



## Guidance

Schools, Chief Education Officers,  
Governing Bodies  
and other interested parties

Date of Issue: 20/01/03

Related documents:  
Guidance on  
School Companies

# Guidance on School Companies

## Annex A & Annex B

### Further Information

LEA Policy Team  
Local Standards Policy  
School Workforce Unit  
Sanctuary Buildings  
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## **CONTENTS**

### **ANNEX A**

#### **FORMING A COMPANY**

This annex offers guidance on how to form a company and provides example articles and memoranda for school companies.

<b>A</b>	<b>Introduction</b>	<b>2</b>
<b>B</b>	<b>Issues to consider</b>	<b>2</b>
<b>C</b>	<b>Example articles of association for a company limited by guarantee</b>	<b>4</b>
<b>D</b>	<b>Example memorandum for a company limited by guarantee</b>	<b>17</b>
<b>E</b>	<b>Example articles of association for a company limited by shares</b>	<b>20</b>
<b>F</b>	<b>Example memorandum for a company limited by shares</b>	<b>41</b>

### **ANNEX B**

#### **SERVICES COMPANIES MAY DELIVER 44**

## A. Introduction

In order to form a company you will need to complete the following:

- (a) **A memorandum of association** – this document sets out the company's name, location, and what it will do (its objects).
- (b) **Articles of association** - this document sets out the rules for the running of the company's internal affairs
- (c) **Form 10** – this document gives details of the first director(s), secretary and the intended address of the registered office
- (d) **Form 12** - this document is a statutory declaration of compliance with all the legal requirements relating to the incorporation of a company.

To help with this process, you are advised to consult a solicitor with experience of company formation. This is a relatively straightforward process and most solicitors should be able to help. For further guidance please contact **Companies House, PO BOX 29019, 21 Bloomsbury Street, London WC1B 3XD (tel 0870 3333636)**

The DfES has prepared some example Memorandum and Articles of Association for School Companies. The first of these examples, Annex A1, are for companies without share capital and limited by guarantee. The second of these examples, Annex A2, are for companies limited by shares.

## B. Issues to consider

There are two issues which companies will need to address in these documents:

### The Appointment and Removal of Directors

1. The directors of the company are answerable to the members of the company but the company structure assumes that the members will not take day-to-day decisions regarding the running of the company – rather they will appoint directors to act on the company's behalf. It is up to the members how they arrange the appointment of directors and how many directors they appoint, the minimum is effectively two directors and the articles will normally state a maximum. The members may wish to appoint a nominee director each or they may wish to agree the appointment of directors between them in general meeting or a combination of the two methods. The first directors are usually named in the articles of association and their particulars must be notified to the Companies Registrar in a section 10 statement when the company is applying to be registered.

2. Removal of directors can be by an obligation to retire in rotation after a certain period of time or if the director is an appointee of a particular person or organisation then the articles can provide for the person appointing to have the power to remove that director. But the members in general meeting always retain the ability to remove a director by ordinary resolution requiring special notice under section 303 of Companies Act 1985.
3. Directors of the company have a duty to act with due care, diligence and skill. That is not to say that they are expected to be an expert in the business of the company or a particular area of it, but that they must exercise the reasonable care and diligence that an ordinary person would do in attending to the affairs of the company. The directors also owe fiduciary duties to the company which means that they are obliged to act in the best interests of the company, to act for proper purposes and to avoid any conflict between their personal interests and those of the company.

## Profits

4. The articles should state how dividend is to be paid to the members. Normally the articles state that dividend shall be distributed among the members according to the amounts paid up on the shares. In the case of school companies where different members contribute different kinds of investment to the company, careful consideration will need to be given to whether that normal rule will result in a fair distribution of profits between the members. For example, when one or more governing bodies form a company with a private sector company and the governing bodies provide the expertise and personnel or intellectual property for the business and the private sector company provides the capital this may not be an appropriate method for dividing the profits. Potential solutions in that type of scenario would be to stick to this distribution method but for the members to take a proportion of the share capital which reflected the proportion of the profit which they expected to get out of the company rather than it reflecting the amount of the capital that they have paid in. It may also be more appropriate for the non-capital providing members to have shares which were not paid up and for the dividend to be paid according to the amount of shares each member holds (regardless of the amount paid up on them).
5. As stated above, the structure of a company limited by guarantee is not designed to easily enable distribution of profits – although it is not impossible to distribute profits under this structure. We would advise that a company limited by guarantee is used where the aim of the company is not to run a business which will generate a profit but rather to provide goods and services to schools at a saving for the purchasing schools. So for these companies it will be more appropriate to have a provision in the articles which restricts use of profit to further the objects of the company.

**C. THE COMPANIES ACTS 1985 AND 1989**

**A COMPANY LIMITED BY GUARANTEE AND NOT  
HAVING A SHARE CAPITAL**

**ARTICLES OF ASSOCIATION OF**

**X SCHOOLS PURCHASING LIMITED**

**INTERPRETATION**

1.1 In these articles:-

<b>"the Company"</b>	means X Schools Purchasing Limited, the company intended to be regulated by these articles
<b>"the Act"</b>	means the Companies Act 1985 including any statutory modification or re-enactment thereof for the time being in force
<b>"the Articles"</b>	means the Articles of Association of the Company from time to time in force
<b>"clear days"</b>	in relation to the period of a notice means the period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect
<b>"executed"</b>	includes any mode of execution
<b>"Executive Director"</b>	Means a director who is employed under a contract of service by the Company.
<b>"in writing"</b>	means any visible means of communicating words including electronic means of communication

<b>"the Memorandum"</b>	means the memorandum of association of the Company from time to time in force
<b>"Non-executive Director"</b>	means a director who is not employed under a contract of service by the Company
<b>"Office"</b>	means the registered office of the Company
<b>"the Regulations"</b>	means the School Companies Regulations 2002
<b>"the Remuneration Committee"</b>	means the committee referred in Article 42.
<b>"the Seal"</b>	means the common seal of the Company
<b>"Secretary"</b>	means the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary
<b>"the United Kingdom"</b>	means Great Britain and Northern Ireland

1.2 Unless the context otherwise requires, words importing:-

- (a) the masculine gender only shall include the feminine gender;
- (b) the singular only shall include the plural number and vice versa;
- (c) persons shall include corporations.

1.3 Subject as aforesaid, words or expressions contained in these Articles shall, unless the context requires otherwise, bear the same meaning as in the Act.

1.4 Subject as aforesaid, words or expressions contained in these Articles shall, unless the context requires otherwise, bear the same meaning as in the Regulations.

## **MEMBERS**

2. The subscribers to the Memorandum and such other persons as are admitted to membership in accordance with the articles shall be members of the Company. No person shall be admitted a member of the company unless he is approved by the

directors. The members may agree unanimously in writing to appoint such additional members as they think fit.

3. Any member of the Company may resign on giving 12 weeks notice to each of the other members and to the Company in writing. Membership shall not be transferable and shall cease on death.

4. Only persons in the following categories are permitted to become members of the Company:

- (a) the governing body of a maintained school;
- (b) a local authority in England;
- (c) the proprietor of an independent school or the governing body of an independent school (if the governing body has legal personality) which provides full-time education for five or more pupils of compulsory school age;
- (d) a company which has as a significant proportion of its business the provision of education or educational or ancillary services or goods;
- (e) a higher education institution;
- (f) a further education institution;
- (g) any individual who is not excluded from membership of a school company by the Regulations.

## **GENERAL MEETINGS**

5. All general meetings other than annual general meetings shall be called extraordinary general meetings. The Company shall hold an annual general meeting each year in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the Company and that of the next. The annual general meeting shall be held at such time and place as the directors appoint.

6. The directors may call general meetings and, on the requisition of members pursuant to the provisions of the Act, shall forthwith proceed to convene an extraordinary general meeting for a date not later than eight weeks after receipt of the requisition. If there are not within the United Kingdom sufficient directors to call a general meeting, any director or any member of the Company may call a general meeting.

## **NOTICE OF GENERAL MEETINGS**

7. An annual general meeting and an extraordinary general meeting called for the passing of a special resolution or a resolution appointing a person as a Director shall be called by at least 21 clear days' notice. All other extraordinary general meetings shall be called by at least 14 clear days' notice but a general meeting may be called by shorter notice if it is so agreed:-

- (a) in the case of an annual general meeting, by all the members entitled to attend and vote; and
- (b) in the case of any other meeting by a majority in number of members having a right to attend and vote, being a majority together holding not less than 95 per cent of the total voting rights at the meeting of all the members.

The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an annual general meeting, shall specify the meeting as such.

The notice shall be given to all the members and to the Directors and auditors.

8. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

## **PROCEEDINGS AT GENERAL MEETINGS**

9. No business shall be transacted at any meeting unless a quorum is present. Two persons entitled to vote upon the business being transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum.

10. If a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Directors may determine.

11. The Chair of the Board, if any, or in his absence some other Director nominated by the Directors shall preside as chairman of the meeting, but if neither the Chair of the Board nor such other Director (if any) be present within 15 minutes after the time appointed for holding the meeting and willing to act, the Directors present shall elect one of their number to be chairman and, if there is only one Director present and willing to act, he shall be chairman.

12. The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than

business which might properly have been transacted at the meeting had adjournment not taken place. When a meeting is adjourned for 14 days or more, at least 7 clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.

13. A director shall, notwithstanding that he is not a member, be entitled to attend and speak at any general meeting.

14. 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. Subject to the provisions of the Act, a poll may be demanded:-

- (a) by the chairman; or
- (b) by at least two persons having the right to vote at the meeting; or
- (c) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.

A demand by a person as proxy for a member shall be the same as a demand by the member.

15. Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

16. The demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the chairman. The withdrawal of a demand for a poll shall not invalidate the result of a show of hands declared before the demand for the poll was made.

17. A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be members) and fix a time and place for declaring the results of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll is demanded.

18. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall be entitled to a casting vote in addition to any other vote he may have.

19. A poll demanded on the election of a chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time and place as the chairman directs not being more than 30 days after the poll is demanded. The demand for a poll shall not prevent continuance of a meeting for the transaction of any business other than the question on which the poll is demanded. If a poll is demanded before the declaration of the result of

a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

20. No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In other cases at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.

21. A resolution in writing executed by or on behalf of each member who would have been entitled to vote upon it if it had been proposed at a general meeting at which he was present shall be as effectual as if it had been passed at a general meeting duly convened and held and may consist of several instruments in the like form each executed by or on behalf of one or more members.

## **VOTES OF MEMBERS**

22. Every member shall have one vote. Votes may be cast personally or by proxy.

23. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.

24. The instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the directors may:-

- (a) be deposited at the office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the company in relation to the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
- (b) in the case of a poll taken more than 48 hours after it is demanded, be deposited as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or
- (c) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman or to the secretary or to any director

and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

25. A vote given or poll demanded by a proxy or by the duly authorised representative of a member organisation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Company at the Office before the

commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

26. Any organisation which is a member of the Company may by resolution of its Council or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company, and the person so authorised shall be entitled to exercise the same powers on behalf of the organisation which he represents as the organisation could exercise if it were an individual member of the Company.

## **DIRECTORS**

27. Unless otherwise determined by ordinary resolution, the number of directors shall not be subject to any maximum but shall not be less than two. At least 40% of the directors of the company at any one time must be Non-executive Directors.

28. The first directors shall be those persons named in the statement delivered pursuant to section 10(2) of the Act, who shall be deemed to have been appointed under the Articles. At the first annual general meeting all the directors shall retire from office. After the retirement of the first directors, the board of directors will be composed as follows:-

- (a) Three Non-executive Directors appointed by the members by special resolution; and
- (b) Two Executive Directors appointed by the members by special resolution.

29. At every subsequent annual general meeting one-third of the Non-executive Directors shall retire from office. If their number is not three or a multiple of three, the number nearest to one-third shall retire from office; but if there is only one Non-executive Director he shall retire.

30. Subject to the provisions of the Act the directors to retire by rotation shall be those who have been longest in office since their last appointment or reappointment, but as between persons who became or were last reappointed directors on the same day those to retire shall (unless they agree otherwise amongst themselves) be determined by lot.

31. If the company, at the meeting at which a director retires by rotation does not fill the vacancy the retiring director shall, if willing to act, be deemed to have been reappointed unless at the meeting it is resolved not to fill the vacancy or unless a resolution for the reappointment of the director is put to the meeting and lost.

32. No person other than a director retiring by rotation shall be appointed or reappointed a director at any general meeting unless –

- (a) he is recommended by the directors; or

(b) not less than fourteen nor more than thirty-five clear days before the date appointed for the meeting, notice executed by a member qualified to vote at the meeting has been given to the company of the intention to propose that person for appointment or reappointment stating the particulars which would, if he were so appointed or reappointed, be required to be included in the company's register of directors together with notice executed by that person of his willingness to be appointed or reappointed.

33. Not less than seven nor more than twenty-eight clear days before the day appointed for holding a general meeting, notice shall be given to all who are entitled to receive notice of the meeting, of any person (other than a director retiring by rotation at the meeting) who is recommended by the directors for appointment or reappointment as a director at the meeting or in respect of whom notice has been duly given to the company of the intention to propose him at the meeting for appointment or reappointment as a director. The notice shall give the particulars of that person which would, if he were so appointed or reappointed, be required to be included in the company's register of directors.

34. Subject as aforesaid, the company may by special resolution appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director and may also determine the rotation in which any additional directors are to retire.

35. Subject as aforesaid, a director who retires at an annual general meeting may, if willing to act, be reappointed. If he is not reappointed, he shall retain office until the meeting appoints someone in his place, or if it does not do so, until the end of the meeting.

## **POWERS OF DIRECTORS AND DELEGATION**

36. Subject to the provisions of the Act, the Memorandum and Articles and to any directions given by special resolution, the business of the company shall be managed by the directors who may exercise all powers of the company.

37. The directors may, by power of attorney or otherwise, appoint any person to be the agent of the company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

## **DISQUALIFICATION AND REMOVAL OF DIRECTORS**

38. A Director shall cease to hold office if he:-

- (a) ceases to be a Director by virtue of any provision in the Act (or any statutory re-enactment or modification of that provision); or is otherwise prohibited by law from being a Director;
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally;

- (c) becomes incapable by reason of mental disorder, illness or injury of managing and administering his own affairs;
- (d) resigns his office by notice to the Company (but only if at least two Directors will remain in office when the notice of resignation is to take effect); or
- (e) is absent without the permission of the Directors from all their meetings held within a period of six months and the Directors resolve that his office be vacated.

## **DIRECTORS' REMUNERATION, EXPENSES AND INTERESTS**

39. The Directors shall be entitled to such remuneration as the Company may by ordinary resolution determine and, unless the resolution provides otherwise, the remuneration shall be deemed to accrue from day to day.

40. The terms of service and remuneration of the executive Directors shall be determined by the Board upon the recommendation of the Remuneration Committee.

41. The Directors may be paid all reasonable travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors or general meetings or otherwise in connection with the discharge of their duties.

42. Subject to the provisions of the Act the Directors may delegate any of their powers to one or more of their number, and may establish committees upon such terms of reference as they see fit.

43. There shall be a Remuneration Committee, comprised solely of non-executive members of the Board together with the Chair of the Board.

44. No Director is entitled to be present or to vote when his or her own remuneration or terms of service are being discussed but Directors may vote upon benefits which are provided jointly for all Directors including the provision of pensions and insurance.

45. Any Director (or any firm, company or organisation of which the Director is a member or employee) may enter into a contract with the Company to supply goods or services outside the scope of the ordinary duties of the Director in return for a payment or other material benefit but only if:-

- (a) the goods or services are actually required by the Company;
- (b) the nature and level of the remuneration is no more than is reasonable in relation to the value of the goods or services and is set in accordance with the procedure in Article 46.

46. Whenever a Director has an interest whether pecuniary or non-pecuniary in a matter to be discussed at a meeting of the Directors or a committee the Director concerned must:-

- (a) declare an interest at or before discussion begins on the matter;
- (b) withdraw from the meeting for that item;
- (c) not be counted in the quorum for that part of the meeting;
- (d) withdraw during the vote and have no vote on the matter.

## **PROCEEDINGS OF DIRECTORS**

47. Subject to the provisions of the Articles, the directors may regulate their proceedings as they think fit. A director may, and the secretary at the request of a director shall, call a meeting of the directors. It shall not be necessary to give notice of a meeting to a director who is absent from the United Kingdom. Questions arising at a meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman of the board shall have a second or casting vote.

48. The quorum for the transaction of the business of the directors may be fixed by the directors and unless so fixed at any other number shall be two.

49. The continuing directors or a sole continuing director may act notwithstanding any vacancies in their number but, if the number of directors is less than the number fixed as the quorum, the continuing directors may act only for the purpose of filling vacancies or of calling a general meeting.

50. The directors may appoint one of their number to be the chairman of the board of directors and may at any time remove him from that office. Unless he is unwilling to do so, the director so appointed shall preside at every meeting of directors at which he is present. But if there is no director holding that office, or if the director holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the directors present may appoint one of their number to be chairman of the meeting.

51. All acts done by a meeting of Directors, or of a committee of Directors, shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any Directors or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director and had been entitled to vote.

52. A resolution in writing, signed by all the Directors entitled to receive notice of a meeting of Directors or of a committee of Directors, shall be as valid and effective as if it had been passed at a meeting of Directors or (as the case may be) a committee of

Directors duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Directors.

53. Unless otherwise restricted by these Articles all or any of the Directors or members of a committee of the Directors may participate in and vote at a meeting of the Directors or such committee by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear and be heard by each other and such participation shall constitute presence in person at the meeting.

54. If a question arises at a meeting of directors or of a committee of directors as to the right of a director to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any director other than himself shall be final and conclusive.

## **SECRETARY**

55. Subject to the provisions of the Act, the Secretary shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit; and any Secretary so appointed may be removed by them.

## **MINUTES**

56. The Directors shall keep minutes in books kept for the purpose:-

- (a) of all appointments of officers made by the Directors; and
- (b) of all proceedings at meetings of the Company and of the Directors and of committees of Directors including the names of the Directors present at each such meeting.

## **THE SEAL**

57. The Seal shall only be used by the authority of the Directors or of a committee of Directors authorised by the Directors. The Directors may determine who shall sign any instrument to which the Seal is affixed and unless otherwise so determined it shall be signed by a Director and by the Secretary or by a second Director.

## **ACCOUNTS**

58. Accounts shall be prepared in accordance with the provisions of Part VII of the Act and with the Regulations.

## **NOTICES**

59. Any notice to be given to or by any person pursuant to the Articles shall be in writing except that a notice calling a meeting of the Directors need not be in writing.

60. The Company may give any notice to a member either personally or by sending it by post in a prepaid envelope addressed to the member at his registered address or by leaving it at that address. A member whose registered address is not within the United Kingdom and who gives to the company an address within the United Kingdom at which notices may be given to him shall be entitled to have notices given to him at that address, but otherwise no such member shall be entitled to receive any notice from the Company.

61. A member present in person at any meeting of the Company shall be deemed to have received notice of the meeting and, where necessary, of the purposes for which it was called.

62. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted.

## **INDEMNITY**

63. Subject to the provisions of the Act every Director or other officer or auditor of the Company shall be indemnified out of the assets of the Company against any liability incurred by him in that capacity in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company.

64. The Directors shall have power to resolve to effect Indemnity Insurance notwithstanding their interest in any such policy.

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**NAMES AND ADDRESSES OF SUBSCRIBERS**

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Dated the

Witness to the above signatures:

## **D. THE COMPANIES ACTS 1985 TO 1989**

### **A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL**

#### **MEMORANDUM OF ASSOCIATION OF X SCHOOLS PURCHASING LIMITED**

1. The Company's name is "X Schools Purchasing Limited" and in this document it is called "the Company".
2. The registered office of the Company is to be situated in England and Wales.
3. The Company's objects ("the Objects") are to purchase goods, services and facilities on behalf of the school governing bodies who are members of the Company and to assist those governing bodies with the efficient purchasing of goods, services and facilities for their schools.
4. In furtherance of the Objects but not otherwise the Company may exercise the following powers:-
  - 4.1 To draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments, and to operate bank accounts in the name of the Trust;
  - 4.2 To acquire, alter, improve, and (subject to such consents as may be required by law) to charge, dispose or otherwise turn to account all or any part of the property and rights of the Company.
  - 4.3 To employ such staff as are necessary for the proper pursuit of the Objects and to make all reasonable and necessary provision for the payments of pensions and superannuation to staff and their dependents.
  - 4.4 To subscribe or guarantee money for any national, local, charitable, benevolent, public, general or useful object or for any exhibition or other purpose which may be considered likely, directly or indirectly, to further the Objects of the Company.
  - 4.5 To pay out of funds of the Company the costs, charges and expenses of and incidental to the formation and registration of the Company.
  - 4.6 To borrow and raise money (subject to such consents as may be required by law) for the furtherance of the Objects in such manner and on such security as the Company may think fit.

- 4.7 To invest the moneys of the Company not immediately required for the furtherance of its objects in such investments as may be thought proper, and to hold, sell or otherwise deal with such investments.
- 4.8 To amalgamate or enter into any partnership or any joint purse or profit sharing arrangement, or co-operate in any way with any person, firm, or company carrying on or proposing to carry on any business or operation within the objects of the Company, and to assist any such person, firm or company.
- 4.9 To apply for, promote and obtain any Act or Parliament, or other licence, permission or authority for enabling the Company to carry any of the Objects into effect, or for effecting any modification of the Company's constitution, or for any other purpose which may seem expedient; to oppose any proceedings or applications which may seem calculated, directly or indirectly to prejudice the Company's interests, and to enter into any arrangements with any governments or authorities, supreme, municipal, local or otherwise, or any corporations, companies or persons, that may seem conducive to the attainment of the Company's objects or any of them.
- 4.10 To act as agents or brokers and as trustees for any person, firm or company, to undertake and perform sub-contracts, and to act in any of the businesses of the Company through or by means of agents, brokers, sub-contractors or others.
- 4.11 To promote any company for the purpose of acquiring all or any of the property or undertaking any of the liabilities of the Company, the promotion of which shall be considered to be calculated to advance directly or indirectly the objects of the Company.
- 4.12 To insure any of the property or assets of the Company against any insurable risk or risks and to effect, purchase or take assurances on the lives of any debtors to the Company, or on the lives of any other persons in whom the Company may have an insurable interest.
- 4.13 To sell and in any other manner deal with or otherwise dispose of the whole or any part of the business or property of the Company for such consideration as the Company may think fit, and in particular for shares, debentures, debenture stock, or securities of any other organisation.
- 4.14 To provide indemnity insurance to cover the liability of directors which by virtue of any rule of law would 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 Company. Provided that any such insurance shall not extend to any claim arising from any act or omission which the directors knew to be breach of trust or breach of duty or which was committed by

the directors in reckless disregard of whether it was a breach of trust or a breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against the directors in their capacity as directors.

4.15 To do all such other lawful things as are necessary for or incidental to or conducive to the achievement of the Objects.

5. The liability of the members is limited.
6. The income and property of the Company shall be applied solely for its objects as set forth in this Memorandum of Association and whilst the Company is trading no portion of its income or property shall be paid to the members of the Company. **PROVIDED THAT** nothing shall prevent the Company from distributing any property it may own when it is wound up between the members of the Company in equal shares. **FURTHER PROVIDED THAT** nothing shall prevent the Company from making payment in good faith at a reasonable and proper rate to any member, officer or servant of the Company in respect of remuneration for services rendered, interest on moneys lent, rent for premises demised or reimbursement of out-of-pocket expenses.
7. Every member of the Company undertakes to contribute such amount as may be required, not exceeding £10, to the Company's assets if it should be wound up whilst he is a member or within one year after he ceases to be a member, for payment of the Company's debts and liabilities contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustments of the rights of the contributories among themselves.

We the subscribers to this memorandum of association, wish to be formed into a company pursuant to this memorandum.

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NAMES AND ADDRESSES OF SUBSCRIBERS

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Dated 2003

Witness to the above signatures.....

**E. THE COMPANIES ACTS 1985 AND 1989**  
**A PRIVATE COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION OF**  
**X EDUCATION SERVICES LIMITED**

**INTERPRETATION**

2.1 In these articles:-

<b>"the Company"</b>	means X Education Services Limited, the company intended to be regulated by these articles
<b>"the Act"</b>	means the Companies Act 1985 including any statutory modification or re-enactment thereof for the time being in force
<b>"the Articles"</b>	means the Articles of Association of the Company from time to time in force
<b>"clear days"</b>	in relation to the period of a notice means the period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect
<b>"executed"</b>	includes any mode of execution
<b>"Executive Director"</b>	means a director who is employed under a contract of service by the Company.
<b>"the holder"</b>	in relation to shares means the member whose name is entered in the register of members as the holder of the shares

<b>"in writing"</b>	means any visible means of communicating words including electronic means of communication
<b>"the Memorandum"</b>	means the memorandum of association of the Company from time to time in force
<b>"Non-executive Director"</b>	means a director who is not employed under a contract of service by the Company
<b>"Office"</b>	means the registered office of the Company
<b>"the Regulations"</b>	means the School Companies Regulations 2002
<b>"the Remuneration Committee"</b>	means the committee referred in Article 42.
<b>"the Seal"</b>	means the common seal of the Company
<b>"Secretary"</b>	means the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary
<b>"the United Kingdom"</b>	means Great Britain and Northern Ireland

2.2 Unless the context otherwise requires, words importing:-

- (a) the masculine gender only shall include the feminine gender;
- (b) the singular only shall include the plural number and vice versa;
- (c) persons shall include corporations.

2.3 Subject as aforesaid, words or expressions contained in these Articles shall, unless the context requires otherwise, bear the same meaning as in the Act.

2.4 Subject as aforesaid, words or expressions contained in these Articles shall, unless the context requires otherwise, bear the same meaning as in the Regulations.

2.5 These Articles exclude wholly the application of Table A of the Companies (Tables A to F) Regulations 1985 to the Company.

## **SHARE CAPITAL**

2. Subject to the provisions of the Act and without prejudice to any rights attached to any existing shares, any share may be issued with such rights or restrictions as the company may by ordinary resolution determine.

3. Subject to the provisions of the Act, shares may be issued which are to be redeemed or are liable to be redeemed at the option of the company or the holder on such terms and in such manner as may be provided by the Articles.

4. The company may exercise the powers of paying commissions conferred by the Act. Subject to the provisions of the Act, any such commission may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other.

5. Except as required by law, no person shall be recognised by the company as holding any share upon any trust and (except as otherwise provided by the articles or by law) the company shall not be bound by or recognise any interest in any share except an absolute right to the entirety thereof in the holder.

## **SHARE CERTIFICATES**

6. Every member upon becoming the holder of any shares, shall be entitled without payment to one certificate for all the shares of each class held by him (and, upon transferring a part of his holding of shares of any class, to a certificate for the balance of such holding) or several certificates each for one or more of his shares upon payment for every certificate after the first of such reasonable sum as the directors may determine. Every certificate shall be sealed with the seal and shall specify the number, class and distinguishing numbers (if any) of the shares to which it relates and the amount or respective amounts paid up thereon. The company shall not be bound to issue more than one certificate for shares held jointly by several persons and delivery of a certificate to one joint holder shall be sufficient delivery to all of them.

7. If a share certificate is defaced, worn-out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and payment of expenses reasonably incurred by the company in investigating evidence as the directors may determine but otherwise free of charge, and (in the case of defacement or wearing-out) on delivery up of the old certificate.

## **LIEN**

8. The company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) payable at a fixed time or called in respect of that share. The directors may at any time declare any share

to be wholly or in part exempt from the provisions of this regulation. The company's lien on a share shall extend to any amount payable in respect of it.

9. The company may sell in such manner as the directors determine any shares on which the company has a lien if a sum in respect of which the lien exists is presently payable and is not paid within fourteen clear days after notice has been given to the holder of the share or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the shares may be sold.

10. To give effect to a sale the directors may authorise some person to execute an instrument of transfer of the shares sold to, or in accordance with the directions of, the purchaser. The title of the transferee to the shares shall not be affected by any irregularity in or invalidity of the proceedings in reference to the sale.

11. The net proceeds of the sale, after payment of the costs, shall be applied in payment of so much of the sum for which the lien exists as is presently payable, and any residue shall (upon surrender to the company for cancellation of the certificate for the shares sold and subject to a like lien for any moneys not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of sale.

## **CALLS ON SHARES AND FORFEITURE**

12. Subject to the terms of allotment, the directors may make calls upon the members in respect of any moneys unpaid on their shares (whether in respect of nominal value or premium) and each member shall (subject to receiving at least fourteen clear days notice specifying when and where payment is to be made) pay to the company as required by the notice the amount called on his shares. A call may, before receipt by the company of any sum due thereunder, be revoked in whole or in part. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect whereof the call was made.

13. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed.

14. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

15. If a call remains unpaid after it has become due and payable the person from whom it is due and payable shall pay interest on the amount unpaid from the day it became due and payable until it is paid at the rate fixed by the terms of allotment of the share or in the notice of the call or, if no rate is fixed, at the appropriate rate (as defined by the Act) but the directors may waive payment of the interest wholly or in part.

16. An amount payable in respect of a share on allotment or at any fixed date, whether in respect of nominal value or premium or as an instalment of a call, shall be deemed to be a call and if it is not paid the provisions of the Articles shall apply as if that amount had become due and payable by virtue of a call.

17. Subject to the terms of allotment, the directors may make arrangements on the issue of shares for a difference between the holders in the amounts and times of payment of calls on their shares.

18. If a call remains unpaid after it has become due and payable the directors may give to the person from whom it is due not less than fourteen clear days notice requiring payment of the amount unpaid together with any interest which may have accrued. The notice shall name the place where payment is to be made and shall state that if the notice is not complied with the shares in respect of which the call was made will be liable to be forfeited.

19. If the notice is not complied with any share in respect of which it was given may, before the payment required by the notice has been made, be forfeited by a resolution of the directors and the forfeiture shall include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.

20. Subject to the provisions of the Act, a forfeited share may be sold, re-allocated or otherwise disposed of on such terms and in such manner as the directors may determine either to the person who was before the forfeiture the holder or to any other person and at any time before sale, re-allotment or other disposition, the forfeiture may be cancelled on such terms as the directors think fit. Where for the purposes of its disposal a forfeited share is to be transferred to any person the directors may authorise some person to execute an instrument of transfer of the share to that person.

21. A person any of whose shares have been forfeited shall cease to be a member in respect of them and shall surrender to the company for cancellation the certificate for the shares forfeited but shall remain liable to the company for all moneys which at the date of forfeiture were presently payable by him to the company in respect of those shares with interest at the rate at which interest was payable on those moneys before the forfeiture, or if no interest was so payable, at the appropriate rate (as defined in the Act) from the date of forfeiture until payment but the directors may waive payment wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.

22. A statutory declaration by a director or the Secretary that a share has been forfeited on a specified date shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share and the declaration shall (subject to the execution of an instrument of transfer if necessary) constitute a good title to the share and the person to whom the share is disposed of shall not be bound to see to the application of the consideration, if any, nor shall his title to the share be affected by any irregularity in or invalidity of the proceedings in reference to the forfeiture or disposal of the share.

## TRANSFER OF SHARES

23. The instrument of transfer of a share may be in any usual form or in any other form which the directors may approve and shall be executed by or on behalf of the transferor and, unless the share is fully paid, by or on behalf of the transferee.
24. If a holder of shares in the Company is proposing to transfer them he must first offer the shares to all other shareholders of the Company rateably.
25. The holder must, prior to transferring any shares in the Company, serve a sale notice on the Secretary. The sale notice shall specify how many shares the holder wishes to transfer and appoint the Company as his agent for the purpose of offering and, if necessary, transferring, the shares to any member of the Company wishing to purchase them at a price to be ascertained in accordance with the Articles.
26. If, following the offer of shares to the members of the Company not all shares have been purchased by the members, then the remaining unpurchased shares shall not be transferred to a person who is not a member, so long as any member is willing to purchase the same at a fair price to be ascertained in accordance with the Articles.
27. The price to be paid by one member to another for the transfer of shares in the Company shall be agreed between them. In the absence of agreement between them the market value of the shares shall be ascertained by the Company's auditor and that value shall be the price of the shares.
28. The directors may, in their absolute discretion decline to register any transfer of any share whether or not it is a fully paid share.
29. If the directors refuse to register a transfer of a share, they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.
30. The registration of transfers of shares or of transfers of any class of shares may be suspended at such times and for such periods (not exceeding thirty days in any year) as the directors may determine.
31. No fee shall be charged for the registration of any instrument of transfer or other document relating to or affecting the title to any share.
32. The Company shall be entitled to retain any instrument of transfer which is registered, but any instrument of transfer which the directors refuse to register shall be returned to the person lodging it when notice of the refusal is given.
33. Only persons in the following categories are permitted to become members of the Company and shares must not be transferred to anyone falling outside these categories:

- (a) the governing body of a maintained school;
- (b) a local authority in England;
- (c) the proprietor of an independent school or the governing body of an independent school (if the governing body has legal personality) which provides full-time education for five or more pupils of compulsory school age;
- (d) a company which has as a significant proportion of its business the provision of education or educational or ancillary services or goods;
- (e) a higher education institution;
- (f) a further education institution;
- (g) any individual who is not excluded from membership of a school company by the Regulations.

34. If a member of the Company is directed to resign his membership of the Company under the School Company Regulations 2002, then that member must issue a resignation notice to the Secretary appointing the Company as his agent for the purpose of transferring his shares in the Company to the other members in accordance with the Articles.

35. If a member of the Company is directed to resign his membership of the Company the other members of the Company must purchase his shares rateably at a price equal to the amount that was paid up on the shares. Where the shares consist of different classes of shares and shares with different amounts paid up on them each type of share shall be purchased by the other members of the Company rateably.

## **TRANSMISSION OF SHARES**

36. If a member dies the survivor or survivors where he was a joint holder, and his personal representatives where he was a sole holder or the only survivor of joint holders, shall be the only persons recognised by the company as having any title to his interest; but nothing herein contained shall release the estate of a deceased member from any liability in respect of any share which had been jointly held by him.

37. A person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as the directors may properly require, elect either to become the holder of the share or to have some person nominated by him registered as the transferee. If he elects to become the holder he shall give notice to the company to that effect. If he elects to have another person registered he shall execute an instrument of transfer of the share to that person. All the articles relating to the transfer of shares shall apply to the notice or instrument of transfer as if it were an instrument of transfer executed by the member and the death or bankruptcy of the member had not occurred.

38. A person becoming entitled to a share in consequence of the death or bankruptcy of a member shall have the rights to which he would be entitled if he were the holder of the share, except that he shall not, before being registered as the holder of the share, be entitled in respect of it to attend or vote at any meeting of the Company or at any separate meeting of the holders of any class of shares in the Company.

## **ALTERATION OF SHARE CAPITAL**

39. The company may by ordinary resolution –

- (a) increase its share capital by new shares of such amount as the resolution prescribes;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) subject to the provisions of the Act, sub-divide its shares, or any of them, into shares of smaller amount and the resolution may determine that, as between the shares resulting from the sub-division, any of them may have any preference or advantage as compared with the others;
- (d) cancel shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled.

40. Subject to the provisions of the Act, the company may by special resolution reduce its share capital, any capital redemption reserve and any share premium account in any way.

## **PURCHASE OF OWN SHARES**

41. Subject to the provisions of the Act, the company may purchase its own shares (including any redeemable shares) and make a payment in respect of the redemption or purchase of its own shares otherwise than out of distributable profits of the company or the proceeds of a fresh issue of shares.

## **GENERAL MEETINGS**

42. All general meetings other than annual general meetings shall be called extraordinary general meetings. The Company shall hold an annual general meeting each year in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the Company and that of the next. The annual general meeting shall be held at such time and place as the directors appoint.

43. The directors may call general meetings and, on the requisition of members pursuant to the provisions of the Act, shall forthwith proceed to convene an extraordinary general meeting for a date not later than eight weeks after receipt of the

requisition. If there are not within the United Kingdom sufficient directors to call a general meeting, any director or any member of the Company may call a general meeting.

## **NOTICE OF GENERAL MEETINGS**

44. An annual general meeting and an extraordinary general meeting called for the passing of a special resolution or a resolution appointing a person as a Director shall be called by at least 21 clear days' notice. All other extraordinary general meetings shall be called by at least 14 clear days' notice but a general meeting may be called by shorter notice if it is so agreed:-

- (a) in the case of an annual general meeting, by all the members entitled to attend and vote; and
- (b) in the case of any other meeting by a majority in number of members having a right to attend and vote, being a majority together holding not less than 95 per cent of the total voting rights at the meeting of all the members.

The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an annual general meeting, shall specify the meeting as such.

The notice shall be given to all the members and to the Directors and auditors.

45. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

## **PROCEEDINGS AT GENERAL MEETINGS**

46. No business shall be transacted at any meeting unless a quorum is present. Two persons entitled to vote upon the business being transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum.

47. If a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Directors may determine.

48. The Chair of the Board, if any, or in his absence some other Director nominated by the Directors shall preside as chairman of the meeting, but if neither the Chair of the Board nor such other Director (if any) be present within 15 minutes after the time appointed for holding the meeting and willing to act, the Directors present shall elect one of their number to be chairman and, if there is only one Director present and willing to act, he shall be chairman.

49. The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had adjournment not taken place. When a meeting is adjourned for 14 days or more, at least 7 clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.

50. A director shall, notwithstanding that he is not a member, be entitled to attend and speak at any general meeting.

51. 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. Subject to the provisions of the Act, a poll may be demanded by:-

- (a) the chairman; or
- (b) at least two persons having the right to vote at the meeting; or
- (c) a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.

A demand by a person as proxy for a member shall be the same as a demand by the member.

52. Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

53. The demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the chairman. The withdrawal of a demand for a poll shall not invalidate the result of a show of hands declared before the demand for the poll was made.

54. A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be members) and fix a time and place for declaring the results of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll is demanded.

55. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall be entitled to a casting vote in addition to any other vote he may have.

56. A poll demanded on the election of a chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time and place as the chairman directs not being more than 30 days after the poll is demanded. The demand for a poll shall not prevent

continuance of a meeting for the transaction of any business other than the question on which the poll is demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

57. No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In other cases at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.

58. A resolution in writing executed by or on behalf of each member who would have been entitled to vote upon it if it had been proposed at a general meeting at which he was present shall be as effectual as if it had been passed at a general meeting duly convened and held and may consist of several instruments in the like form each executed by or on behalf of one or more members.

## **VOTES OF MEMBERS**

59. Subject to any rights or restrictions attached to any shares, on a show of hands every member who (being an individual) is present in person or (being a corporation) is present by a duly authorised representative, not being himself a member entitled to vote, shall have one vote and on a poll every member shall have one vote for every share of which he is the holder.

60. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders' and seniority shall be determined by the order in which the names of the holders stand in the register of members.

61. No member shall vote at any general meeting or at any separate meeting of the holders of any class of shares in the Company, either in person or by proxy, in respect of any share held by him unless all moneys presently payable by him in respect of that share have been paid.

62. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.

63. On a poll, votes may be given either personally or by proxy. A member may appoint more than one proxy to attend on the same occasion.

64. The instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the directors may:-

- (a) be deposited at the office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of

proxy sent out by the company in relation to the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or

- (b) in the case of a poll taken more than 48 hours after it is demanded, be deposited as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or
- (c) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman or to the secretary or to any director

and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

65. A vote given or poll demanded by a proxy or by the duly authorised representative of a member organisation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

66. Any organisation which is a member of the Company may by resolution of its Council or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company, and the person so authorised shall be entitled to exercise the same powers on behalf of the organisation which he represents as the organisation could exercise if it were an individual member of the Company.

## **DIRECTORS**

67. Unless otherwise determined by ordinary resolution, the number of directors shall not be subject to any maximum but shall not be less than two. At least 40% of the directors of the company at any one time must be Non-executive Directors.

68. The first directors shall be those persons named in the statement delivered pursuant to section 10(2) of the Act, who shall be deemed to have been appointed under the Articles. At the first annual general meeting all the directors shall retire from office. After the retirement of the first directors, the board of directors will be composed as follows:-

- (a) Three Non-executive Directors appointed by the members by special resolution; and
- (b) Two Executive Directors appointed by the members by special resolution.

69. At every subsequent annual general meeting one-third of the Non-executive Directors shall retire from office. If their number is not three or a multiple of three, the

number nearest to one-third shall retire from office; but if there is only one Non-executive Director he shall retire.

70. Subject to the provisions of the Act the directors to retire by rotation shall be those who have been longest in office since their last appointment or reappointment, but as between persons who became or were last reappointed directors on the same day those to retire shall (unless they agree otherwise amongst themselves) be determined by lot.

71. If the company, at the meeting at which a director retires by rotation does not fill the vacancy the retiring director shall, if willing to act, be deemed to have been reappointed unless at the meeting it is resolved not to fill the vacancy or unless a resolution for the reappointment of the director is put to the meeting and lost.

72. No person other than a director retiring by rotation shall be appointed or reappointed a director at any general meeting unless –

- (a) he is recommended by the directors; or
- (b) not less than fourteen nor more than thirty-five clear days before the date appointed for the meeting, notice executed by a member qualified to vote at the meeting has been given to the company of the intention to propose that person for appointment or reappointment stating the particulars which would, if he were so appointed or reappointed, be required to be included in the company's register of directors together with notice executed by that person of his willingness to be appointed or reappointed.

73. Not less than seven nor more than twenty-eight clear days before the day appointed for holding a general meeting, notice shall be given to all who are entitled to receive notice of the meeting, of any person (other than a director retiring by rotation at the meeting) who is recommended by the directors for appointment or reappointment as a director at the meeting or in respect of whom notice has been duly given to the company of the intention to propose him at the meeting for appointment or reappointment as a director. The notice shall give the particulars of that person which would, if he were so appointed or reappointed, be required to be included in the company's register of directors.

74. Subject as aforesaid, the company may by special resolution appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director and may also determine the rotation in which any additional directors are to retire.

75. Subject as aforesaid, a director who retires at an annual general meeting may, if willing to act, be reappointed. If he is not reappointed, he shall retain office until the meeting appoints someone in his place, or if it does not do so, until the end of the meeting.

## **POWERS OF DIRECTORS AND DELEGATION**

76. Subject to the provisions of the Act, the Memorandum and Articles and to any directions given by special resolution, the business of the company shall be managed by the directors who may exercise all powers of the company.

77. The directors may, by power of attorney or otherwise, appoint any person to be the agent of the company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

## **DISQUALIFICATION AND REMOVAL OF DIRECTORS**

78. A director shall cease to hold office if he:-

- (a) ceases to be a director by virtue of any provision in the Act (or any statutory re-enactment or modification of that provision); or is otherwise prohibited by law from being a director;
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (c) becomes incapable by reason of mental disorder, illness or injury of managing and administering his own affairs;
- (d) resigns his office by notice to the Company (but only if at least two directors will remain in office when the notice of resignation is to take effect); or
- (e) is absent without the permission of the directors from all their meetings held within a period of six months and the directors resolve that his office be vacated.

## **DIRECTORS' REMUNERATION, EXPENSES AND INTERESTS**

79. The directors shall be entitled to such remuneration as the Company may by ordinary resolution determine and, unless the resolution provides otherwise, the remuneration shall be deemed to accrue from day to day.

80. The terms of service and remuneration of the Executive Directors shall be determined by the Board upon the recommendation of the Remuneration Committee.

81. The directors may be paid all reasonable travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of directors or committees of directors or general meetings or otherwise in connection with the discharge of their duties.

82. Subject to the provisions of the Act the directors may delegate any of their powers to one or more of their number, and may establish committees upon such terms of reference as they see fit.

83. There shall be a Remuneration Committee, comprised solely of non-executive members of the Board together with the Chair of the Board.

84. No director is entitled to be present or to vote when his or her own remuneration or terms of service are being discussed but directors may vote upon benefits which are provided jointly for all directors including the provision of pensions and insurance.

85. Any director (or any firm, company or organisation of which the director is a member or employee) may enter into a contract with the Company to supply goods or services outside the scope of the ordinary duties of the director in return for a payment or other material benefit but only if:-

- (a) the goods or services are actually required by the Company;
- (b) the nature and level of the remuneration is no more than is reasonable in relation to the value of the goods or services and is set in accordance with the procedure in Article 45.

86. Whenever a director has an interest whether pecuniary or non-pecuniary in a matter to be discussed at a meeting of the directors or a committee the director concerned must:-

- (a) declare an interest at or before discussion begins on the matter;
- (b) withdraw from the meeting for that item;
- (c) not be counted in the quorum for that part of the meeting;
- (d) withdraw during the vote and have no vote on the matter.

## **PROCEEDINGS OF DIRECTORS**

87. Subject to the provisions of the Articles, the directors may regulate their proceedings as they think fit. A director may, and the secretary at the request of a director shall, call a meeting of the directors. It shall not be necessary to give notice of a meeting to a director who is absent from the United Kingdom. Questions arising at a meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman of the board shall have a second or casting vote.

88. The quorum for the transaction of the business of the directors may be fixed by the directors and unless so fixed at any other number shall be two.

89. The continuing directors or a sole continuing director may act notwithstanding any vacancies in their number but, if the number of directors is less than the number

fixed as the quorum, the continuing directors may act only for the purpose of filling vacancies or of calling a general meeting.

90. The directors may appoint one of their number to be the chairman of the board of directors and may at any time remove him from that office. Unless he is unwilling to do so, the director so appointed shall preside at every meeting of directors at which he is present. But if there is no director holding that office, or if the director holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the directors present may appoint one of their number to be chairman of the meeting.

91. All acts done by a meeting of directors, or of a committee of directors, shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any directors or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote.

92. A resolution in writing, signed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors, shall be as valid and effective as if it had been passed at a meeting of directors or (as the case may be) a committee of directors duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the directors.

93. Unless otherwise restricted by these Articles all or any of the directors or members of a committee of the directors may participate in and vote at a meeting of the directors or such committee by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear and be heard by each other and such participation shall constitute presence in person at the meeting.

94. If a question arises at a meeting of directors or of a committee of directors as to the right of a director to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any director other than himself shall be final and conclusive.

## **SECRETARY**

95. Subject to the provisions of the Act, the Secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any Secretary so appointed may be removed by them.

## **MINUTES**

96. The directors shall keep minutes in books kept for the purpose:-

- (a) of all appointments of officers made by the Directors; and

- (b) of all proceedings at meetings of the Company and of the Directors and of committees of Directors including the names of the Directors present at each such meeting.

## **THE SEAL**

97. The Seal shall only be used by the authority of the Directors or of a committee of Directors authorised by the Directors. The Directors may determine who shall sign any instrument to which the Seal is affixed and unless otherwise so determined it shall be signed by a Director and by the Secretary or by a second Director.

## **DIVIDENDS**

98. Subject to the provisions of the Act, the Company may by ordinary resolution declare dividends in accordance with the respective rights of the members, but no dividend shall exceed the amount recommended by the directors.

99. Subject to the provisions of the Act, the directors may pay interim dividends if it appears to them that they are justified by the profits of the Company available for distribution. If the share capital is divided into different classes, the directors may pay interim dividends on shares which confer deferred or non-preferred rights with regard to dividend as well as on shares which confer preferential rights with regard to dividend, but no interim dividend shall be paid on shares carrying deferred or non-preferred rights, if, at the time of payment, any preferential dividend is in arrear. The directors may also pay at intervals settled by them any dividend payable at a fixed rate if it appear to them that the profits available for distribution justify the payment. Provided the directors act in good faith they shall not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on any shares having deferred or non-preferred rights.

100. Except as otherwise provided by the rights attached to shares, all dividends shall be declared and paid according to the amounts paid up on the shares on which the dividend is paid. All dividends shall be apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly.

101. Any dividend or other moneys payable in respect of a share may be paid by cheque sent by post to the registered address of the person entitled or, if two or more persons are the holders of the share or are jointly entitled to it by reason of the death or bankruptcy of the holder, to the registered address of that one of those persons who is first named in the register of members or to such other person as the person or persons entitled may in writing direct and payment of the cheque shall be a good discharge by the Company. Any joint holder or other person jointly entitled to a share as aforesaid may give receipts for any dividend or other moneys payable in respect of the share.

102. No dividend or other moneys payable in respect of a share shall bear interest against the company unless otherwise provided by the rights attached to the share.

103. Any dividend which has remained unclaimed for twelve years from the date when it became due for payment shall, if the directors so resolve, be forfeited and cease to remain owing by the Company.

## **ACCOUNTS**

104. Accounts shall be prepared in accordance with the provisions of Part VII of the Act.

## **CAPITALISATION OF PROFITS**

105. The directors may with the authority of an ordinary resolution of the company -

- (a) subjects as hereinafter provided, resolve to capitalise any undivided profits of the company not required for paying any preferential dividend (whether or not they are available for distribution) or any sum standing to the credit of the company's share premium account or capital redemption reserve;
- (b) appropriate the sum resolved to be capitalised to the members who would have been entitled to it if it were distributed by way of dividend and in the same proportions and apply such sum on their behalf either in or towards paying up the amounts, if any, for the time being unpaid on any shares held by them respectively, or in paying up in full unissued shares or debentures of the company of a nominal amount equal to that sum, and allot the shares or debentures credited as fully paid to those members or as they may direct, in those proportions, or partly in one way and partly in the other; but the share premium account, the capital redemption reserve, and any profits which are not available for distribution may, for the purposes of this regulation, only be applied in paying up unissued shares to be allotted to members credited as fully paid;
- (c) make such provision by the issue of fractional certificates or by payment in cash or otherwise as they determine in the case of shares or debentures becoming distributable under this regulation in fractions; and
- (d) authorise any person to enter on behalf of all the members concerned into any agreement with the company providing for the allotment to them respectively, credited as fully paid, of any shares or debentures to which they are entitled upon such capitalisation, any agreement made under such authority being binding on all members.

## **NOTICES**

106. Any notice to be given to or by any person pursuant to the Articles shall be in writing except that a notice calling a meeting of the Directors need not be in writing.

107. The Company may give any notice to a member either personally or by sending it by post in a prepaid envelope addressed to the member at his registered address or by leaving it at that address. A member whose registered address is not within the United Kingdom and who gives to the company an address within the United Kingdom at which notices may be given to him shall be entitled to have notices given to him at that address, but otherwise no such member shall be entitled to receive any notice from the Company.

108. A member present in person at any meeting of the Company shall be deemed to have received notice of the meeting and, where necessary, of the purposes for which it was called.

109. Every person who becomes entitled to a share shall be bound by any notice in respect of that share which, before his name is entered in the register of members has been duly given to a person from whom he derives his title.

109. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted.

110. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending or delivering it, in any manner authorised by the articles for the giving of notice to a member, addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt or by any like description at the address, if any, within the United Kingdom supplied for that purpose by the persons claiming to be so entitled. Until such an address has been supplied, a notice may be given in any manner in which it might have been given if the death or bankruptcy had not occurred.

## **WINDING UP**

111. If the company is wound up, the liquidator may, with the sanction of an extraordinary resolution of the Company and any other sanction required by the Act, divide among the members in specie the whole or any part of the assets of the Company and may, for that purpose, value any assets and determine how the division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the members as he with the like sanction determines, but no member shall be compelled to accept any assets upon which there is a liability.

## **INDEMNITY**

112. Subject to the provisions of the Act every Director or other officer or auditor of the Company shall be indemnified out of the assets of the Company against any liability incurred by him in that capacity in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company.

113. The Directors shall have power to resolve to effect Indemnity Insurance notwithstanding their interest in any such policy.

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**NAMES AND ADDRESSES OF SUBSCRIBERS**

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Dated the

Witness to the above signatures:

## **F. THE COMPANIES ACTS 1985 TO 1989**

### **A PRIVATE COMPANY LIMITED BY SHARES**

#### **MEMORANDUM OF ASSOCIATION OF X EDUCATION SERVICES LIMITED**

1. The Company's name is "X Education Services Limited" and in this document it is called "the Company".
2. The registered office of the Company is to be situated in England and Wales.
3. The Company's objects ("the Objects") are to supply education related services and facilities to schools.
4. In furtherance of the Objects but not otherwise the Company may exercise the following powers:-
  - 4.1 To draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments, and to operate bank accounts in the name of the Trust;
  - 4.2 To acquire, alter, improve, and (subject to such consents as may be required by law) to charge, dispose or otherwise turn to account all or any part of the property and rights of the Company.
  - 4.3 To employ such staff as are necessary for the proper pursuit of the Objects and to make all reasonable and necessary provision for the payments of pensions and superannuation to staff and their dependents.
  - 4.4 To subscribe or guarantee money for any national, local, charitable, benevolent, public, general or useful object or for any exhibition or other purpose which may be considered likely, directly or indirectly, to further the Objects of the Company.
  - 4.5 To pay out of funds of the Company the costs, charges and expenses of and incidental to the formation and registration of the Company.
  - 4.6 To borrow and raise money (subject to such consents as may be required by law) for the furtherance of the Objects in such manner and on such security as the Company may think fit.

- 4.7 To invest the moneys of the Company not immediately required for the furtherance of its objects in such investments as may be thought proper, and to hold, sell or otherwise deal with such investments.
- 4.8 To amalgamate or enter into any partnership or any joint purse or profit sharing arrangement, or co-operate in any way with any person, firm, or company carrying on or proposing to carry on any business or operation within the objects of the Company, and to assist any such person, firm or company.
- 4.9 To apply for, promote and obtain any Act or Parliament, or other licence, permission or authority for enabling the Company to carry any of the Objects into effect, or for effecting any modification of the Company's constitution, or for any other purpose which may seem expedient; to oppose any proceedings or applications which may seem calculated, directly or indirectly to prejudice the Company's interests, and to enter into any arrangements with any governments or authorities, supreme, municipal, local or otherwise, or any corporations, companies or persons, that may seem conducive to the attainment of the Company's objects or any of them.
- 4.10 To act as agents or brokers and as trustees for any person, firm or company, to undertake and perform sub-contracts, and to act in any of the businesses of the Company through or by means of agents, brokers, sub-contractors or others.
- 4.11 To promote any company for the purpose of acquiring all or any of the property or undertaking any of the liabilities of the Company, the promotion of which shall be considered to be calculated to advance directly or indirectly the objects of the Company.
- 4.12 To insure any of the property or assets of the Company against any insurable risk or risks and to effect, purchase or take assurances on the lives of any debtors to the Company, or on the lives of any other persons in whom the Company may have an insurable interest.
- 4.13 To sell and in any other manner deal with or otherwise dispose of the whole or any part of the business or property of the Company for such consideration as the Company may think fit, and in particular for shares, debentures, debenture stock, or securities of any other organisation.
- 4.14 To provide indemnity insurance to cover the liability of directors which by virtue of any rule of law would 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 Company. Provided that any such insurance shall not extend to any claim arising from any act or omission which the directors knew to be breach of trust or breach of duty or which was committed by

the directors in reckless disregard of whether it was a breach of trust or a breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against the directors in their capacity as directors.

4.15 To do all such other lawful things as are necessary for or incidental to or conducive to the achievement of the Objects.

5. The liability of the members is limited.

6. The company's share capital is £20,000 divided into 20,000 shares of £1 each

We the subscribers to this memorandum of association, wish to be formed into a company pursuant to this memorandum; and we agree to take the number of shares shown opposite our respective names.

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NAMES AND ADDRESSES OF SUBSCRIBERS

NUMBER OF SHARES TAKEN BY EACH SUBSCRIBER

---

Dated 2003

Witness to the above signatures .....

### SERVICES COMPANIES MAY DELIVER

School companies are able to provide services to schools within the company and other schools. This is within a context of other policies which emphasise collaboration amongst schools, for example, school federations, extended schools and specialist schools. We expect the services that school companies provide to be based (not necessarily exclusively) on the professional expertise of the school management and teaching staff, and to take account of any relevant quality assurance arrangements. Some services will be delivered through long term contracts with for example an LEA; other services might be delivered more informally to local schools.

The following are examples of the sort of services that may be delivered:

Schools could join together to provide ICT services to other schools. Forming a company will enable the schools to join together effectively and pool resources, for example entering into a hire purchase agreement for a van to carry out company business.

Schools may have developed expertise in helping asylum seeker children adapt to school life. Forming a company allows such schools to offer a package of targeted support. This could be on behalf of the LEA, through the Contracting Out Order.

Schools can offer specialist curriculum support in areas where they have real strengths and capacity to share them. Several schools may have very good science teachers and forming a company will enable them to share this in a sustained and targeted way with schools that have weak science provision.

Schools with expertise in tackling bullying or challenging racism through drama could form a company together with a drama company. This would provide the capacity to deliver the workshop to other schools, enabling the school to share its good practice with a far wider audience.

Schools with an excellent record in behaviour management could join with a private or voluntary sector company in providing advice and support to schools facing pupil discipline problems.

School with links to the wider business community might form a company involving private companies to enable other schools to develop such links, including more structured packages of work experience and school-business liaison

A school or group of schools might join with a private sector nursery provider to provide a range of services for transition from nursery school to primary school. The package could include teaching and learning packages, advice on pupil progression, advice on general and more specific issues (e.g. curriculum) around the transition from nursery to

primary school and guidance on multi-agency support available to children from deprived backgrounds.

A school with a track record in boosting pupil participation in FE and HE could join with a FE college or university and offer consultancy support, advice or pupil workshops to schools seeking to boost pupil progression into FE and HE. This could involve consultancy support on marketing techniques designed to encourage children to think about their longer term future in education.

A group of small primary schools could form a company to employ experts to share amongst their members and with other schools; for example, an ICT technician, a bursar, a language teacher or a music teacher.

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