



Supporting NHS Procurement Professionals

**Charitable Incorporated Organisation - Charity Number 1170161**

## **Constitution**

**Date of constitution:** 01 November 2016

### **1. Name**

The name of the Charitable Incorporated Organisation (CIO) is the

**Health Care Supply Association (HCSA)**

### **2. National location of principal office**

The principal office of the HCSA is in England.

### **3. Objects**

#### **3.1 The Objects of the HCSA are:**

To promote and protect good health for the public benefit by promoting the efficiency of the National Health Service (NHS) across the UK, through:-

3.1.1 Education and training of purchasing and supply personnel and purchasing and supply management relating to its duties in supporting the delivery of healthcare services, in order to support NHS stakeholders in delivering the best quality and most cost efficient healthcare; and

3.1.2 Undertaking or commissioning and publishing the beneficial results of research or best practice case studies in related subjects.

#### **3.2 In furtherance of the said Objects the Association may:**

3.2.1 Facilitate a network for the sharing of knowledge and best practice

- Provide a professional network that encourages shared learning and promotes the commercial profession within UK healthcare (Commercial to mean Purchasing and Supply, Procurement and Commissioning).
- Provide opportunities and facilities among members of the HCSA and others for discussions, lectures, enquiries, conferences, schools and study groups.
- Facilitate networking opportunities to increase the flow of information and knowledge between members, NHS stakeholders and partner organisations.

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### 3.2.2 Deliver education and learning events

- Organise conferences, lectures, seminars, workshops, training and any other educational events.
- Promote research and acquiring and disseminating information relating to health services supply chain management, including the publication of statistics, papers, reports and opinions.
- Establish, maintaining and developing links and to exchange information and knowledge with appropriate bodies at national and international level.
- Deliver learning and development interventions to meet the needs of members and other UK NHS stakeholders.

### 3.2.3 Improve quality, excellence and cost efficiency

- Promote, maintain and continuously improve professional standards
- Collaborate with industry and others in developing and adopting more innovative and cost effective healthcare solutions
- Publish and promote good practice case studies which assist in the delivery of savings, freeing up resources for improved patient care
- Acknowledge success by allocating awards

### 3.2.4 Liaise with partners

- Advance public education of the HCSA's objects.
- Liaise with any other organisations that have similar interests.

### 3.2.5 Acts as the profession's principal advisor for national bodies

- Consider and offer advice on points of practice and any other relevant matters referred to the HCSA.
- Advance health care management and procurement and other subjects as applied to all or any of the duties imposed upon functions undertaken by health services.
- Co-ordinate and represent the procurement viewpoint in the UK healthcare sphere.
- Afford information, advice and assistance concerned with health service management to the Department of Health, statutory health bodies and the equivalent organisations in Northern Ireland, Scotland and Wales.
- Through its appointed representatives, consult and collaborate with representatives of any or all of the aforesaid bodies on matters of principle and practice relating to health service supply chain management and procurement.

Do all such other lawful things as are conducive or incidental to the attainment of the foregoing objects.

Nothing in this constitution shall authorise an application of the property of the HCSA for the purposes which are not charitable in accordance with section 7 of the Charities and Trustee Investment (Scotland) Act 2005 and section 2 of the Charities Act (Northern

Ireland) 2008.

#### **4. Powers**

The HCSA has power to do anything which is calculated to further its objects or is conducive or incidental to doing so. In particular, the HCSA's powers include power:

4.1 to promote or carry out research;

4.2 to provide advice;

4.3 to publish or distribute information;

4.4 to co-operate with other bodies;

4.5 to support, administer or set up other charities;

4.6 to raise funds (but not by means of taxable trading);

4.7 to borrow money and to charge the whole or any part of its property as security for the repayment of the money borrowed (but only in accordance with the restrictions imposed by the Charities Act);

4.8 to acquire or hire property of any kind;

4.9 to let or dispose of property of any kind (but only in accordance with the restrictions imposed by the Charities Act);

4.10 to make grants or loans of money and to give guarantees;

4.11 to set aside funds for special purposes or as reserves against future expenditure;

4.12 to deposit or invest in funds in any manner (but to invest only after obtaining such advice from a financial expert as the Trustees considers necessary and having regard to the suitability of investments and the need for diversification);

4.13 to delegate the management of investments to a financial expert, but only on terms that:

*4.13.1 the investment policy is set down in writing for the financial expert by the Trustees;*

*4.13.2 every transaction is reported promptly to the Trustees;*

*4.13.3 the performance of the investments is reviewed regularly by the Trustees;*

*4.13.4 the Trustees are entitled to cancel the delegation arrangement at any time;*

*4.13.5 the investment policy and the delegation arrangement are reviewed at least once a year;*

*4.13.6 all payments due to the financial expert are on a scale or at a level which is agreed in advance and are notified promptly to the Trustees on receipt; and*

*4.13.7 the financial expert must not do anything outside the powers of the Trustees;*

4.14 to arrange for investments or other property of the HCSA to be held in the name of a nominee company acting under the control of the Trustees or of a financial expert acting under its instructions, and to pay any reasonable fee required;

4.15 to deposit documents and physical assets with any company registered or having a place of business in England and Wales as custodian, and to pay any reasonable fee required;

4.16 to insure the property of the HCSA against any foreseeable risk and take out other insurance policies to protect the HCSA when required;

4.17 to pay for indemnity insurance to cover the liability of the Trustees (HCSA Trustees read also HCSA Council Members):

*4.17.1 which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default, breach of trust, or breach of duty of which they may be guilty in relation to the HCSA; and*

*4.17.2 to make contributions to the assets of the HCSA in accordance with the provisions of section 214 of the Insolvency Act 1986, provided that any such insurance in the case of Article 4.17.1 shall not extend to:*

*4.17.3 any liability resulting from conduct which a Trustee knew, or must be assumed to have known, was not in the best interests of the HCSA, or which the Trustee did not care whether it was in the best interests of the HCSA or not;*

*4.17.4 any liability to pay the costs of unsuccessfully defending criminal prosecutions for offences arising out of the fraud or dishonesty or wilful or reckless misconduct of a Trustee; or*

*4.17.5 any liability to pay a fine, and provided that any such insurance in the case of Article 4.17.2:*

*4.17.6 shall not extend to any liability to make such a contribution where the basis of the Trustee's liability is his knowledge prior to the insolvent liquidation of the HCSA (or reckless failure to acquire that knowledge) that there was no reasonable prospect that the HCSA would avoid going into insolvent liquidation;*

4.18 subject to Article 6, to employ paid or unpaid agents, staff or advisers;

4.19 to enter into contracts to provide services to or on behalf of other bodies;

4.20 to establish or acquire subsidiary companies to assist or act as agents for the HCSA;

4.21 to pay the costs of forming the HCSA; and

4.22 to delegate responsibility and authority to the HCSA Council (or Council Executive which will have equivalent powers to that of Council) for the day to day management and operation of the HCSA (see 18.) but on terms that:

*4.22.1 the financial and other governance arrangements are set down in writing by the Trustees for compliance by the Council*

*4.22.2 the HCSA Council submits copies of its quarterly Council Meeting minutes to the Trustees, including a Financial status report*

*4.22.3 the Council Chairman submits a report to the Trustees in advance of their meetings*

*4.22.4 the Council Members (or the Council as a collective) must not do anything outside the powers of the Trustees;*

4.23 to do anything else within the law which promotes or helps to promote the Objects of the HCSA

## **5. Application of income and property**

- (1)** The income and property of the HCSA must be applied solely towards the promotion of the objects.
  - (a) A Trustee is entitled to be reimbursed from the property of the HCSA or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the HCSA.
  - (b) A Trustee may benefit from Trustee indemnity insurance cover purchased at the HCSA's expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011.
- (2)** None of the income or property of the HCSA may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member of the HCSA. This does not prevent a member who is not also a Trustee receiving:
  - (a) A benefit from the HCSA as a beneficiary of the HCSA.
  - (b) Reasonable and proper remuneration for any goods or services supplied to the HCSA.
- (3)** Nothing in this clause shall prevent a Trustee or connected person receiving any benefit or payment which is authorised by Clause 6.

## **6. Benefits and payments to Trustees and connected persons**

### **(1) General provisions**

No Trustee or connected person may:

- (a) Buy or receive any goods or services from the HCSA on terms preferential to those applicable to members of the public;
- (b) Sell goods, services, or any interest in land to the HCSA;
- (c) Be employed by, or receive any remuneration from, the HCSA;
- (d) Receive any other financial benefit from the HCSA;

unless the payment or benefit is permitted by sub-clause (2) of this clause, or authorised by the court or the prior written consent of the Charity Commission ("the Commission") has been obtained. In this clause, a "financial benefit" means a benefit, direct or indirect, which is either money or has a monetary value.

**(2) Scope and powers permitting Trustees' or connected persons' benefits**

- (a) A Trustee or connected person may receive a benefit from the HCSA as a beneficiary of the HCSA provided that a majority of the Trustees do not benefit in this way.
- (b) A Trustee or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the HCSA where that is permitted in accordance with, and subject to the conditions in, section 185 to 188 of the Charities Act 2011.
- (c) Subject to sub-clause (3) of this clause a Trustee or connected person may provide the HCSA with goods that are not supplied in connection with services provided to the HCSA by the Trustee or connected person.
- (d) A Trustee or connected person may receive interest on money lent to the HCSA at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate).
- (e) A Trustee or connected person may receive rent for premises let by the Trustee or connected person to the HCSA. The amount of the rent and the other terms of the lease must be reasonable and proper. The Trustee concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.
- (f) A Trustee or connected person may take part in the normal trading and fundraising activities of the HCSA on the same terms as members of the public.

**(3) Payment for supply of goods only – controls**

The HCSA and its Trustees may only rely upon the authority provided by sub-clause (2)(c) of this clause if each of the following conditions is satisfied:

- (a) The amount or maximum amount of the payment for the goods is set out in a written agreement between the HCSA and the Trustee or connected person supplying the goods (“the supplier”).
- (b) The amount or maximum amount of the payment for the goods does not exceed what is reasonable in the circumstances for the supply of the goods.
- (c) The other Trustees are satisfied that it is in the best interests of the HCSA to contract with the supplier rather than with someone who is not a Trustee or connected person. In reaching that decision the Trustees must balance the advantage of contracting with a Trustee or connected person against the disadvantages of doing so.
- (d) The supplier is absent from the part of any meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or

her or it with regard to the supply of goods to the HCSA.

- (e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of Trustees is present at the meeting.
- (f) The reason for their decision is recorded by the Trustees in the minute book.
- (g) A majority of the Trustees then in office are not in receipt of remuneration or payments authorised by clause 6.

**(4) In sub-clauses (2) and (3) of this clause:**

- (a) “the HCSA” includes any company in which the HCSA:
  - (i) Holds more than 50% of the shares; or
  - (ii) Controls more than 50% of the voting rights attached to the shares; or
  - (iii) Has the right to appoint one or more directors to the Trustees of the company;
- (b) “connected person” includes any person within the definition set out in clause [30] (Interpretation);

**7. Conflicts of interest and conflicts of loyalty**

A Trustee must:

- (1) declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the HCSA or in any transaction or arrangement entered into by the HCSA which has not previously been declared; and
- (2) absent himself or herself from any discussions of the charity Trustees in which it is possible that a conflict of interest will arise between his or her duty to act solely in the interests of the HCSA and any personal interest (including but not limited to any financial interest).

Any Trustee absenting himself or herself from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the Trustees on the matter.

**8. Liability of members to contribute to the assets of the HCSA if it is wound up**

- (1) If the HCSA is wound up, each member of the HCSA is liable to contribute to the assets of the HCSA such amount (but not more than £1) as may be required for payment of the debts and liabilities of the HCSA contracted before that person or organisation ceases to be a member, for payment of the costs, charges and expenses of winding up, and for adjustment of the rights

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of the contributing members among themselves.

- (2) In sub-clause (1) of this clause “member” includes any person or organisation that was a member of the HCSA within 12 months before the commencement of the winding up.
- (3) But subject to that, the members of the HCSA have no liability to contribute to its assets if it is wound up, and accordingly have no personal responsibility for the settlement of its debts and liabilities beyond the amount that they are liable to contribute.

## **9. Membership of the HCSA**

### **(1) Admission of new members**

#### **1.1 Eligibility**

- a) Membership of the HCSA is open to anyone who is interested in furthering its purposes, and who, by applying for membership, has indicated his, her or its agreement to become a member and acceptance of the duty of members set out in clause 8 above clauses below.
- b) A member may be an individual, a corporate body, or an individual or corporate body representing an organisation which is not incorporated.

### **(2) Membership Classifications**

There shall be five classifications of membership of the HCSA as defined below. Membership classifications will be subject to review.

#### **2.1 Full Membership**

2.1.1 Persons involved in health and social care purchasing, supply chain management and commissioning support and who are employed by UK NHS organisations and related public sector bodies.

2.1.2 Full members have voting rights

#### **2.2 Honorary Members**

2.2.1 Honorary member status shall be awarded to individuals in recognition of their distinguished service to the aims of the HCSA. Nominations for Honorary membership may be submitted by Trustees or Officers of Council or Members for consideration by Trustees whose decision shall be final.

2.2.2 Honorary members have voting rights

#### **2.3 Retired Members**

2.3.1 Members upon retirement (as defined in 2.1 and 2.2 above), may retain membership of the HCSA and continue to do so as long they formally indicate their desire to do so.

2.3.2 Retired members have voting rights

## **2.4 Associate Membership**

2.4.1 Persons involved in purchasing, supply chain management or commissioning who were previously full members of the HCSA but who have had their post transferred (under TUPE) to a private sector employer, and therefore no longer meeting the criteria in 2.1) but still within purchasing and supply and commissioning linked with healthcare services and who wish to continue to support the work of the HCSA will be eligible for Associate membership.

2.4.2 Persons involved in healthcare purchasing; supply chain management or commissioning employed within a private sector healthcare provider organization or a private sector commissioner organisation will be eligible for consideration for Associate membership.

2.4.3 Persons who do not meet the above criteria but whom Council considers would support and enhance the work of the HCSA will be eligible for consideration for Associate membership.

2.4.4 Associate members shall have no voting rights.

## **2.5 Corporate Membership**

2.5.1 Organisations (or a representative of a corporate organisation) which supply goods or services to the NHS will be eligible for consideration for Corporate membership where Council considers this would benefit the HCSA.

2.5.2 Corporate members shall have no voting rights.

### **(3) Admission of members**

#### **(a) Admission procedure**

The HCSA Trustees

- (i) may require applications for membership to be made in any reasonable way that they decide;
- (ii) shall, if they approve an application for membership, notify the applicant of their decision within 21 days;
- (iii) may refuse an application for membership if they believe that it is in the best interests of the HCSA for them to do so;
- iv) shall, if they decide to refuse an application for membership, give the applicant their reasons for doing so, within 21 days of the decision being taken, and give the applicant the opportunity to appeal against the refusal; and
- (v) shall give fair consideration to any such appeal, and shall inform the applicant of their decision, but any decision to

confirm refusal of the application for membership shall be final.

**(4) Transfer of membership**

Membership of the HCSA cannot be transferred to anyone else except in the case of an individual or corporate body representing an organisation which is not incorporated, whose membership may be transferred by the unincorporated organisation to a new representative. Such transfer of membership does not take effect until the HCSA has received written notification of the transfer.

**(5) Conversion of membership classes immediately prior to Vesting**

At the moment in time immediately prior to Vesting, each member's membership shall convert automatically without further sanction of the Trustees or of the members into one of the membership classifications set out in Section 9(2) above. In relation to any question as to the classification of membership into which a then member falls, the Trustees' decision shall be final.

**(6) Duty of members**

It is the duty of each member of the HCSA to exercise his or her powers as a member of the HCSA in the way he or she decides in good faith would be most likely to further the purposes of the HCSA.

**(7) Termination of membership**

- (a) Membership of the HCSA comes to an end if:
  - (i) the member dies, or, in the case of an organisation (or the representative of an organisation) that organisation ceases to exist; or
  - (ii) the member sends a notice of resignation to the Trustees; or
  - (iii) any sum of money owed by the member to the HCSA is not paid in full within six months of its falling due; or
  - (iv) the Trustees decide that it is in the best interests of the HCSA that the member (organisation or its representative) in question should be removed from membership, and pass a resolution to that effect.
- (b) Before the Trustees take any decision to remove someone from membership of the HCSA they must:
  - (i) inform the member of the reasons why it is proposed to remove him, her or it from membership;
  - (ii) give the member at least 21 clear days' notice in which to make representations to the Trustees as to why he, she or it

should not be removed from membership;

- (iii) at a duly constituted meeting of the Trustees, consider whether or not the member should be removed from membership;
  - (iv) consider at that meeting any representations which the member makes as to why the member should not be removed;
- and
- (v) allow the member, or the member's representative, to make those representations in person at that meeting, if the member so chooses.

**(8) Membership fees**

The HCSA may require members to pay reasonable membership fees to the HCSA.

**(9) Associate membership**

- (a) The Trustees may create associate or other classes of non-voting membership, and may determine the rights and obligations of any such members (including payment of membership fees), and the conditions for admission to, and termination of membership of any such class of members.
- (b) Other references in this constitution to "members" and "membership" do not apply to non-voting members, and non-voting members do not qualify as members for any purpose under the Charities Acts, General Regulations or Dissolution Regulations.

**10. Members' decisions**

**(1) General provisions**

Except for those decisions that must be taken in a particular way as indicated in sub-clause (4) of this clause, decisions of the members of the HCSA may be taken either by vote at a general meeting as provided in sub-clause (2) of this clause or by written resolution as provided in sub-clause (3) of this clause.

**(2) Taking ordinary decisions by vote**

Subject to sub-clause (4) of this clause, any decision of the members of the HCSA may be taken by means of a resolution at a general meeting. Such a resolution may be passed by a simple majority of votes cast at the meeting (including votes cast by postal or email ballot, and proxy votes).

**(3) Taking ordinary decisions by written resolution without a general meeting**

- (a) Subject to sub-clause (4) of this clause, a resolution in writing agreed by a simple majority of all the members who would have been entitled

to vote upon it had it been proposed at a general meeting shall be effective, provided that:

- (i) a copy of the proposed resolution has been sent to all the members eligible to vote; and
  - (ii) a simple majority of members has signified its agreement to the resolution in a document or documents which are received at the principal office within the period of 28 days beginning with the circulation date. The document signifying a member's agreement must be authenticated by their signature (or in the case of an organisation which is a member, by execution according to its usual procedure), by a statement of their identity accompanying the document, or in such other manner as the HCSA has specified.
- (b) The resolution in writing may comprise several copies to which one or more members have signified their agreement.
  - (c) Eligibility to vote on the resolution is limited to members who are members of the HCSA (with voting rights) on the date when the proposal is first circulated in accordance with paragraph (a) above.
  - (d) Not less than 10% of the members of the HCSA (with voting rights) may request the Trustees to make a proposal for decision by the members.
  - (e) The Trustees must within 21 days of receiving such a request comply with it if:
    - (i) The proposal is not frivolous or vexatious, and does not involve the publication of defamatory material;
    - (ii) The proposal is stated with sufficient clarity to enable effect to be given to it if it is agreed by the members; and
    - (iii) Effect can lawfully be given to the proposal if it is so agreed.
  - (f) Sub-clauses (a) to (c) of this clause apply to a proposal made at the request of members.

**(4) Decisions that must be taken in a particular way**

- (a) Any decision to remove a Trustee must be taken in accordance with clause 15(2).
- (b) Any decision to amend this constitution must be taken in accordance with clause 29 of this constitution (Amendment of Constitution).
- (c) Any decision to wind up or dissolve the HCSA must be taken in

accordance with clause 30 of this constitution (Voluntary winding up or dissolution). Any decision to amalgamate or transfer the undertaking of the HCSA to one or more other CIOs must be taken in accordance with the provisions of the Charities Act 2011.

## **11. General meetings of members**

### **(1) Types of general meeting**

There must be an annual general meeting (AGM) of the members of the HCSA. The first AGM must be held within 18 months of the registration of the HCSA, and subsequent AGMs must be held at intervals of not more than 15 months. The AGM must receive the annual statement of accounts (duly audited or examined where applicable) and the Trustees' annual report, and must elect Trustees as required under clause 13.

Other general meetings of the members of the HCSA may be held at any time.

All general meetings must be held in accordance with the following provisions.

### **(2) Calling general meetings**

- (a) The Trustees:
  - (i) must call the annual general meeting of the members of the HCSA in accordance with sub-clause (1) of this clause, and identify it as such in the notice of the meeting; and
  - (ii) may call any other general meeting of the members at any time.
- (b) The Trustees must, within 21 days, call a general meeting of the members of the HCSA if:
  - (i) they receive a request to do so from at least 10% of the members of the HCSA; and
  - (ii) the request states the general nature of the business to be dealt with at the meeting, and is authenticated by the member(s) making the request.
- (c) If, at the time of any such request, there has not been any general meeting of the members of the HCSA for more than 12 months, then sub-clause (b)(i) of this clause shall have effect as if 5% were substituted for 10%.
- (d) Any such request may include particulars of a resolution that may properly be proposed, and is intended to be proposed, at the meeting.
- (e) A resolution may only properly be proposed if it is lawful, and is not defamatory, frivolous or vexatious.

- (f) Any general meeting called by the Trustees at the request of the members of the HCSA must be held within 28 days from the date on which it is called.
- (g) If the Trustees fail to comply with this obligation to call a general meeting at the request of its members, then the members who requested the meeting may themselves call a general meeting.
- (h) A general meeting called in this way must be held not more than 3 months after the date when the members first requested the meeting.
- (i) The HCSA must reimburse any reasonable expenses incurred by the members calling a general meeting by reason of the failure of the Trustees to duly call the meeting, but the HCSA shall be entitled to be indemnified by the Trustees who were responsible for such failure.

### **(3) Notice of general meetings**

- (a) The Trustees, or, as the case may be, the relevant members of the HCSA, must give at least 14 clear days' notice of any general meeting to all of the members, and to any Trustee of the HCSA who is not a member.
- (b) If it is agreed by not less than 90% of all members of the HCSA, any resolution may be proposed and passed at the meeting even though the requirements of sub-clause (3) (a) of this clause have not been met. This sub-clause does not apply where a specified period of notice is strictly required by another clause in this constitution, by the Charities Act 2011 or by the General Regulations.
- (c) The notice of any general meeting must:
  - (i) state the time and date of the meeting;
  - (ii) give the address at which the meeting is to take place;
  - (iii) give particulars of any resolution which is to be moved at the meeting, and of the general nature of any other business to be dealt with at the meeting; and
  - (iv) if a proposal to alter the constitution of the HCSA is to be considered at the meeting, include the text of the proposed alteration;
  - (v) include, with the notice for the AGM, the annual statement of accounts and Trustees' annual report, details of persons standing for election or re- election as Trustee, or where allowed under clause 22 (Use of electronic communication), details of where the information may be found on the HCSA's website.

- (d) Proof that an envelope containing a notice was properly addressed, prepaid and posted; or that an electronic form of notice was properly addressed and sent, shall be conclusive evidence that the notice was given. Notice shall be deemed to be given 48 hours after it was posted or sent.
- (e) The proceedings of a meeting shall not be invalidated because a member who was entitled to receive notice of the meeting did not receive it because of accidental omission.

**(4) Chairing of general meetings**

The person nominated as chair by the Trustees under clause 19(2) (Chairing of meetings), shall, if present at the general meeting and willing to act, preside as chair of the meeting. Subject to that, the members of the HCSA who are present at a general meeting shall elect a chair to preside at the meeting.

**(5) Quorum at general meetings**

- (a) No business may be transacted at any general meeting of the members of the HCSA unless a quorum is present when the meeting starts.
- (b) Subject to the following provisions, the quorum for general meetings shall be the greater of 5% or three members. An organisation represented by a person present at the meeting in accordance with sub-clause (7) of this clause, is counted as being present in person.
- (c) If the meeting has been called by or at the request of the members and a quorum is not present within 15 minutes of the starting time specified in the notice of the meeting, the meeting is closed.
- (d) If the meeting has been called in any other way and a quorum is not present within 15 minutes of the starting time specified in the notice of the meeting, the chair must adjourn the meeting. The date, time and place at which the meeting will resume must either be announced by the chair or be notified to the HCSA's members at least seven clear days before the date on which it will resume.
- (e) If a quorum is not present within 15 minutes of the start time of the adjourned meeting, the member or members present at the meeting constitute a quorum.
- (f) If at any time during the meeting a quorum ceases to be present, the meeting may discuss issues and make recommendations to the Trustees but may not make any decisions. If decisions are required which must be made by a meeting of the members, the meeting must be adjourned.

**(6) Voting at general meetings**

- (a) Any decision other than one falling within clause 10(4) (Decisions that HCSA CIO Constitution November 2016

must be taken in a particular way) shall be taken by a simple majority of votes cast at the meeting (including proxy and postal votes). Every member has one vote unless otherwise provided in the rights of a particular class of membership under this constitution

- (b) A resolution put to the vote of a meeting shall be decided on a show of hands, unless (before or on the declaration of the result of the show of hands) a poll is duly demanded. A poll may be demanded by the chair or by at least 10% of the members present in person or by proxy at the meeting.
- (c) A poll demanded on the election of a person to chair the meeting or on a question of adjournment must be taken immediately. A poll on any other matter shall be taken, and the result of the poll shall be announced, in such manner as the chair of the meeting shall decide, provided that the poll must be taken, and the result of the poll announced, within 30 days of the demand for the poll.
- (d) A poll may be taken:
  - (i) at the meeting at which it was demanded; or
  - (ii) at some other time and place specified by the chair; or
  - (iii) through the use of postal or electronic communications.
- (e) In the event of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting shall have a second, or casting vote.
- (f) Any objection to the qualification of any voter must be raised at the meeting at which the vote is cast and the decision of the chair of the meeting shall be final.

**(7) Proxy voting**

- (a) Any member of the HCSA may appoint another person as a proxy to exercise all or any of that member's rights to attend, speak and vote at a general meeting of the HCSA.

Proxies must be appointed by a notice in writing (a "proxy notice") which:

- (i) states the name and address of the member appointing the proxy;
- (ii) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
- (iii) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the HCSA may determine; and

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- (iv) is delivered to the HCSA in accordance with the constitution and any instructions contained in the notice of the general meeting to which they relate.
- (b) The HCSA may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (c) Proxy notices may (but do not have to) specify how the proxy under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- (d) Unless a proxy notice indicates otherwise, it must be treated as:
  - (i) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
  - (ii) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.
- (e) A member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the HCSA by or on behalf of that member.
- (f) An appointment under a proxy notice may be revoked by delivering to the HCSA a notice in writing given by or on behalf of the member by whom or on whose behalf the proxy notice was given.
- (g) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- (h) If a proxy notice is not signed or authenticated by the member appointing the proxy, it must be accompanied by written evidence that the person who signed or authenticated it on that member's behalf had authority to do so.

## **(8) Representation of organisations and corporate members**

An organisation or a corporate body that is a member of the HCSA (as defined in section 9 (2.5)) may, in accordance with its usual decision-making process, authorise a person to act as its representative at any general meeting of the HCSA.

The representative is entitled to exercise the same powers on behalf of the organisation or corporate body as the organisation or corporate body could

exercise as an individual member of the HCSA.

**(9) Adjournment of meetings**

The chair may with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting to another time and/or place. No business may be transacted at an adjourned meeting except business which could properly have been transacted at the original meeting.

**12. Trustees**

**(1) Functions and duties of Trustees**

The Trustees shall manage the affairs of the HCSA and may for that purpose exercise all the powers of the HCSA. It is the duty of each Trustee:

- (a) to exercise his or her powers and to perform his or her functions as a Trustee of the HCSA in the way he or she decides in good faith would be most likely to further the purposes of the HCSA; and
- (b) to exercise, in the performance of those functions, such care and skill as is reasonable in the circumstances having regard in particular to:
  - (i) any special knowledge or experience that he or she has or holds himself or herself out as having; and
  - (ii) if he or she acts as a Trustee of the HCSA in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

**(2) Eligibility for Trusteeship**

- (a) Every Trustee must be a natural person.
- (b) No one may be appointed as a Trustee:
  - if he or she is under the age of 16 years; or
  - if he or she would automatically cease to hold office under the provisions of clause 15(1)(f).
- (c) No one is entitled to act as a Trustee whether on appointment or on any re-appointment until he or she has expressly acknowledged, in whatever way the Trustees decide, his or her acceptance of the office of Trustee.
- (d) At least one of the Trustees of the HCSA must be 18 years of age or over. If there is no Trustee aged at least 18 years, the remaining Trustee or Trustees may act only to call a meeting of the Trustees, or appoint a new Trustee.
- (e) Every Trustee must be a member of the HCSA or if not already a

member, must apply to become a member immediately upon appointment as a Trustee.

**(3) Number of Trustees**

- (a) There must be at least three HCSA Trustees. If the number falls below this minimum, the remaining Trustee or Trustees may act only to call a meeting of the HCSA Trustees, or appoint a new Trustee.
- (b) The maximum number of HCSA Trustees is 12. The HCSA Trustees may not appoint any HCSA Trustee if as a result the number of HCSA Trustees would exceed the maximum.

**(4) First Trustees**

The first Trustees of the HCSA are:

Professor Duncan Eaton	Mr Ian Turner
Mrs Nevin Stewart	Mr Mark Roscrow
Mr Clive Hamblin	Mr Eugene Cooke

**13. Appointment of Trustees**

- (1) At the first annual general meeting of the members of the HCSA all the Trustees shall retire from office;
- (2) At every subsequent annual general meeting of the members of the HCSA, one-third of the Trustees shall retire from office. If the number of Trustees is not three or a multiple of three, then the number nearest to one-third shall retire from office, but if there is only one Trustee, he or she shall retire;
- (3) The Trustees to retire by rotation shall be those who have been longest in office since their last appointment or reappointment. If any Trustees were last appointed or reappointed on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot;
- (4) The vacancies so arising may be filled by the decision of the members at the annual general meeting; any vacancies not filled at the annual general meeting may be filled as provided in sub-clause (5) of this clause;
- (5) The members or the Trustees may at any time decide to appoint a new Trustee, whether in place of a Trustee who has retired or been removed in accordance with clause 15 (Retirement and removal of Trustees), or as an additional Trustee, provided that the limit specified in clause 12(3) on the number of Trustees would not as a result be exceeded;
- (6) A person so appointed by the members of the HCSA shall retire in accordance with the provisions of sub-clauses (2) and (3) of this clause. A person so appointed by the Trustees shall retire at the conclusion of the next annual general meeting after the date of his or her appointment, and shall not be counted for the purpose of determining which of the Trustees is to retire by

rotation at that meeting.

#### **14. Information for new Trustees**

The Trustees will make available to each new Trustee, on or before his or her first appointment:

- (a) a copy of this constitution and any amendments made to it; and
- (b) a copy of the HCSA's latest Trustees' annual report and statement of accounts.

#### **15. Retirement and removal of Trustees**

- (1) A Trustee ceases to hold office if he or she:
  - (a) retires by notifying the HCSA in writing (but only if enough Trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings);
  - (b) is absent without the permission of the Trustees from all their meetings held within a period of six months and the Trustees resolve that his or her office be vacated;
  - (c) dies;
  - (d) becomes incapable by reason of mental disorder, illness or injury of managing and administering his or her own affairs.
  - (e) is removed by the members of the HCSA in accordance with sub-clause (2) of this clause; or
  - (f) is disqualified from acting as a Trustee by virtue of section 178-180 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision).
- (2) A Trustee shall be removed from office if a resolution to remove that Trustee is proposed at a general meeting of the members called for that purpose and properly convened in accordance with clause 11, and the resolution is passed by a two-thirds majority of votes cast at the meeting.
- (3) A resolution to remove a Trustee in accordance with this clause shall not take effect unless the individual concerned has been given at least 14 clear days' notice in writing that the resolution is to be proposed, specifying the circumstances alleged to justify removal from office, and has been given a reasonable opportunity of making oral and/or written representations to the members of the HCSA.

#### **16. Reappointment of Trustees**

Any person who retires as a Trustee as a consequence of 13.1; by rotation or by giving notice to the HCSA is eligible for reappointment. A Trustee who has served for three consecutive terms may not be reappointed for a fourth consecutive term but

may be reappointed after an interval of at least three years.

## **17. Taking of decisions by Trustees**

Any decision may be taken either:

- at a meeting of the Trustees; or
- by resolution in writing or electronic form agreed by all of the Trustees, which may comprise either a single document or several documents containing the text of the resolution in like form to each of which one or more Trustees has signified their agreement.

## **18. Delegation by Trustees**

- (1) The Trustees may delegate any of their powers or functions to the HCSA Council, and, if they do, they must determine the terms and conditions on which the delegation is made (see 4.22). The Trustees may at any time alter those terms and conditions, or revoke the delegation.
- (2) This power is in addition to the power of delegation in the General Regulations and any other power of delegation available to the Trustees, but is subject to the following requirements -
  - (a) a committee may consist of two or more persons, but at least one member of each committee must be a Trustee;
  - (b) the acts and proceedings of any committee must be brought to the attention of the Trustees as a whole as soon as is reasonably practicable; and
  - (c) the Trustees shall from time to time review the arrangements which they have made for the delegation of their powers.

## **19. Meetings and proceedings of Trustees**

### **(1) Calling meetings**

- (a) Any Trustee may call a meeting of the Trustees.
- (b) Subject to that, the Trustees shall decide how their meetings are to be called, and what notice is required.

### **(2) Chairing of meetings**

The Trustees may appoint one of their number to chair their meetings and may at any time revoke such appointment. If no-one has been so appointed, or if the person appointed is unwilling to preside or is not present within 10 minutes after the time of the meeting, the Trustees present may appoint one of their number to chair that meeting.

### **(3) Procedure at meetings**

- (a) No decision shall be taken at a meeting unless a quorum is present at the time when the decision is taken. The quorum is two Trustees, or the number nearest to one third of the total number of Trustees, whichever is greater, or such larger number as the Trustees may decide from time to time. A Trustee shall not be counted in the quorum present when any decision is made about a matter upon which he or she is not entitled to vote.
- (b) Questions arising at a meeting shall be decided by a majority of those eligible to vote.
- (c) In the case of an equality of votes, the chair shall have a second or casting vote.

**(4) Participation in meetings by electronic means**

- (a) A meeting may be held by suitable electronic means agreed by the Trustees in which each participant may communicate with all the other participants.
- (b) Any Trustee participating at a meeting by suitable electronic means agreed by the Trustees in which a participant or participants may communicate with all the other participants shall qualify as being present at the meeting.
- (c) Meetings held by electronic means must comply with rules for meetings, including chairing and the taking of minutes.

**20. Saving provisions**

- (1) Subject to sub-clause (2) of this clause, all decisions of the Trustees, or of a committee of Trustees, shall be valid notwithstanding the participation in any vote of a Trustee:
  - who was disqualified from holding office;
  - who had previously retired or who had been obliged by the constitution to vacate office;
  - who was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise;

if, without the vote of that Trustee and that Trustee being counted in the quorum, the decision has been made by a majority of the Trustees at a quorate meeting.

- (2) Sub-clause (1) of this clause does not permit a Trustee to keep any benefit that may be conferred upon him or her by a resolution of the Trustees or of a committee of Trustees if, but for clause (1), the resolution would have been void, or if the Trustee has not complied with clause 7 (Conflicts of interest).

## **21. Execution of documents**

- (1) The HCSA shall execute documents by signature.
- (2) A document is validly executed by signature if it is signed by at least two of the Trustees.

## **22. Use of electronic communication**

- (1) The HCSA will comply with the requirements of the Communications Provisions in the General Regulations and in particular:
  - (a) the requirement to provide within 21 days to any member on request a hard copy of any document or information sent to the member otherwise than in hard copy form;
  - (b) any requirements to provide information to the Commission in a particular form or manner.

### **(2) Communications to the HCSA**

Any member or Trustee of the HCSA may communicate electronically with the HCSA to an address specified by the HCSA for the purpose, so long as the communication is authenticated in a manner which is satisfactory to the HCSA.

### **(3) Communications by the HCSA**

- (a) Any member or Trustee of the HCSA, by providing the HCSA with his or her email address or similar, is taken to have agreed to receive communications from the HCSA in electronic form at that address, unless the member has indicated to the HCSA his or her unwillingness to receive such communications in that form.
- (b) The Trustees may, subject to compliance with any legal requirements, by means of publication on its website –
  - (i) provide the members with the notice referred to in clause 11(3) (Notice of general meetings);
  - (ii) give Trustees notice of their meetings in accordance with clause 19(1) (Calling meetings); and
  - (iii) submit any proposal to the members or Trustees for decision by written resolution or postal vote in accordance with the HCSA's powers under clause 10 (Members' decisions), 10(3) (Decisions taken by resolution in writing), or the provisions for postal voting clause 23.
- (c) The Trustees must:
  - (i) take reasonable steps to ensure that members and Trustees

are promptly notified of the publication of any such notice or proposal;

- (ii) send any such notice or proposal in hard copy form to any member or Trustee who has not consented to receive communications in electronic form.

### **23. Postal & Email Voting**

- (a) The HCSA may, if the Trustees so decide, allow the members to vote by post or electronic mail ("email") to elect Trustees or to make a decision on any matter that is being decided at a general meeting of the members.
- (b) The Trustees must appoint at least two persons independent of the HCSA to serve as scrutineers to supervise the conduct of the postal/email ballot and the counting of votes.
- (c) If postal and/or email voting is to be allowed on a matter, the HCSA must send to members of the HCSA not less than 21 days before the deadline for receipt of votes cast in this way:
  - (i) a notice by email, if the member has agreed to receive notices in this way under clause 22 (Use of electronic communications), including an explanation of the purpose of the vote and the voting procedure to be followed by the member, and a voting form capable of being returned by email or post to the HCSA, containing details of the resolution being put to a vote, or of the candidates for election, as applicable;
  - (ii) a notice by post to all other members, including a written explanation of the purpose of the postal vote and the voting procedure to be followed by the member; and a postal voting form containing details of the resolution being put to a vote, or of the candidates for election, as applicable.
- (d) The voting procedure must require all forms returned by post be in an envelope with the member's name and signature, and nothing else, on the outside, inside another envelope addressed to 'The Scrutineers for HCSA', at the HCSA's principal office or such other postal address as is specified in the voting procedure.
- (e) The voting procedure for votes cast by email must require the member's name to be at the top of the email, and the email must be authenticated in the manner specified in the voting procedure.
- (f) Email votes must be returned to an email address used only for this purpose and must be accessed only by a scrutineer.
- (g) The voting procedure must specify the closing date and time for receipt of votes, and must state that any votes received after the closing date or not complying with the voting procedure will be invalid

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and not be counted.

- (h) The scrutineers must make a list of names of members casting valid votes, and a separate list of members casting votes which were invalid. These lists must be provided to a Trustee or other person overseeing admission to, and voting at the general meeting. A member who has cast a valid postal or email vote must not vote at the meeting, and must not be counted in the quorum for any part of the meeting on which he, she or it has already cast a valid vote. A member who has cast an invalid vote by post or email is allowed to vote at the meeting and counts towards the quorum.
- (i) For postal votes, the scrutineers must retain the internal envelopes (with the member's name and signature). For email votes, the scrutineers must cut off and retain any part of the email that includes the member's name. In each case, a scrutineer must record on this evidence of the member's name that the vote has been counted, or if the vote has been declared invalid, the reason for such declaration.
- (j) Votes cast by post or email must be counted by all the scrutineers before the meeting at which the vote is to be taken. The scrutineers must provide to the person chairing the meeting written confirmation of the number of valid votes received by post and email and the number of votes received which were invalid.
- (k) The scrutineers must not disclose the result of the postal/email ballot until after votes taken by hand or by poll at the meeting, or by poll after the meeting, have been counted. Only at this point shall the scrutineers declare the result of the valid votes received, and these votes shall be included in the declaration of the result of the vote.
- (l) Following the final declaration of the result of the vote, the scrutineers must provide to a Trustee or other authorised person bundles containing the evidence of members submitting valid postal votes; evidence of members submitting valid email votes; evidence of invalid votes; the valid votes; and the invalid votes.
- (m) Any dispute about the conduct of a postal or email ballot must be referred initially to a panel set up by the Trustees, to consist of two Trustees and two persons independent of the HCSA. If the dispute cannot be satisfactorily resolved by the panel, it must be referred to the Electoral Reform Society.

## **24. Keeping of Registers**

The HCSA must comply with its obligations under the General Regulations in relation to the keeping of, and provision of access to, registers of its members and Trustees.

## **25. Minutes**

The Trustees must keep minutes of all:

- (1) appointments of officers made by the Trustees;
- (2) proceedings at general meetings of the HCSA;
- (3) meetings of the Trustees and committees of Trustees including:
  - the names of the Trustees present at the meeting;
  - the decisions made at the meetings; and
  - where appropriate the reasons for the decisions;
- (4) decisions made by the Trustees otherwise than in meetings.

**26. Accounting records, accounts, annual reports and returns, register maintenance**

- (1) The Trustees must comply with the requirements of the Charities Act 2011 with regard to the keeping of accounting records, to the preparation and scrutiny of statements of accounts, and to the preparation of annual reports and returns. The statements of accounts, reports and returns must be sent to the Charity Commission, regardless of the income of the HCSA, within 10 months of the financial year end.
- (2) The Trustees must comply with their obligation to inform the Commission within 28 days of any change in the particulars of the HCSA entered on the Central Register of Charities.

**27. Rules**

The Trustees may from time to time make such reasonable and proper rules or bye laws as they may deem necessary or expedient for the proper conduct and management of the HCSA, but such rules or bye laws must not be inconsistent with any provision of this constitution. Copies of any such rules or bye laws currently in force must be made available to any member of the HCSA on request.

**28. Disputes**

If a dispute arises between members of the HCSA about the validity or propriety of anything done by the members under this constitution, and the dispute cannot be resolved by agreement, the parties to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation.

**29. Amendment of constitution**

As provided by clauses 224-227 of the Charities Act 2011:

- (1) This constitution can only be amended:  
  
by a resolution passed by a 75% majority of votes cast at a general meeting of the members of the HCSA.

- (2) Any alteration of clause 3 (Objects), clause 30 (Voluntary winding up or dissolution), this clause, or of any provision where the alteration would provide authorisation for any benefit to be obtained by Trustees or members of the HCSA or persons connected with them, requires the prior written consent of the Charity Commission.
- (3) No amendment that is inconsistent with the provisions of the Charities Act 2011 or the General Regulations shall be valid.
- (4) A copy of any resolution altering the constitution, together with a copy of the HCSA's constitution as amended, must be sent to the Commission within 15 days from the date on which the resolution is passed. The amendment does not take effect until it has been recorded in the Register of Charities.

### **30. Voluntary winding up or dissolution**

- (1) As provided by the Dissolution Regulations, the HCSA may be dissolved by resolution of its members. Any decision by the members to wind up or dissolve the HCSA can only be made:
  - (a) at a general meeting of the members of the HCSA called in accordance with clause 11 (Meetings of Members), of which not less than 14 days' notice has been given to those eligible to attend and vote:
    - (i) by a resolution passed by a 75% majority of those voting.
- (2) Subject to the payment of all the HCSA's debts:
  - (a) Any resolution for the winding up of the HCSA, or for the dissolution of the HCSA without winding up, may contain a provision directing how any remaining assets of the HCSA shall be applied.
  - (b) If the resolution does not contain such a provision, the Trustees must decide how any remaining assets of the HCSA shall be applied.
  - (c) In either case the remaining assets must be applied for charitable purposes the same as or similar to those of the HCSA.
- (3) The HCSA must observe the requirements of the Dissolution Regulations in applying to the Commission for the HCSA to be removed from the Register of Charities, and in particular:
  - (a) the Trustees must send with their application to the Commission:
    - (i) a copy of the resolution passed by the members of the HCSA;
    - (ii) a declaration by the Trustees that any debts and other liabilities of the HCSA have been settled or otherwise provided for in full; and
    - (iii) a statement by the Trustees setting out the way in which any

property of the HCSA has been or is to be applied prior to its dissolution in accordance with this constitution;

- (b) the Trustees must ensure that a copy of the application is sent within seven days to every member and employee of the HCSA, and to any Trustee of the HCSA who was not privy to the application.
- (4) If the HCSA is to be wound up or dissolved in any other circumstances, the provisions of the Dissolution Regulations must be followed.

### 31. Interpretation

In this constitution:

**“connected person”** means:

- (a) a child, parent, grandchild, grandparent, brother or sister of the Trustee;
- (b) the spouse or civil partner of the Trustee or of any person falling within sub-clause (a) above;
- (c) a person carrying on business in partnership with the Trustee or with any person falling within sub-clause (a) or (b) above;
- (d) an institution which is controlled –
  - (i) by the Trustee or any connected person falling within sub-clause (a), (b), or (c) above; or
  - (ii) by two or more persons falling within sub-clause (d)(i), when taken together
- (e) a body corporate in which –
  - (i) the Trustee or any connected person falling within sub-clauses (a) to (c) has a substantial interest; or
  - (ii) two or more persons falling within sub-clause (e)(i) who, when taken together, have a substantial interest.
- (f) “HCSA” means the “Health Care Supply Association”

Section 118 of the Charities Act 2011 apply for the purposes of interpreting the terms used in this constitution.

**“General Regulations”** means the Charitable Incorporated Organisations (General) Regulations 2012.

**“Dissolution Regulations”** means the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012.

The **“Communications Provisions”** means the Communications Provisions in (Part 10, Chapter 4) of the General Regulations.

**“Trustee”** means a Trustee of the HCSA.

A **“poll”** means a counted vote or ballot, usually (but not necessarily) in writing.