, not from the originating department, to receive tenders on his behalf and to be responsible for their

endorsement and safe custody until the time appointed for their opening, and for the records maintained in accordance with Section 3.

3 Opening Formal Tenders

3.1 As soon as practicable after the date and time stated as being the latest time for the receipt of tenders they shall be opened in the presence of two senior officers designated by the Chief Executive and not from the originating department.

3.2 Every tender received shall be stamped with the date of opening and initialled by two of those present at the opening. A permanent record shall be maintained to show for each set of competitive tender invitations despatched:

3.2.1 the names of firms/individuals invited;

3.2.2 the names of and the number of firms/individuals from which tenders have been received;

3.2.3 the total price(s) tendered;

3.2.4 closing date and time;

3.2.5 date and time of opening;

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

3.3 Except as in Section 3.4 below, a record shall be maintained of all price alterations on tenders, i.e. where a price has apparently been altered, and the final price shown shall be recorded. Every price alteration appearing on a tender and the record should be initialed by two of those present at the opening.

3.4 A report shall be made in the record if, on any one tender, price alterations are so numerous as to render the procedure in Section 3.3 unreasonable.

4 Admissibility and Acceptance of Formal Tenders

4.1 In considering which tender to accept, if any, the designated officers shall have regard to whether value for money will be obtained by the Trust and whether the number of tenders received provides adequate competition. In cases of doubt they shall consult the Chief Executive.

4.2 Tenders received after the due time and date may be considered only if the Chief Executive or Nominated Officer decides that there are exceptional circumstances, e.g. where significant financial, technical or delivery advantages would accrue, and is satisfied that there is no reason to doubt the bona fides of the tenders concerned. The Chief Executive or Nominated Officer shall decide whether such tenders are admissible and whether re-tendering is desirable. Retendering may be limited to those tenders reasonably in the field of consideration in the original competition. If the tender is accepted the late arrival of the tender should be reported to the Board at its next meeting.

4.3 Technically late tenders (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.

- 4.4 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 his own initiative either orally or in writing after the due time for receipt) should be dealt with in the same way as late tenders under Section
- 4.5 Where examination of tenders reveals errors which would affect the tender figure, the tenderer is to be given details of such errors and afforded the opportunity of confirming or withdrawing his offer.
- 4.6 Necessary discussions with a tenderer of the contents of his tender, in order to elucidate technical points etc, before the award of a contract, need not disqualify the tender.
- 4.7 While decisions as to the admissibility of late, incomplete, or amended tenders are under consideration and while re-tenders are being obtained, the tender documents shall remain strictly confidential and kept in safekeeping by an officer designated by the Chief Executive.
- 4.8 Where only one tender/quotation is received the Chief Executive shall, as far as practicable, ensure that the price to be paid is fair and reasonable.
- 4.9 A tender other than the lowest (if payment is to be made by the Trust), or other than the highest (if payment is to be received by the Trust) shall not be accepted unless for good and sufficient reason the Board decides otherwise and record that decision in their minutes and in the record referred to in 3.3 above.
- 4.10 Where the form of contract includes a fluctuation clause all applications for price variations must be submitted in writing by the tenderer and shall be approved by the Chief Executive or Nominated Officer.
- 4.11 All Tenders should be treated as confidential and should be retained for inspection.

5 Lists of Approved Firms

- 5.1 The Trust shall compile and maintain, and the Director of Resources shall keep, lists of approved firms and individuals from whom tenders may be invited, as provided for in SO 9, and shall keep these under review. The lists shall be selected from all firms which have applied for permission to tender provided that:
 - 5.1.1 in the case of building, engineering and maintenance works, the Chief Executive is satisfied on their capacity, conditions of labour, etc, and that the Director of Resources is satisfied that their financial standing is adequate.
 - 5.1.2 in the case of the supply of goods, materials and related services, and consultancy services the Chief Executive or the Nominated Officer is satisfied as to their technical competence etc, and that the Director of Resources is satisfied that their financial standing is adequate.
 - 5.1.3 in the case of the provision of healthcare services to the Trust by a private sector provider, the Director of Resources is satisfied as to their financial standing and the Medical Director is satisfied as to their technical/medical competence.

- 5.2 The Trust shall arrange for advertisements to be issued as may be necessary, and not less frequently than every third year, in trade journals and national newspapers inviting applications from firms for inclusion in the prescribed lists.
- 5.3 If in the opinion of the Chief Executive or the Director of Resources it is impractical to use a list of approved firms/individuals (for example where specialist services or skills are required and there are insufficient suitable potential contractors on the list), the Chief Executive should ensure that appropriate checks are carried out as to the technical and financial capability of firms invited to tender or quote.
- 5.4 A permanent record should be made of the reasons for inviting a tender or quote other than from an approved list.

AUTHORISATION OF NORTH ESSEX PARTNERSHIP NHS FOUNDATION TRUST

Schedule 2

Mandatory Goods and Services

Schedule 2
Mandatory Goods and Services

North Essex Mental Health Partnership NHS Trust

2007/08

		Block Services (Block contract)	
Care Group	Care sub-group	Currency	Activity
Adults	Acute Inpatient	Occupied Bed Days	47391
	CMHT	Face to Face	52629
	Assertive Outreach Team	Face to Face	8065
	Crisis Resolution Team	Face to Face	16781
	Early Intervention Team	Face to Face	2891
	PICU	Bed Occupancy	7797
	Rehabilitation – inpatient	Occupied Bed Days	21725
	Low Secure	Bed Occupancy	4205
	Daycare	Attendance	35506
	Outpatients	Attendance	26641
	Other Services	Face to Face	28889
CAMHS	Tier 3	Attendance	19345
	Tier 4	Bed Occupancy	4590
Older People	Inpatient – Functional	Occupied Bed Days	24003
	Inpatient – Organic	Occupied Bed Days	19481
	Inpatient – Mix	Occupied Bed Days	8465
	CMHT	Face to Face	12959
	Outpatient & Daycase	Attendance	36695
	Other Services	Face to Face	4047
Substance Misuse	Outpatient	Attendance	21113

AUTHORISATION OF NORTH ESSEX PARTNERSHIP NHS FOUNDATION TRUST

Schedule 3

Mandatory Education and Training

Schedule 3
Mandatory Education and Training Services

North Essex Mental Health Partnership NHS Trust

2007/08

Commissioning body	Educational body	Contract Length (Years)	Expiry date of contract	Student group	Type of training	Number of Students	Contract Value (£000s)
East of England SHA	Eastern Deanery	1 Year	31/03/2007	Medical	PGMDE	41	920
East of England SHA	WDC	Rolling Contract		Nursing	WDC Salary Replacement	39.4	547
East of England SHA	WDC	Rolling Contract		AHP	WDC Salary Replacement	9	76
East of England SHA	WDC	1 Year	31/03/2007	Nursing	WDC Nursing Support	N/A	45
East of England SHA	WDC	Rolling Contract		Psychologists	WDC Psychology Support (Treated as Recharge in 06/07)	16	375

AUTHORISATION OF NORTH ESSEX PARTNERSHIP NHS FOUNDATION TRUST

Schedule 4

Private Health Care

AUTHORISATION OF NORTH ESSEX PARTNERSHIP NHS FOUNDATION TRUST

PRIVATE HEALTH CARE

In 2002/03 the proportion of the total patient income derived from private health charges was 0%.

Pursuant to section 44 of the Act and Condition 10 of this Authorisation the proportion of total income of the Trust in any financial year derived from private charges shall not be greater than 0%.

DEFINITION:

Private patient income

Total patient
related income

AUTHORISATION OF NORTH ESSEX PARTNERSHIP NHS FOUNDATION TRUST

Schedule 5

Limit on Borrowing

AUTHORISATION OF NORTH ESSEX PARTNERSHIP NHS FOUNDATION TRUST

PRUDENTIAL BORROWING LIMIT

Pursuant to section 46 of the Act, the Prudential Borrowing Limit ("PBL") for the year 2007/08 is the sum of the following:

- (i) Maximum cumulative long term borrowing: £17.5 million and
- (ii) Approved working capital facility: not to exceed £7.5 million

AUTHORISATION OF NORTH ESSEX PARTNERSHIP NHS FOUNDATION TRUST

Schedule 6

Information

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