

The Companies Act 2006

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COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL

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ARTICLES OF ASSOCIATION

of

COLLEGES WALES / COLEGAU CYMRU LIMITED

(the "Charity")

Charity Number: 1060182

Company Number: 02832103

(Adopted by Special Resolution on 18 JULY 2017)

1. INTERPRETATION AND APPLICATION OF THE MODEL ARTICLES

1.1 In these Articles:

"2006 Act"	means the Companies Act 2006 including any statutory modification or re-enactment thereof for the time being in force;
"AGM"	means an annual general meeting, duly convened;
"Articles"	means these Articles of Association of the Charity, as amended from time to time;
"Associate Member"	means any Member appointed under or in accordance with <b>Article 10</b> ;
"Auditors"	means the Charity's auditors from time to time;
"Board"	means the Trustees of the Charity from time to time or such number of Trustees who together constitute a quorum at a duly convened and held meeting of Trustees;

<b>"Charity"</b>	means the company intended to be regulated by these Articles;
<b>"Charities Act"</b>	means the Charities (Protection and Social Investment) Act 2016 including any statutory modification or re-enactment thereof for the time being in force;
<b>"Chairperson"</b>	means the chairperson of the Charity appointed pursuant to <b>Article 82</b> ;
<b>"Chairs of Governing Bodies"</b>	means the Chairs of Governing Bodies appointed to the Board as Trustees in accordance with <b>Article 42</b> ;
<b>"Chair of the Meeting"</b>	means the Chairperson or in his or her absence, the Deputy Chairperson or, in their absence, such person as is appointed to act as chair of a meeting of the Board or any general meeting respectively in accordance with these Articles;
<b>"Chief Executive"</b>	means the chief executive of the Company from time to time appointed by the Board under <b>Article 89</b> ;
<b>"clear days"</b>	means in relation to the period of a notice that period excluding the day when the notice is served or deemed to be served and the day for which it is given or on which it is to take effect;
<b>"Commissioners"</b>	means the Charity Commission for England and Wales or any replacement body from time to time.
<b>"Company Member"</b>	means an Eligible Member and <b>"Member"</b> shall be interpreted to include bodies of persons whether corporate or incorporate including but not limited to companies, in accordance with these Articles and the Act;
<b>"conflict"</b>	a situation in which a Trustee has or can have, a direct or indirect interest that conflicts or possibly may conflict, with the interests of the Charity;
<b>"Deputy Chair"</b>	the Deputy Chairperson of the Charity appointed in accordance with <b>Article 83</b> ;
<b>"electronic communications", "communication" and "electronic form"</b>	have the meaning given to them by the Electronic Communications Act 2000;

"Eligible Trustee"	a Trustee who would be entitled to vote on the matter at a meeting of Trustees (but excluding in relation to the authorisation of a Conflict pursuant to <b>Article 8.1</b> , any Trustee whose vote is not to be counted in respect of the particular matter);
"executed"	includes any mode of execution including by electronic signature using DocuSign or any other EU compliant digital signature software approved by the Board from time to time;
"Governing Body"	means the governing body of an Eligible Member and " <b>Governing Bodies</b> " means the Governing Bodies collectively of all Eligible Members;
"Memorandum"	means the Memorandum of Association of the Company, as amended from time to time;
"CEO/Principals' Forum"	means the forum of CEO/Principals as constituted and/or designated under <b>Article 77</b> from time to time;
"office"	means the registered office of the Charity;
"Quorum"	<p>(A) with regard to meeting of the Board, the quorum may be fixed by the Trustees but shall not be less than one third (1/3<sup>rd</sup>) of their number or two (2) Trustees, whichever is greater;</p> <p>(B) with regard to meetings of the Audit Committee, the quorum shall be two (2); and</p> <p>(C) with regard to general meetings of Members, five (5) persons entitled to vote upon the business to be transacted, each being a Member or a duly authorised representative of a Member, or one tenth of to the total number of such persons for the time being, whichever is greater, shall constitute a quorum.</p>
"seal"	means the common seal of the Charity if it has one;
"Secretary"	means the secretary of the Charity or any other person appointed to perform the duties of the secretary of the Charity, including a joint, assistant or deputy secretary;

<b>"term of service"</b>	the term of service of a Trustee in accordance with <b>Article 46</b> ;
<b>"Trustees"</b>	means the Trustees of the Charity (and <b>"Trustee"</b> has a corresponding meaning);
<b>"United Kingdom"</b>	means Great Britain and Northern Ireland;

- 1.2 Unless the context otherwise requires words or expressions contained in these Articles shall bear the same meaning as in the 2006 Act.
- 1.3 Unless the contrary intention appears, expressions referring to writing shall be construed as including references to printing, photography and any other mode of representing or reproducing words in visible form; words importing the singular number only shall include the plural number and vice versa; words importing the masculine gender only shall include the feminine gender; the words importing persons shall include partnerships, associations and corporations.
- 1.4 Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.
- 1.5 A reference in these Articles to an "Article" is a reference to the relevant article of these Articles unless expressly provided otherwise.
- 1.6 Unless expressly provided otherwise, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of:
- 1.6.1 any subordinate legislation from time to time made under it; and
- 1.6.2 any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.7 Any phrase introduced by the terms **"including"**, **"include"**, **"in particular"** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.8 The Model Articles shall apply to the Charity, except in so far as they are modified or excluded by these Articles.

## **OBJECTS**

2. The objects for which the Company is established are the advancement of education for the benefit of the general public in Wales.

## **POWERS**

- 3 In furtherance of that object, but not otherwise, the Company shall have the following powers:

- 3.1 provide a forum for discussion of matters of common interest conducted by all the further education corporations and other institutions receiving funding from the Welsh Government or its successor body from time to time;
- 3.2 to make representations on behalf of its members to persons concerned with education and its funding in Wales;
- 3.3 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 Charity;
- 3.4 to raise funds and to invite and receive contributions: provided that in raising funds the Charity shall not undertake any substantial permanent trading activities and shall conform to any relevant statutory regulations;
- 3.5 to acquire, alter, improve and (subject to such consents as may be required by law) to charge or otherwise dispose of property;
- 3.6 subject to Article 5 below to employ such staff who shall not be Trustees of the Charity as are necessary for the proper pursuit of the Objects and to make all reasonable and necessary provision for the payment of pensions and superannuation to staff and their dependants;
- 3.7 to establish or support any charitable trusts, associations or institutions formed for the Objects;
- 3.8 to co-operate with other charities, voluntary bodies and statutory authorities operating in furtherance of the Objects or similar charitable purposes and to exchange information and advice with them;
- 3.9 to pay out of the funds of the Charity the costs, charges and expenses of and incidental to the formation and registration of the Charity;
- 3.10 to provide a range of services to help raise the standard of education to the benefit of the general public in Wales; and
- 3.11 to do all such other lawful things as are necessary for the achievement of the Objects.

#### **INCOME AND PROPERTY**

- 4 The income and property of the Charity shall be applied solely towards the promotion of the Objects and no part shall be paid or transferred directly, or indirectly, by way of dividend, bonus or otherwise by way of profit, to members of the Charity, and no Trustee shall be appointed to any office of the Charity, paid by salary or fees or receive any remuneration or other benefit in money or money's worth from the Charity: Provided that nothing in this document shall prevent any payment in good faith by the Charity;
  - 4.1 of the usual professional charges for business done by any Trustee who is a solicitor, accountant or other person engaged in a profession, or by any partner of his or hers, when instructed by the Charity to act in a professional capacity on its behalf: Provided that at no time shall a majority of the Trustees benefit under this provision and that a Trustee shall withdraw from any meeting at which his or her appointment or remuneration, or that of his or her partner, is under discussion;

- 4.2 of reasonable and proper remuneration for any services rendered to the Charity by any member, officer or servant of the Charity by any member, officer or servant of the Charity who is not a Trustee;
- 4.3 of interest on money lent by any member of the Charity or Trustee at a reasonable and proper rate per annum not exceeding 2 per cent less than the published base lending rate of a clearing bank to be selected by the Trustees;
- 4.4 of fees, remuneration or other benefit in money or money's worth to any company of which a Trustee may also be a member holding not more than 1/100<sup>th</sup> part of the issued capital of that company;
- 4.5 of reasonable and proper rent for premises demised or let by any member of the Company or a Trustee; and
- 4.6 to any Trustee of reasonable out-of-pocket expenses.

#### **LIABILITY OF MEMBERS**

- 5 The liability of the Members is limited.
- 6 Every Member of the Charity undertakes to contribute such amounts as may be required (not exceeding £10) to the Charity's assets if it should be wound up while he, she or it is a Member or within one year after he, she or it ceases to be a Member, for payment of the Charity's debts and liabilities contracted before he, she or it ceases to be a Member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributors among themselves.

#### **WINDING-UP**

- 7 If the Charity is wound up or dissolved and after all its debts and liabilities have been satisfied there remains any property it shall NOT be paid to or distributed among the Members, but shall be given or transferred to some other charity or charities having objects similar to the Objects which prohibits the distribution of its or their income and property to an extent at least as great as is imposed on the Charity by Article 5 above, chosen by the Members at or before the time of dissolution and if that cannot be done then to some other charitable object.

#### **COMPANY MEMBERS**

- 8. Subject to Article 8.1, the following bodies are eligible to become Company Members of the Company:
  - 8.1 A further education college or further education establishment in Wales (whether further education corporations, wholly owned subsidiaries of universities or designated further education institutions in Wales) which is in receipt of recurrent funding from the Welsh Government or its successor body from time to time.

- 8.2 Every Eligible Member will have the right to apply to be a Company Member of the Charity.
- 8.3 No person shall become a Company Member unless its admittance has been approved by the Board and it is eligible to be a Member under **Article 8.1**.
- 8.4 Every three (3) years the Board shall fix the subscription to be paid by each Company Member. The Board may fix a different level of subscription for each Company Member or for different categories of Company Member in its entire discretion provided it does so on the basis of fair and transparent criteria.
- 9 A Company Member shall cease to be a Company Member upon:
- 9.1 the Board resolving that it has failed to meet the eligibility criteria set out in **Article 8.1**; or
- 9.2 a resolution being passed at a meeting of the Board removing it as a Company Member; provided that such resolution is passed by not less than three-fourths (3/4ths) of the Board present at a meeting called for the purposes of which such Company Member shall have been given not less than fourteen (14) days' notice in writing and at which it shall have been given the right to attend and to be heard; or
- 9.3 the Trustees may in their absolute discretion permit any Company Member of the Charity to retire, provided that after such retirement the number of Members is not less than five (5); and
- 9.4 the Company Member is not able to resign without the prior consent of the Board, such consent not to be unreasonably withheld.

#### **ASSOCIATE MEMBERS**

- 10 The Board may invite any institution or body which does not fulfil the eligibility criteria in **Article 8.1** to become an Associate Member and on acceptance that institution or body shall be admitted to Membership. Upon becoming an Associate Member that Member shall become liable for payment to the Company of such subscription as the Board may determine from time to time.
11. Every three (3) years the Board shall fix the subscription to be paid by each Associate Member. The Board may fix a different level of subscription for each Associate Member or for different categories of Associate Member in its entire discretion provided it does so on the basis of fair and transparent criteria.
- 12 An Associate Member shall cease to be an Associate Member upon:
- 12.1 its name being removed from the Register of Members of the Company, following the receipt by the Company of at least ninety (90) days' notice in writing, intimating that it resigns as an Associate Member, such notice to be accompanied by a certified true copy of the resolution of the governing body of that Associate Member resolving to withdraw, or
- 12.2 a resolution being passed at a meeting of the Board removing it as an Associate Member; provided that such resolution is passed by not less than three-fourths (3/4ths) of the Board present at a meeting called for the purposes of which such an Associate Member shall have been given not less than fourteen (14) days' notice in writing and at which it shall have been given the right to attend and to be heard; or

- 12.3 its passing a resolution to wind up or having a winding up petition presented against it or a receiver being appointed in respect of any of its assets.
- 13 Associate Members shall have no right to vote; no right to convene a meeting of Members under Article 8.1 or the provisions of the 2006 Act; no right to participate in the distribution of any assets on a winding-up; and no right to nominate or vote upon a person becoming a Trustee of the Company. Associate Membership of the Company shall not be transferable.

## GENERAL MEETINGS

14. The Charity shall hold a general meeting in each calendar year as its AGM in addition to any other meetings in that year, and shall specify the meeting as such in the notice calling it; and not more than fifteen (15) months shall elapse between the date of one AGM of the Charity and that of the next. The AGM shall be held at such times and places as the Board shall determine. All general meetings, other than the AGM, shall be called general meetings.
15. A written resolution passed in accordance with the Companies Act 2006 is as valid as a resolution actually passed at a general meeting or at an AGM.
16. The Board may call general meetings and, on the requisition of Members pursuant to the provisions of the 2006 Act, shall forthwith proceed to convene a general meeting for a date not later than eight (8) weeks after receipt of the requisition. If there are not within the United Kingdom sufficient Trustees to call a general meeting, any Trustee or any Member of the Charity may call a general meeting.

## NOTICE OF GENERAL MEETINGS

17. An AGM and a general meeting called for the passing of a special resolution appointing a person as a Trustee shall be called by at least twenty-one (21) clear days' notice. All other extraordinary general meetings shall be called by at least fourteen (14) clear days' notice but may be called by shorter notice if it is so agreed:
- (a) in the case of an AGM, by all the Members entitled to attend and vote thereat; and
  - (b) in the case of any other general meeting by a majority in number of Members having a right to attend and vote, being a majority together holding not less than ninety five per cent (95%) of the total voting rights at the meeting of all the Members.
  - (c) the notice shall specify the time, date and place of the meeting and the general nature of the business to be transacted and, in the case of an AGM, shall specify the meeting as such.
  - (d) the notice shall be given to all the Members, Associate Members, the Trustees and to the Auditors in writing and shall be given personally or sent by 1st class post or delivered to the last known address of or sent in electronic form to the Members, Associate Members, Trustees and to the Auditors.
18. 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.



- 19 In exceptional circumstances (including but not limited to extreme adverse weather conditions), the Board may postpone an AGM or general meeting (as the case may be) by notice in writing to Members, Associate Members, Trustees and to the Auditors (which will be valid if issued before the date of the scheduled meeting) to a later date specified in such notice. The postponed meeting shall be deemed to be a properly called meeting of which valid notice has been given and the original notice as to business to be transacted shall remain valid.

#### **PROCEEDINGS AT GENERAL MEETINGS AND AGMS**

- 20 No business shall be transacted at any general meeting or AGM unless a quorum of Members is present at the time when the general meeting or AGM proceeds to business.
- 21 If such quorum is not present within half an hour from the time appointed for the general meeting or AGM, or if during a general meeting or AGM a quorum ceases to be present, the general meeting or AGM shall stand adjourned to such time and place as the Board may determine. The Chair of the Board or, in his/her absence, the Deputy Chair shall preside as Chair of the general meeting or AGM, but if neither the Chair nor the Deputy Chair is present within fifteen (15) minutes after the time appointed for holding the general meeting or AGM, the Trustees present shall elect one of their number to be Chairperson of the general meeting or AGM and, if there is only one Trustee present who is willing to act, s/he shall be Chairperson of the general meeting or AGM.
- 22 If no Trustee is willing to act as Chairperson, or if no Trustee is present within fifteen (15) minutes after the time appointed for holding the general meeting or AGM, those Members present and entitled to vote shall choose one of their number to be Chairperson.
- 23 A Trustee shall, notwithstanding that s/he is not a Member, be entitled to attend and speak at any general meeting or AGM.
- 24 The Chairperson may, with the consent of a general meeting or AGM at which a quorum is present (and shall if so directed by the general meeting or AGM), adjourn the general meeting or AGM from time to time and from place to place, but no business shall be transacted at an adjourned general meeting or AGM other than business which might properly have been transacted at the general meeting or AGM had adjournment not taken place. When a general meeting or AGM is adjourned for fourteen (14) days or more, at least seven (7) clear days' notice shall be given specifying the time and place of the adjourned general meeting or AGM and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.
- 25 A resolution put to the vote of any general meeting or AGM shall be decided on a show of hands unless before, or on the declaration of the results of, the show of hands a poll is duly demanded. Subject to the provisions of the 2006 Act, a poll may be demanded:
- (a) by the Chairperson; or
  - (b) by at least two (2) Members having the right to vote at the general meeting or AGM; or
  - (c) by a Member or Members present in person and representing not less than one-tenth (1/10<sup>th</sup>) of the total voting rights of all the Members.
- 26 Unless a poll is duly demanded, a declaration by the Chairperson of the general meeting or AGM that a resolution has been carried or lost and an entry to that effect in the minutes of the general meeting or

AGM 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.

- 27 The demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the Chairperson, and a demand so withdrawn shall not invalidate the result of a show of hands declared before the demand for the poll was made.
- 28 If a poll is duly demanded it shall be taken in such manner as the Chairperson directs. The result of the poll shall be declared at such time and place as the Chairperson may direct, and shall be deemed to be the resolution of the general meeting or AGM at which the poll is demanded.
- 29 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson shall be entitled to a second or casting vote in addition to any other vote he may have.
- 30 A poll demanded on the election of a Chairperson of a general meeting or AGM, or any question of adjournment shall be taken immediately.
- 31 A poll demanded on any other question shall be taken either immediately or at such time and place as the Chairperson directs not being more than thirty (30) days after the poll is demanded. The demand for a poll shall not prevent continuance of a general meeting or AGM 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 general meeting or AGM shall continue as if the demand had not been made.
- 32 No notice needs to be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the general meeting or AGM at which it is demanded. In any other cases at least seven (7) clear days' notice shall be given specifying the time and place at which the poll is to be taken.

#### VOTES OF MEMBERS

- 33 Subject to **Article 34**, every full Member shall have one vote, which may be given either via its duly authorised representative at the general meeting or AGM or by proxy. On a poll, Members represented by proxy or by duly authorised representatives shall have one vote. A Member so represented is deemed present in person at such general meeting or AGM.
- 34 No Member shall be entitled to vote at any general meeting or AGM unless all moneys then payable by the Member to the Charity have been paid including but not limited to any subscription.
- 35 No objection shall be raised to the qualification of any voter except at the general meeting or AGM or adjourned general meeting or adjourned AGM at which the vote objected to is tendered, and every vote not disallowed at the general meeting or AGM shall be valid. Any objection made in due time shall be referred to the Chairperson of the general meeting or AGM whose decision shall be final and binding.
- 36 A vote given or poll demanded 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 Charity at the office before the commencement of the general meeting or AGM or adjourned general meeting or adjourned AGM 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 general meeting or AGM or adjourned general meeting or adjourned AGM) the time appointed for taking the poll.

37 Any organisation which is a Member of the Charity may by resolution of its council or other governing body authorise such person as it thinks fit to act as its representatives at any general meeting or AGM of the Charity, and the person so authorised shall be entitled to exercise the same powers on behalf of the organisation which s/he represents as the organisation could exercise if it were an individual Member of the Charity.

### 38 MEANS OF COMMUNICATION TO BE USED

38.1 Subject to these Articles, anything sent or supplied by or to the Charity under these Articles may be sent or supplied in any way in which the 2006 Act provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Charity and the company communications provisions in the 2006 Act shall apply to anything sent or supplied under these Articles.

38.2 A communication sent or supplied by the Charity shall be deemed to have been received by the intended recipient:

38.2.1 if it is sent by post, forty eight (48) hours after it was posted;

38.2.2 if it is hand delivered, at the time of such delivery;

38.2.3 if it is sent in electronic form, immediately upon its being sent; and

38.2.4 if it is made available on a website, when the notification of the presence of the communication on the website was received by the intended recipient or, if later, on the date on which the communication appeared on the website.

38.3 In the case of a communication sent or supplied by the Charity, the Charity may make the documents or information available on a website in accordance with the 2006 Act.

38.4 Subject to these Articles, any notice or document to be sent or supplied to a Trustee in connection with the taking of decisions by the Board may also be sent or supplied by the means by which that Trustee has asked to be sent or supplied with such notices or documents for the time being.

38.5 Subject to these Articles, any notice or document to be sent or supplied to a Member or an Associate Member in connection with the taking of decisions by the Members or Associate Members may also be sent or supplied by the means by which that Member or Associate Member has asked to be sent or supplied with such notices or documents for the time being.

38.6 A Trustee or a Member or an Associate Member may agree with the Charity that notices or documents sent to that Trustee or that Member or that Associate Member in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified.

### TRUSTEES

39 The number of Trustees shall not be less than five (5).

40 No Trustee shall vacate office or be ineligible for re-appointment as a Trustee nor shall any person be ineligible for appointment as a Trustee by reason only of his having attained any particular age.

## APPOINTMENT AND RETIREMENT OF TRUSTEES

### COMPOSITION

- 41 The Board shall be made up of a minimum of five (5) Trustees and a maximum of six (6):-
- (a) the Chair of the CEO/Principals' Forum shall be appointed as Chair;
  - (b) the Deputy Chair of the CEO/Principals' Forum shall be appointed as Deputy Chair;
  - (c) up to two (2) Chairs of Governing Bodies shall be appointed as Trustees;
  - (d) up to two (2) independent external professionals shall be appointed as Trustee(s) as determined by the Board from time to time.
- 42 Every Eligible Member will have the right, but not the obligation, to propose the Chair of its College Governing Body to be one of the Chairs of Governing Bodies appointed as Trustees pursuant to **Article 41(c)**. The Members shall procure that their proposed appointees have been nominated prior to the AGM at which such Trustees take office.
- 43 Nothing in these Articles shall prevent or prohibit the College Principal and the Chair of Governing Body of the same Eligible Member serving simultaneously as Trustees.
- 44 If there are vacancies under **Article 41(c)** then the Board may co-opt such number of individuals to be Trustees ("Co-opted Trustees") on such terms as the Board thinks fit provided that the total number of Trustees does not exceed six (6).
- 45 The Trustees who are in office at the date of adoption of these Articles shall remain in office notwithstanding the provisions of **Article 46** until those who are ineligible under **Article 49** shall resign and new appointments under **Article 41** shall take office to confirm appointments to **Article 41**.

### TERM OF OFFICE

- 46 Subject to **Article 41**, All Trustees appointed pursuant to **Article 41(c)** and **41(d)** shall hold office for an initial period of three (3) years (or such lesser period as the Board may set on his or her appointment). On expiry of that period each Trustee shall then be eligible to be considered for re-appointment for a further period of three (3) years (or such lesser period as the Board may set on his or her re-appointment). The maximum period of office for such Trustees, shall be six (6) years.
- 47 Co-opted Trustees shall only hold office for so long as the vacancy they were appointed to fill remains vacant or for one (1) year (if the vacancy remains outstanding).
- 48 All other Trustees shall hold office for as long as they hold the position which renders them eligible for appointment as a Trustee under **Article 41** or for so long as such nomination remains in force.

## DISQUALIFICATION AND REMOVAL OF TRUSTEES

- 49 The office of a Trustee shall be automatically vacated if s/he:
- 49.1 ceases to be a Trustee by virtue of any provision in the 2006 Act or is disqualified from acting as a Trustee by virtue of section 181A of the Charities Act 2011 as amended by The Charities (Protection and Social Investment) Act 2016 (or any statutory re-enactment or modification of that provision);
  - 49.2 becomes, in the opinion of the Board, incapable by reason of mental disorder, illness or injury of managing and administering his/her own affairs;
  - 49.3 becomes, in the opinion of the Board, incapable by reason of physical illness or chronic long term illness or terminal illness from carrying out his or her duties as a Trustee;
  - 49.4 resigns his/her office by notice to the Charity (but only if at least two (2) Trustees will remain in office when the notice of resignation is to take effect);
  - 49.5 is disqualified as a Director;
  - 49.6 is bankrupt or makes any composition or arrangement with his/her creditors;
  - 49.7 that Trustee, in the reasonable opinion of the Board, commits any act of fraud or dishonesty or has acted or behaved in any manner which brings or is likely to bring the Company into disrepute or is materially averse to the interests of the Company and the Board resolve that his or her office is vacated, or
  - 49.8 is absent without the permission of the Trustees from all their meetings held within a period of six (6) months and the Trustees resolve that his/her office be vacated;
  - 49.9 is appointed pursuant to Article 42(a) and ceases to hold the position of Chair or Deputy Chair of the CEO/Principals' Forum.

## POWERS OF THE BOARD

- 50 Subject to the provisions of the 2006 Act, the Memorandum and these Articles and to any directions given by Special Resolution, the business of the Charity shall be managed by the Trustees who may exercise all the powers of the Charity. No alteration of the Memorandum or these Articles and no such direction shall invalidate any prior act of the Board which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this Article shall not be limited by any special power given to the Board by these Articles and a meeting of the Board at which a quorum is present may exercise all the powers exercisable by the Trustees.
- 51 In addition to all powers hereby expressly conferred upon them and without detracting from the generality of their powers under these Articles the Trustees shall have the following powers, namely:
- (a) to expend the funds of the Charity in such manner as they shall consider most beneficial for the achievement of the objects and to invest in the name of the Charity such part of the funds as they may see fit and to direct the sale or transportation of any such investments and to expend the proceedings of any such sale in furtherance of the objects of the Charity;
  - (b) to enter into contracts on behalf of the Charity.

## **APPOINTMENT AND RETIREMENT OF TRUSTEES**

- 52 No person other than a Trustee appointed pursuant to these Articles shall be appointed as the Chair or Deputy Chair at any general meeting or an AGM unless:
- 52.1 s/he is a College CEO/Principal for an Eligible Member who is nominated by the CEO/Principals' Forum; or
- 52.2 not less than fourteen (14) nor more than thirty-five (35) 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 Charity of the intention to propose that person for appointment stating the particulars which would, if s/he were so appointed, be required to be included in the Charity's register of Trustees together with a notice executed by that person of his/her willingness to be appointed.
- 53 No person may be appointed as a Trustee:
- 53.1 unless s/he has attained the age of 18 years; or
- 53.2 in circumstances such that, had s/he already been a Trustee, s/he would have been disqualified from acting under the provisions of **Article 49**.
- 53 Not less than seven (7) nor more than twenty-eight (28) clear days before the date appointed for holding a general meeting or AGM notice shall be given to all persons who are entitled to receive notice of the general meeting or AGM of any person who is recommended by the Trustees for appointment as a Trustee at the general meeting or AGM or in respect of whom notice has been duly given to the Charity by an Eligible Member of the intention to propose him at the general meeting or AGM for appointment as a Trustee. The notice shall give the particulars of that person which would, if s/he were so appointed, be required to be included in the Charity's register of Trustees.
- 54 Subject as aforesaid, the Charity may by ordinary resolution appoint a person who is willing to act to be a Trustee either to fill a vacancy or as an additional Trustee. A Trustee so appointed shall hold office until the next following AGM. If his/her appointment is not ratified by the Members at such AGM, s/he shall vacate office at the conclusion thereof.
- 55 The Trustees may appoint a person who is willing to act to be a Trustee either to fill a vacancy or as an additional Trustee provided that the appointment does not cause the number of Trustees to exceed any number fixed by or in accordance with the Articles as the maximum of six Trustees. A Trustee so appointed shall hold office until the next following AGM. If his/her appointment is not ratified by the Members at such AGM, s/he shall vacate office at the conclusion thereof.

## **DELEGATION OF TRUSTEES' POWERS**

- 56 The Board may delegate any of their powers that are not referred to in the Schedule of Matters Reserved for the Board, to any committee that comprises of one or more Trustee which may include such other non-Trustees as the Board may determine. Any such delegation may be made subject to any conditions the Board may impose, and either collaterally with or to the exclusion of their own powers, and may be revoked or altered. Any such committee may include non-Trustees as members, as authorised by the Board.

- 57 Subject to any such conditions, the proceedings of the committee with one or more Trustees shall be governed by these Articles regulating the proceedings of the Board, so far as they are capable of applying save that the Board may determine the quorum for meetings of any committee and the quorum need not consist solely of Trustee(s). All acts and proceedings of any such committee shall be reported to the Board as soon as possible.
- 58 The Board may determine from time to time the membership of any committee from the CEO/Principals' Forum.
- 59 The Board shall have the power to terminate the membership of any committee member from that committee.
- 60 No committee member shall be entitled to remuneration in respect of their position as a committee member, but shall be entitled to paid all travel and other expenses properly incurred in carrying out the duties as a committee member.
- 61 The Board shall set the terms of reference of any committee.

#### **REMUNERATION OF TRUSTEES**

- 62 Except to the extent permitted by Article 5 of the Memorandum, no Trustee shall take or hold any interest in property belonging to the Charity or receive remuneration or be interested otherwise than as a Trustee in any other contract to which the Charity is a party.
- 63 Trustees may be paid all reasonable travelling, hotel and other expenses reasonably and properly incurred by them in connection with their attendance at meetings of Trustees or committee meetings or AGMs or general meetings or otherwise in connection with the discharge of their duties, but shall otherwise be paid no remuneration.

#### **TRUSTEES' CONFLICT OF INTERESTS**

- 64 The Board may, in accordance with the requirements set out in these Articles authorise any matter proposed to them by any Trustee which would, if not authorised, involve a Trustee breaching his/her duty under section 175 of the 2006 Act to avoid conflicts of interest ("Conflict").
- 65 In authorising a Conflict, the Board may decide (whether at the time of giving the authority or subsequently) that if a Trustee has obtained any information through his/her involvement in the Conflict otherwise than as a Trustee of the Company and in respect of which s/he owes a duty of confidentiality to another person the Trustee is under no obligation to:
- (a) disclose such information to the Board or to any Trustee or other officer or employee of the Company;
  - (b) use or apply any such information in performing his/her duties as a Trustee, where to do so would amount to a breach of that confidence.
- 66 Where the Board authorise a Conflict pursuant to Article 68, the Trustee shall:
- (a) be excluded from discussions (whether at meetings of the Board or any committee meeting or otherwise) related to the Conflict;

- (b) not be given any documents or other information relating to the Conflict;
- (c) not vote (or be counted in the quorum) at any future meeting of the Board or committee meeting in relation to any resolution relating to the Conflict.

67 Where the Board authorise a Conflict:

- (a) the Trustee will be obliged to conduct himself in accordance with any terms imposed by the Board in relation to the Conflict;
- (b) the Trustee will not infringe any duty s/he owes to the Company by virtue of sections 171 to 177 of the 2006 Act provided s/he acts in accordance with such terms, limits and conditions (if any) as the Board impose in respect of its authorisation.

68 A Trustee is not required, by reason of being a Trustee (or because of the fiduciary relationship established by reason of being a Trustee), to account to the Company for any remuneration, profit or other benefit which s/he derives from or in connection with a relationship involving a Conflict which has been authorised by the Board or by the Company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

#### **TRUSTEES' DECLARATION OF INTERESTS**

69 The Trustees may, in accordance with the requirements set out in this Article, authorise any Conflict proposed to them by any Trustee which would, if not authorised, involve a Trustee (an **Interested Trustee**) breaching his/her duty under section 175 of the Act to avoid conflicts of interest.

70 Any authorisation under Article 69 shall be effective only if:

- (a) to the extent permitted by the Act, the matter in question shall have been proposed by any Trustee for consideration in the same way that any other matter may be proposed to the Trustees under the provisions of these Articles or in such other manner as the Trustees may determine;
- (b) any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Trustee; and
- (c) the matter was agreed to without the Interested Trustee voting or would have been agreed to if the Interested Trustee's vote had not been counted.
- (d) any authorisation of a Conflict under Article 70 may (whether at the time of giving the authorisation or subsequently):
  - i extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;
  - ii provide that the Interested Trustee be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Trustees or committee meetings or otherwise) related to the Conflict;
  - iii provide that the Interested Trustee shall or shall not be an Eligible Trustee in respect of any future decision of the Trustees in relation to any resolution related to the Conflict;



- iv impose upon the Interested Trustee such other terms for the purposes of dealing with the Conflict as the Trustees think fit;
  - v provide that, where the Interested Trustee obtains, or has obtained (through his/her involvement in the Conflict and otherwise than through his/her position as a Trustee of the Company) information that is confidential to a third party, he shall not be obliged to disclose that information to the Company, or to use it in relation to the Company's affairs where to do so would amount to a breach of that confidence; and
  - vi permit the Interested Trustee to absent himself from the discussion of matters relating to the Conflict at any meeting of the Trustees or committee meeting (as the case may be) and be excused from reviewing papers prepared by, or for, the Trustees or any committee meeting to the extent they relate to such matters.
- (e) Where the Trustees authorise a Conflict, the Interested Trustee shall be obliged to conduct himself in accordance with any terms and conditions imposed by the Trustees in relation to the Conflict.
- (f) The Trustees may revoke or vary such authorisation at any time, but this shall not affect anything done by the Interested Trustee prior to such revocation or variation in accordance with the terms of such authorisation.
- (g) A Trustee is not required, by reason of being a Trustee (or because of the fiduciary relationship established by reason of being a Trustee), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the Trustees in accordance with these Articles or by the Company in general meeting or AGM (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.
- (h) Subject to sections 177(5) and 177(6) and sections 182(5) and 182(6) of the Act, and provided s/he has declared the nature and extent of his/her interest in accordance with the requirements of the Act, a Trustee who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Company:
  - i. may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise (directly or indirectly) interested;
  - ii. shall be an Eligible Trustee for the purposes of any proposed decision of the Trustees (or committee meeting) in respect of such existing or proposed transaction or arrangement in which s/he is interested;
  - iii. shall be entitled to vote at a meeting of Trustees (or of a committee meeting) or participate in any unanimous decision, in respect of such existing or proposed transaction or arrangement in which s/he is interested;
  - iv. may act by herself/himself or his/her firm in a professional capacity for the Company (otherwise than as auditor) and s/he or his/her firm shall be entitled to remuneration for professional services as if s/he were not a Trustee;

- v. may be a Trustee or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise (directly or indirectly) interested; and
- vi. shall not, save as s/he may otherwise agree, be accountable to the Company for any benefit which s/he (or a person connected with her/him (as defined in section 252 of the Act)) derives from any such transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his/her duty under section 176 of the Act.

## PROCEEDINGS OF THE TRUSTEES

- 71 Subject to the provisions of these Articles and the Charities Act, the Board may regulate their proceedings as they think fit. Any Trustee, and the Secretary at the request of a Trustee shall be entitled to call a meeting of the Board. A Trustee who is absent from the United Kingdom shall not be entitled to notice of a meeting at his address in the United Kingdom. Questions arising at a meeting shall be decided by a majority of votes.
- 72 In the case of an equality of votes, the Chairperson shall have a second or casting vote.
- 73 Subject to the provisions of these Articles, a Trustee may participate in a meeting of the Board or a committee meeting by means of a conference telephone or similar communications equipment whereby all the Trustees or committee members participating in the meeting can hear each other and the Trustees or committee members participating in a meeting in this manner shall be deemed to be present in person at such meeting.
- 74 The quorum for the transaction of the business of the Board shall be the Quorum.
- 75 The Trustees may act notwithstanding any vacancies in their number, but, if the number of Trustees is less than the number fixed as the quorum, the continuing Trustees or Trustee may act only for the purpose of filling vacancies or of calling a general meeting or an AGM.
- 76 The Chairperson or, in his/her absence, the Deputy Chairperson present shall chair Board meetings. In the absence of both the Chairperson and the Deputy Chairperson, the Trustees may appoint one of their number to be the Chair of the Meeting.
- 77 The Trustees may appoint one (1) or more sub-committees consisting of one (1) or more Trustees together with any other non-Trustees as the Board shall determine for the purpose of making any inquiry or supervising or performing any function or duty which in the opinion of the Trustees would be more conveniently undertaken or carried out by a sub-committee: provided that all acts and proceedings of any such sub-committees shall be fully and promptly reported to the Trustees.
- 78 Subject always to **Article 71**, the Trustees may appoint a sub-committee consisting of one (1) or more trustees together with any other non-Trustees as the Board shall determine including the Chairperson and the Deputy Chairperson together with the Charity's Chief Executive (from time to time) to expedite

business between Board meetings on behalf of the Charity. The remit of this sub-committee may (at the direction of the Board) include:-

- a. the power to meet when appropriate between meetings of the Board;
- b. the power to implement decisions made by the Board;
- c. the power to progress matters that occur between meetings of the Board and, where appropriate, to demonstrate leadership to the Board on policy matters affecting the further education sector in Wales; and
- d. a remit to report any decisions for approval or any deliberations for comment to the next meeting of the Board.

79 All acts done by a meeting of Trustees, or of a committee, shall notwithstanding that it be afterwards discovered that there was a defect in the appointment of any Trustee or committee member or that any of them were disqualified from holding office, or had vacated office, or were not entitled to attend, vote and be counted in the quorum at such meeting of Trustees or committee meeting, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Trustee or committee member and had been entitled to attend and vote and form part in the quorum (as the case may be).

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

81 Any bank account in which any part of the assets of the Charity is deposited shall be operated by the Trustees and shall indicate the name of the Charity. All cheques and orders for the payment of money from such account shall be signed by at least two Trustees.

#### **CHAIRPERSON AND DEPUTY CHAIRPERSON**

82 On the date of every other AGM, the Members will appoint the Chair of the CEO/Principals' Forum to also act as Chair of the Board of Trustees, who will take up such office at the AGM at which s/he is appointed.

83 On the date of every other AGM, the Members will appoint the Deputy Chair of the CEO/Principals' Forum to also act as Deputy Chair of the Board of Trustees, who will take up office at the AGM at which s/he is appointed.

84 The Chairperson and the Deputy Chairperson will serve concurrently for a two-year term of office.

85 In the event that there is no Chairperson in office, the CEO/Principals' Forum may elect one (1) of their number to act as Chairperson at any time they deem appropriate who shall take office upon appointment until the next AGM where his/her appointment shall be ratified by the Members or s/he shall cease to act as Chairperson.

86 In the event that there is no Deputy Chairperson in office concurrently with a Chairperson, the CEO/Principals' Forum may elect one of their number to act as Deputy Chairperson at any time they

deem appropriate who will take office upon appointment until the next AGM where his/her appointment shall be ratified by the Members or s/he shall cease to act as Deputy Chairperson.

87 If a Chairperson or a Deputy Chairperson (as the case may be) is appointed by the CEO/Principals' Forum at any time except at the AGM referred to in **Article 82** or **83** respectively, his/her appointment shall be ratified by the Members at the next AGM failing which s/he shall cease to act as Chairperson or Deputy Chairperson and may be replaced by an alternate Chairperson or Deputy Chairperson in accordance with **Articles 85** or **86** respectively.

88 Except in circumstances where the Chairperson or Deputy Chairperson is elected in accordance with **Articles 82** or **83** respectively where s/he has been appointed in between AGMs and where, as a consequence, they may de facto serve longer than two (2) years but less than three (3) years in office in such role, the Chairperson and the Deputy Chairperson shall hold such posts for a maximum of two (2) years and shall retire from such posts at the third (3<sup>rd</sup>) AGM (starting from the AGM at which they were elected) at which a new Chairperson or Deputy Chairperson (as the case may be) shall take office. The Chairperson and the Deputy Chairperson shall not be subject to retirement by rotation.

#### **CHIEF EXECUTIVE AND EXECUTIVE OFFICERS**

89 Subject to the provisions of the 2006 Act and to Article 5 of the Memorandum, the Board may appoint a Chief Executive, Deputy Chief Executive (if appointed) and Secretary for the Charity. Any such appointment may be made upon such terms as the Board determine.

90 The Board may from time to time appoint a person to the office of Chief Executive for such period and on such terms and at such remuneration as it thinks fit, and the Board may delegate such powers to the Chief Executive as it deems appropriate. Subject to the terms of any agreement entered into in any particular case it may revoke such appointment.

#### **ADVISORY FORUM**

91 The Board shall have regard to the views of the advisory forum (whose membership will be drawn from the CEO/Principals of Company Members) known as the CEO/Principals' Forum.

#### **SECRETARY**

92 Subject to the provisions of the 2006 Act, the Secretary shall be appointed by the Board for such term, and such remuneration and upon such conditions as they may think fit; and any Secretary so appointed may be removed by them. The Board may delegate such powers to the Secretary as it deems appropriate. Subject to the terms of any agreement entered into in any particular case it may revoke such appointment.

#### **MINUTES**

93 The Trustees shall cause minutes to be made in the books kept for the purpose of all appointments of officers of the Company made by the Board; and of all proceedings at meetings of the Charity and of the Trustees and of committees including the names of all present at each such meeting thereof.

#### **THE SEAL**

94 The Company shall not be obliged to have a Seal. If it elects to do so, the Board shall provide for the safe custody of the Seal, which shall only be used by the authority of the Board or of the Committee of

Trustees authorised by the Board. The Trustees may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Trustee and by the Secretary or by a second Trustee.

## **ACCOUNTS**

- 95 Accounts shall be prepared in accordance with the provisions of Part VII of the 2006 Act. Such records will be kept at the registered office of the Company and shall at all times be open to inspection by any of the Trustees.

## **ANNUAL REPORT**

- 101 The Trustees shall comply with their obligations under the Charities Act 1992 (or any statutory re-enactment or modification of that Act) with regard to the preparation of an annual report and its transmission to the Commissioners.

## **ANNUAL RETURN**

- 96 The Trustees shall comply with their obligations under the Charities Act 1992 (or any statutory re-enactment or modification of that Act) with regard to the preparation of an annual return and its transmission to the Commissioners.

## **AUDIT**

- 97 Auditors shall be appointed and their rights and duties regulated in accordance with the 2006 Act.
- 98 True accounts shall be kept of the sum of money received and expended by the Company, the matters in respect of which such receipts and expenditure take place and of the property, assets and liabilities of the Company. Once at least in every calendar year the accounts of the Charity shall be examined and the correctness of the balance sheet ascertained by the Auditors appointed under the preceding Article.

## **INDEMNITY**

- 99 Subject to the provisions of the 2006 Act every Trustee or committee member or other office or auditor of the Charity shall be indemnified out of the assets of the Charity against any liability incurred by him in that capacity in defending any proceedings, whether civil or criminal, in which judgment is given in his/her favour or in which s/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 Charity.

## **RULES**

- 100
- (a) The Trustees may from time to time make such rules or bye laws as they may deem necessary or expedient or convenient for the proper conduct and management of the Charity and for the purposes of prescribing classes of and conditions of Membership, and in particular but without prejudice to the generality of the foregoing, they may by such rules or bye laws regulate:

- i. the admission and classification of Members (including the admission of organisations to Membership) and the rights and privileges of such Members, and the conditions of Membership and the terms on which Members may resign or have their Membership terminated and the entrance fees, subscriptions and other fees or payments to be made by Members;
  - ii. the conduct of Members of the Charity in relation to one another, and to the Charity's servants;
  - iii. the setting aside of the whole or any part or parts of the Charity's premises at any particular time or time or for any particular purpose or purposes;
  - iv. the procedure at general meetings and meetings of the Trustees and committee meetings in so far as such procedure is not regulated by these Articles; and
  - v. generally, all such matters as are commonly the subject matter of company rules.
- (b) The Charity in general meeting or AGM shall have power to alter, add to or repeal the rules or bye laws and the Trustees shall adopt such means as they think sufficient to bring to the notice of Members of the Charity all such rules or bye laws, which shall be binding on all Members of the Charity. Provided that no rule or bye law shall be inconsistent with, or shall affect or repeal anything contained in, the Memorandum or the Articles.

S K Lush

18 July 2017