

**Dated**

**2013**

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**MEMORANDUM AND ARTICLES OF ASSOCIATION**

**of**

**PREMIER FOUNDATION LIMITED**

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**COMPANIES ACT 2006**

**COMPANY NOT HAVING A SHARE CAPITAL**

**MEMORANDUM OF ASSOCIATION OF**

**PREMIER FOUNDATION LIMITED**

Each subscriber to this Memorandum of Association wishes to form a company under the Companies Act 2006 and agrees to become a member of the Company.

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*Name of each subscriber*

*Authentication by each subscriber*

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Dated .....

## **COMPANIES ACT 2006**

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

#### **ARTICLES OF ASSOCIATION OF**

#### **PREMIER FOUNDATION LIMITED**

##### **1. Name**

The name of the Charity ("the Charity") is Premier Foundation Limited.

##### **2. Registered office**

The registered office of the Charity shall be in England.

##### **3. Objects**

The objects of the Charity are, for the public benefit, to advance such exclusively charitable purposes as the Trustees may in their absolute discretion think fit, including:

- 3.1** to advance amateur sports and to promote community participation in healthy recreation, in particular, but not exclusively, by providing funding or facilities to enable children and young people with disabilities to participate in sporting activities; and
- 3.2** to promote the provision of facilities for recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age, infirmity or disablement, financial hardship or social and economic circumstances or for the public at large in the interests of social welfare and with the object of improving the condition of life of the said individuals; to advance the education of children and young people by the provision, encouragement and promotion of education, instruction or training in the skills needed in employment; and
- 3.3** to relieve poverty amongst children and young people through the provision of assistance (including financial assistance) and encouragement whilst their education is being advanced or whilst they are in the process of establishing new businesses.

##### **4. Powers**

The Charity has the following powers which may be exercised only in promoting the objects:

- 4.1** to provide sports equipment and facilities;
- 4.2** to provide advice;
- 4.3** to publish or distribute information;
- 4.4** to co-operate with other bodies;
- 4.5** to enter into any arrangements with any Government department, local authority, university, college or other body or person conducive to the promotion and attainment of the objects;
- 4.6** to support, administer or set up other charities;
- 4.7** to raise funds;
- 4.8** to borrow or raise money on such terms as may be thought fit and give security for loans (but only in accordance with the restrictions imposed by the Charities Act 2011);
- 4.9** to secure the discharge of any of the Charity's liabilities and obligations in any manner;
- 4.10** to acquire any copyright, patents, translation, publication, right of publication or reproduction or other intellectual property rights which may appear useful to the Charity and to protect, prolong, register, renew, exercise, develop, turn to account, use or manufacture the same;
- 4.11** to advertise in such manner as may be thought expedient with a view to promoting the objects;
- 4.12** to purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property or any rights therein and any rights or privileges necessary for the promotion of the objects and to construct, maintain and alter any buildings or erections necessary or convenient for the work of the Charity;
- 4.13** to let or dispose of property of any kind;
- 4.14** to provide financial assistance, make grants, donations or loans of money and to give guarantees;
- 4.15** to draw, make, accept, endorse, discount, execute, issue and deal with promissory notes, bills of exchange and other instruments of any kind, whether or not negotiable or transferable;

- 4.16** to set aside funds for special purposes or as reserves against future expenditure;
- 4.17** to deposit or invest funds in any manner (but to invest only after obtaining advice from a financial expert and having regard to the suitability of investments and the need for diversification);
- 4.18** to solicit contributions to the funds of the Charity and to accept gifts (both inter vivos and testamentary) of money and other property of any kind, whether real or personal and whether or not subject to any specific charitable trusts or conditions;
- 4.19** to accept any gifts, subscriptions, donations, bequests or devises of lands, monies, securities either real or personal property;
- 4.20** to appoint, constitute and delegate powers to such advisory committees as the Trustees may think fit;
- 4.21** to delegate the management of investments to a financial expert, but only on terms that:
- (A)** the investment policy is set down in writing for the financial expert by the Trustees;
  - (B)** every transaction is reported promptly to the Trustees;
  - (C)** the performance of the investments is reviewed regularly with the Trustees;
  - (D)** the Trustees are entitled to cancel the delegation arrangement at any time;
  - (E)** the investment policy and the delegation arrangement are reviewed at least once a year;
  - (F)** all payments due to the financial expert are on a scale or at a level which is agreed in advance and are notified promptly to the Trustees on receipt; and
  - (G)** the financial expert must not do anything outside the powers of the Trustees;
- 4.22** to arrange for investments or other property of the Charity to be held in the name of a nominee (being a corporate body registered or having an established place of business in England and Wales) under the control of the Trustees or of a financial expert acting under their instructions and to pay any reasonable fee required;

- 4.23** to insure the property of the Charity against any foreseeable risk and take out other insurance policies to protect the Charity when required;
- 4.24** to purchase and maintain insurance for the Trustees as permitted by the Charities Act 2006 against the costs of a successful defence to a criminal prosecution brought against them as Charity Trustees or against personal liability incurred by them in respect of any act or omission in the actual or purported execution and/or discharge of their duties and/or in the exercise or purported exercise of their powers and/or otherwise in relation to the Charity which is or is alleged to be a breach of trust or breach of duty, unless the Trustee concerned knew that, or was reckless whether the act or omission was a breach of trust or breach of duty;
- 4.25** to employ paid or unpaid agents, staff or advisers;
- 4.26** to enter into contracts to provide services to or on behalf of other bodies;
- 4.27** to establish, become a member of, manage, or support any bodies (whether incorporated or not) whose objects may seem capable of furthering any of the objects;
- 4.28** to establish where necessary local branches (whether autonomous or not);
- 4.29** to procure the Charity to be registered or recognised in any foreign country or place;
- 4.30** to pay all costs and expenses arising in connection with the formation and registration of the Charity; and
- 4.31** to do anything else within the law which promotes or is ancillary to the objects.

## **5. Benefits to Members and Trustees**

- 5.1** The property and funds of the Charity shall be used only for promoting the objects and do not belong to the members of the Charity but, subject to compliance with Article 5.4:
  - (A)** members (including Trustees) may be paid interest at a reasonable rate on money lent to the Charity; and
  - (B)** members (including Trustees) may be paid a reasonable rent or hiring fee for property let or hired to the Charity.

**5.2** A Trustee shall not receive any payment of money or other material benefit (whether directly or indirectly) from the Charity except:

- (A)** as mentioned in Articles 4.24, 5.1(A), 5.1(B) or 5.3 of these Articles;
- (B)** reimbursement of reasonable out-of-pocket expenses (including hotel and travel costs) actually incurred in running the Charity;
- (C)** an indemnity (insofar as permitted by Article 16) in respect of any liabilities properly incurred in running the Charity (including the costs of a successful defence to criminal proceedings);
- (D)** payment to any company in which a Trustee has no more than a one per cent shareholding; and
- (E)** in exceptional cases (but only with the written consent of the Commission in advance and subject, where required by the Companies Act, to the approval or affirmation of the members) other payments or benefits.

**5.3** Any Trustee or Connected Person (or any firm or company of which a Trustee or Connected Person is a member or employee) may enter into a written contract with the Charity to supply services in return for a payment or other material benefit but only if:

- (A)** the services are actually required by the Charity;
- (B)** the nature and level of the remuneration is no more than is reasonable in relation to the value of the services and is set in accordance with the procedure in Article 5.4; and
- (C)** no more than one third of the Trustees are subject to such a contract in any financial year.

**5.4** Subject to Articles 5.2 and 5.5, any Trustee who becomes a Conflicted Trustee in relation to any matter must:

- (A)** declare the nature and extent of his or her interest at or before discussion begins on the matter;
- (B)** withdraw from the meeting for that item after providing any information required by the Trustees
- (C)** not be counted in the quorum for that part of the meeting; and
- (D)** be absent during the vote and have no vote on the matter.

**5.5** When a Trustee is a Conflicted Trustee, the Trustees present at a meeting who are not Conflicted Trustees, if they form a quorum without counting the Conflicted Trustee and are satisfied that it is in the best interest of the Charity to do so, may by resolution passed in the absence of the Conflicted Trustee authorise the Conflicted Trustee or a Connected Person, notwithstanding any conflict of interest or duty which has arisen or may arise for the Conflicted Trustee or Connected Person:

- (A) to continue to participate in discussions leading to the making of a decision; or
- (B) to disclose information confidential to the Charity to a third party, or
- (C) to take any other action not otherwise authorised which does not involve the receipt by the Conflicted Trustee or a Connected Person of any payment or material benefit from the charity, or refrain from taking action designed to remove the conflict.

**5.6** A Conflicted Trustee who obtains (other than through his position as Trustee) information that is confidential to a third party, shall not be in breach of his or her duties to the Charity if he or she declares the conflict in accordance with Article 5.4 and then withholds such confidential information from the Charity.

**5.7** This Article may not be amended without the prior permission of the Charity Commission.

## **6. Membership**

**6.1** The sole member of the Charity shall be the Founder.

**6.2** Membership of the Charity is not transferable.

## **7. Limited liability**

The liability of the members is limited.

## **8. Guarantee**

Every member promises, if the Charity is dissolved while he or it (in the case of a member which is a corporate body) remains a member or within 12 months afterwards, to contribute up to £1 towards the costs of dissolution and the liabilities incurred by the Charity while the contributor was a member.

## **9. General Meetings**

- 9.1** General meetings are called on at least 14 days' written notice specifying the business to be discussed unless special notice is required by the Act. The notice shall specify the time and place of the meeting and a copy of the notice shall be sent to all members.
- 9.2** A general meeting may be called at shorter notice if it is so agreed by a majority of members who together hold not less than 90 per cent of the voting rights.
- 9.3** There is a quorum at a general meeting is one member.
- 9.4** A member may appoint another person as his proxy to exercise all or any of his rights and to speak and vote at general meetings.
- 9.5** A resolution in writing executed by or on behalf of seventy-five per cent of the members shall be as effectual as if it had been raised at a general meeting and may consist of several instruments in the like form each executed by or on behalf of one or more of the members.
- 9.6** The Charity may hold an AGM in every year which all members are entitled to attend.
- 9.7** At an AGM the members:
- (A) receive the accounts of the Charity for the previous financial year;
  - (B) receive the Trustees' report on the Charity's activities since the previous AGM; and
  - (C) discuss and determine any issues of policy or deal with any other business put before them.
- 9.8** Any general meeting which is not an AGM is an EGM.

## **10. The Trustees**

- 10.1** The Trustees as Charity Trustees have control of the Charity and its property and funds.
- 10.2** The number of Trustees shall be not less than three individuals or bodies corporate. The first Trustees shall be the subscribers to the Memorandum.
- 10.3** Every Trustee must sign a declaration of willingness to act as a Trustee of the Charity before he is eligible to vote at any meeting of the Trustees.
- 10.4** The Founder shall have the power to appoint and remove Trustees by notification in writing.
- 10.5** A Trustee's term of office automatically terminates if he or she:
- (A)** ceases to be a Trustee by virtue of any provision of the Act or he becomes prohibited by law from being a Trustee; or
  - (B)** becomes bankrupt or makes any arrangement or composition with his creditors generally; or
  - (C)** is or may be suffering from mental disorder and either:
    - (1)** he or she is admitted to hospital in pursuance of an application for admission under the Mental Health Act 1983 or, in Scotland, an application for admission under the Mental Health (Scotland) Act 1960; or
    - (2)** an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his or her detention or the appointment of a receiver, curator bonis, or other person to exercise powers with respect to his or her property or affairs; or
  - (D)** is absent from four consecutive meetings of the Trustees and the Trustees resolve that his or her office be vacated;
  - (E)** resigns by written notice to the Trustees; or
  - (F)** is removed by the Founder.
- 10.6** A technical defect in the appointment of a Trustee of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting of Trustees.

## **11. Proceedings of Trustees**

- 11.1** The Trustees must hold at least two meetings each year.
- 11.2** A quorum at a meeting of the Trustees is one-third of the Trustees.
- 11.3** A meeting of the Trustees may be held in person or by suitable electronic means as agreed by the Trustees by which participants may communicate with all the other participants.
- 11.4** The Chairman or (if the Chairman is unable or unwilling to do so) some other Trustee chosen by the Trustees present presides at each meeting.
- 11.5** Every issue may be determined by a simple majority of the votes cast at a meeting but a written resolution signed by a majority of the Trustees is as valid as a resolution passed at a meeting (and for this purpose the resolution may be contained in more than one document and will be treated as passed on the date of the last signature).
- 11.6** Every Trustee has one vote on each issue.
- 11.7** A procedural defect of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.

## **12. Powers of Trustees**

The Trustees have the following powers in the administration of the Charity:

- (A)** to appoint (and remove) any member (who may be a Trustee) to act as Secretary to the Charity in accordance with the Act and where the office of Secretary is vacant or there is for any other reason no secretary capable of acting, to appoint (and remove) any assistant or deputy secretary (who need not be a member) to so act;
- (B)** to appoint a chairman, treasurer and other honorary officers from among their number;
- (C)** to delegate any of their functions to committees consisting of two or more individuals appointed by them (but at least one member of every committee must be a Trustee and all proceedings of committees must be reported promptly to the Trustees);
- (D)** to make rules consistent with the Articles and the Act to govern proceedings at their meetings and at meetings of committees;

- (E) to make rules consistent with the Articles and the Act to govern the administration of the Charity and the use of its seal (if any);
- (F) to establish procedures to assist the resolution of disputes within the Charity;
- (G) subject to the provisions of the Act, the Articles and to any directions given by special resolution, to manage the business of the Charity;
- (H) to resolve pursuant to Article 4.24 of the Articles to effect indemnity insurance notwithstanding their interest in such a policy; and
- (I) to exercise any other powers of the Charity which are not reserved to a general meeting.

### **13. Records and Accounts**

**13.1** The Trustees must comply with the requirements of the Act and of the Charities Act 2011 as to keeping financial records, the audit of accounts and the preparation and transmission to the Registrar of Companies and the Commission of:

- (A) annual reports;
- (B) annual returns; and
- (C) annual statements of account.

**13.2** The Trustees must keep proper records of:

- (A) all proceedings at general meetings;
- (B) all proceedings at meetings of the Trustees;
- (C) all reports of committees; and
- (D) all professional advice obtained.

**13.3** Accounting records relating to the Charity must be made available for inspection by any Trustee at any reasonable time during normal office hours and may be made available for inspection by members who are not Trustees if the Trustees so decide.

**13.4** A copy of the Charity's latest available statement of account must be supplied on request to any Trustee or member, or to any other person

who makes a written request and pays the Charity's reasonable costs, within two months.

- 13.5** No member shall (as such) have any right of inspecting any accounting records or other book or document of the Charity except as conferred by statute or authorised by the Trustees or by ordinary resolution of the Charity.

#### **14. Exclusion of model articles**

The model Articles for a company limited by guarantee are hereby expressly excluded.

#### **15. Notices**

- 15.1** Notices under these Articles may be sent by hand, or by post or by suitable electronic means or (where applicable to members generally) may be published in any suitable journal or newspaper or any newsletter distributed by the Charity.
- 15.2** The only address at which a member is entitled to receive notices is the address shown in the register of members.
- 15.3** Any notice given in accordance with these Articles is to be treated for all purposes as having been received:
- (A)** twenty four hours after being sent by electronic means or delivered by hand to the relevant address;
  - (B)** two clear days after being sent by first class post to that address;
  - (C)** three clear days after being sent by second class or overseas post to that address;
  - (D)** on the date of publication of a newspaper containing the notice;
  - (E)** on being handed to the member personally; or, if earlier
  - (F)** as soon as the member acknowledges actual receipt.
- 15.4** A technical defect in the giving of notice of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.

## **16. Indemnity**

Subject to the provisions of the Act, every Trustee or other officer, employee or auditor of the Charity, shall be indemnified out of the assets of the Charity against any liability incurred by him in defending any proceedings whether civil or criminal in which judgment 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 Charity.

## **17. Dissolution**

If the Charity is dissolved the assets (if any) remaining after provision has been made for all its liabilities must be applied to or for the benefit of such charitable institution or institutions having similar or complementary objects to those of the Charity and if more than one then in such shares or proportions and in such manner in all respects as the Trustees may, in their discretion, decide.

## **18. Interpretation**

**18.1** In these Articles the following wording shall have the following meanings:

- "the Act" means the Companies Act 2006 and every other statute concerning companies;
- "AGM" means an annual general meeting of the Charity;
- "the Articles" means these Articles of Association;
- "authorised representative" means an individual who is authorised by a member corporation to act on its behalf at meetings of the Charity in accordance with the Act, and whose name is given to the Secretary;
- "Chairman" means the chairman of the Trustees;
- "the Charity" means the Charity governed by these Articles;
- "clear day" means 24 hours from midnight following the relevant event;
- "Charity Trustee" has the meaning prescribed by the Charities Act 2011;

- "the Commission" means the Charity Commissioners for England and Wales;
- "Conflicted Trustee" means a Trustee in respect of whom a conflict of interest arises or may reasonably arise because the Conflicted Trustee or a Connected Person stands to receive a benefit from the Charity, or has some separate interest or duty in a matter to be decided, or in relation to information which is confidential to the Charity;
- "Connected Person" means, in relation to a Trustee, a person connected with a Charity Trustee or a trustee for a charity within the meaning of the Charities Acts 2011;
- "EGM" means an extraordinary general meeting of the Charity;
- "financial expert" means an individual, company or firm who is an authorised person within the meaning of the Financial Services and Markets Act 2000;
- "the Founder" means Premier Education Group, Shropshire NR17 1EJ;
- "material benefit" means a benefit which may not be financial but has monetary value;
- "member" and "membership" refer to membership of the Charity;
- "month" means calendar month;
- "the objects" means the objects of the Charity as defined in Article 3 of these Articles;
- "the Office" means the registered office of the Charity from time to time;
- "Secretary" means the Secretary of the Charity;
- "Trustee" means a Trustee of the Charity and "Trustees" means all of the Trustees;
- "written" or "in writing" refers to a legible document on paper including a fax message; and
- "year" means calendar year.

**18.2** Unless expressly defined herein or unless the context otherwise requires, expressions defined in the Act or any statutory modification

thereof in force at the date at which these regulations become binding on the Charity, shall have the meanings so defined.

**18.3** References to an Act of Parliament are to such act as amended or re-enacted from time to time and to any subordinate legislation made under it.

**18.4** Save where the context otherwise requires references to the masculine gender shall include the feminine gender.