HIBERNIA COLLEGE UNLIMITED – COPORATE GOVERNANCE CODE

1. Governance Context

This Corporate Governance Code is a key document in the governance infrastructure of Hibernia College Unlimited. It sits alongside the College's *Governance and Management Policy***,** which describes the Hibernia College management structure and articulates the principles by which the College is governed, and identifies the key boards, committees and positions and their regulatory context.

Irish company law regulates how the company, Hibernia College Unlimited, functions, and it underpins this Corporate Governance Code. As a company established for the primary purpose of designing and providing programmes of education and training, some of which will lead to awards of the Irish state as well as professional bodies, its governance infrastructure is designed to reflect this distinctiveness and associated regulatory requirements. Law and regulation specifically pertaining to provision of higher education programmes apply to the College.

The Companies Act 2014 (revised 2018) consolidates the previous Irish Companies Acts and many of the related statutory instruments into a single statute while simultaneously introducing significant reforms to Irish company law. It is the primary piece of legislation with which Hibernia College Unlimited must comply.

As a provider of higher education leading to awards of *Quality and Qualifications Ireland* (QQI), Hibernia College Unlimited must also comply with policy and regulation developed by QQI under the *Qualifications and Quality Assurance (Education and Training) Act 2012*. Standards have been established for institutional governance and management, as well as for qualifications and they must be adopted by providers of programmes leading to QQI awards. The standards apply to all educational provision of the College.

2. Role of the Board of Directors

The Board of Directors, hereafter referred to as the Board, should be clear about its mandate and from that identify the various functions, roles and responsibilities entailed in the delivery of that mandate.

The Board is collectively responsible for leading and directing the company's activities. While the Board may delegate particular functions to management, and in particular academic responsibilities to the Academic Board, the exercise of the power of delegation does not absolve the Board from the duty to supervise the discharge of the delegated functions.

The Board should fulfil key functions, including: reviewing and guiding strategic direction and major plans of action, risk management policies and procedures, annual budgets and business plans, setting performance objectives, monitoring implementation and company performance, and overseeing major capital expenditure and investment decisions.

The Board should act on a fully informed and ethical basis, in good faith, with due diligence and care, and in the best interest of the company, having due regard to its legal responsibilities and its strategic objectives.

The Board should promote the development of the capacity of the company including the capability of its leadership and staff.

The Board is responsible for holding the CEO and senior management to account for the effective performance of their responsibilities.

a. *Leadership:*

The Board's role is to provide leadership and direction to the company within a framework of prudent and effective controls which enables risk to be assessed and managed. The Board should agree the body's strategic aims and ensure optimal use of resources to meet its objectives.

b. *Ethical Standards:*

The Board has a key role in setting the ethical tone of the company, not only by its own actions but also in overseeing senior management and staff. High ethical standards are in the long term interests of the company and a key means to make it credible and trustworthy. It is important that the Board sets the correct 'tone from the top'. The Board should lead by example and ensure that good standards of governance and ethical behaviours permeate all levels of the organisation.

c. *Compliance:*

The Board should review the controls and procedures adopted by the company to provide itself with reasonable assurance that such controls and procedures are adequate to secure compliance by the company with their statutory and governance obligations, including those established under the *Qualifications and Quality Assurance (Education and Training) Act 2012*. In particular, the Board retains responsibility to ensure that "academic decision-making, (relating to education and training), is independent of commercial considerations or the undue influence of business owners" as required by QQI. (*Statutory Quality Assurance Guidelines developed by QQI for Independent/Providers coming to QQI on a Voluntary Basis).*

d. *Collective Responsibility:*

The collective responsibility and authority of the Board should be safeguarded. All Board members should be afforded the opportunity to fully contribute to Board deliberations, and where necessary to provide constructive challenge, while excessive influence on Board decision-making by one or more individual members should be guarded against.

e. *Board Oversight Role:*

The management of the company has a duty to provide the Board with all necessary information to enable the Board perform their duties to a high standard. The Board of the company should take all necessary steps to make themselves aware of any relevant information and access all information as necessary.

While the Board of the company may establish an Audit and Risk Committee to assist with its consideration of issues relating to audit, governance and risk management, the Board of the company maintains responsibility for and makes the final decisions on all of these areas.

3. Matters for Decision of the Board

The Board should meet sufficiently regularly to discharge its duties effectively. The Board should have a formal schedule of matters specifically reserved for it for decision to ensure that the direction and control of the Company is firmly in its hands.

This schedule should include, at least, the following:

- Significant acquisitions, disposals and retirement of assets of the company or its subsidiaries. The schedule should specify clear quantitative thresholds for contracts above which Board approval is required
- Major investments and capital projects
- Delegated authority levels, treasury policy and risk management policies
- Approval of terms of major contracts
- Approval of annual budgets and corporate plans
- Approval of annual reports and financial statements
- Consideration of periodic reports from the Academic Board
- Appointment, remuneration and assessment of the performance of, and succession planning for, the CEO
- Significant amendments to the staff remuneration and other benefits.

a. Expenditure and Performance:

Decision on major items of expenditure should be aligned with medium to long-term strategies so as to ensure that such expenditure is focused on clearly defined objectives and outcomes. A performance measurement system should be put in place to assess the effectiveness/outcome of such expenditure and this should be reported to the Board.

b. Post Resignation/Retirement:

The Board should, in a manner most effective to the company, deal with the issue of post resignation/retirement employment, appointment and/or consultancy of its Board members and employees and should ensure that any procedures that it may have put in place in this regard are monitored and enforced to guard against conflicts of interest or inappropriate disclosure of information that might otherwise arise. Such procedures could include the return of Board papers at the end of a Board members term.

c. Conflict of Interest:

The Board should have procedures in place to monitor and manage potential conflicts of interest of Board members and management.

d. Annual Confirmation:

The Board has responsibility for ensuring that effective systems of internal control are instituted and implemented. The Board is required to confirm has part of the annual report that the company has an appropriate system of internal and financial control in place.

e. Risk Management:

The Board should monitor the company's risk management and internal control systems and, at least annually, carry out a review of their effectiveness, and report on that review in the annual report. The monitoring and review should cover all material controls, including financial, operational and compliance controls.

f. External Auditors:

The Board should establish procedures for maintaining an appropriate relationship with the external auditors. There should be a statement by the external auditor in the external auditors' report about the Board's reporting responsibilities.

g. Written Charters:

Any Board committees, including any internal audit unit, should each have written charters. The Board should agree the intervals within which the charters should be reviewed by the main Board and updated as appropriate.

4. Statement of Strategy

a. Strategic Plan:

The preparation and adoption of a strategic plan is a primary responsibility of the Board of the company. Such plans should set appropriate objectives and goals and identify relevant indicators and targets against which performance can be clearly measured, reflecting the nature of the company as being primarily a designer and provider of education and training.

b. Implementation:

Implementation of the strategy by the management of the company should be supported through an annual planning and budgeting cycle. The Board of the company should approve an annual plan and/or budget and should formally undertake an evaluation of actual performance by reference to the plan and/or budget on an annual basis.

c. Annual Report and Financial Statements:

The Board should explain in the annual report their responsibility for the preparation of the annual report and financial statements and whether they consider the financial statements to be a true and fair view of the company's financial performance and its financial position at the end of the year.

The Board should include in the annual report an explanation of the basis on which the company generates or preserves value over the longer term (the business model) and the strategy for delivering the objectives of the company.

In annual financial statements, the Board should state whether it considered it appropriate to adopt the going concern basis of accounting in preparing them, and identify any material uncertainties to the company's ability to continue to do so over a period of at least twelve months from the date of approval of the financial statements.

5. Secretary of the Board

The Board has a duty to ensure that the person appointed as Secretary of the Board has the skills necessary to discharge their statutory and legal duties and such other duties as may be delegated by the Board. Both the appointment and removal of the Secretary of the Board should be a matter for the Board as a whole.

a. Role of Secretary of the Board:

The role of the Secretary of the Board should be seen as a support to the Board. The scale and scope of the role will depend on the size, nature and responsibilities of the company.

The Secretary of the Board may be assigned such functions and duties as may be delegated by the Board. The duties can be classified as follows:

- Statutory duties
- Duty of disclosure
- Duty to exercise due care, skill and diligence, and
- Administrative duties.

b. Governance:

The Secretary of the Board should report to the Chairperson on all Board governance matters and should assist the Chairperson in ensuring relevant information is made available to the Board and its committees.

The Secretary of the Board is responsible for advising the Board through the Chairperson on all governance matters. The Board should have a list of statutory obligations and regulations that are required to be complied with and the execution of which depends on the Secretary of the Board.

6. Division of Responsibilities

There should be a clear division of responsibilities between leading and managing the Board and the executive responsibility for running the company. No one individual should have unfettered powers of decision.

a. Separation of Roles:

The roles of chairman and chief executive should not be exercised by the same individual. The division of responsibilities between the chairman and chief executive should be clearly established, set out in writing and agreed by the board.

b. Distributed Responsibilities:

In recognition of the nature of the organisation as a higher education institution, approved by Quality and Qualifications Ireland to provide programmes of higher education leading to national awards, the Board of Directors formally delegates all authority for academic decision-making to the Academic Board. The nature of the decisions are provided in the Board-approved terms of reference for the Academic Board. The Academic Board is established to reflect the particular competences required to make academic and quality assurance decisions for the College. It reports to the Board of Directors. This is addressed in the *Policy on Management and Governance*.

7. Role of the Chairperson

The Chairperson is responsible for leadership of the Board and ensuring its effectiveness on all aspects of its role.

The Chairperson should display high standards of integrity and probity and set expectations regarding culture, values, and behaviours for the company and for the tone of discussions at Board level.

a. *Board's Agenda:*

The Chairperson and the CEO are responsible for the effective management of the Board's agenda and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues. The Chairperson and the CEO should meet in advance of the Board meeting to agree the agenda.

b. *Openness and Debate:*

Essential to the effective functioning of the Board is dialogue which is both constructive and challenging. The Chairperson should promote a culture of openness and debate by facilitating the effective contribution of key management and all Board members.

c. *Timely Information:*

The Chairperson is responsible for ensuring that the Board receive accurate, timely and clear information. The Chairperson should ensure effective communication with all relevant stakeholders.

d. *Board Skills:*

Where the Chairperson is of the view that specific skills are required on the Board, he/she should advise the other Board members of this view for their consideration sufficiently in advance of a time when Board vacancies are due to arise. This is in order to seek to ensure that the process undertaken identifies candidates with the requisite skills and experience to make effective Board members.

e. *Information Flows:*

Under the direction of the Chairperson, the responsibilities of the Secretary of the Board include ensuring good information flows within the Board and its committees and between senior management and non-executive Board members, as well as facilitating induction, mentoring and assisting with ongoing professional development as required.

8. Role of Board Members

The company should be headed by an effective Board which is collectively responsible for the long-term sustainability of the company.

Non-executive Board members should bring an independent judgement to bear on issues of strategy, performance, resources, key appointments, and standards of conduct.

a. *Fiduciary Duty:*

All Board members have a fiduciary duty to the company in the first instance (i.e. the duty to act in good faith and in the best interests of the company).

The principle fiduciary duties are:

1. To act in good faith in what the Board member considers to be the interest of the company;
2. To act honestly and responsibly in relation to the conduct of the affairs of the company;
3. To act in accordance with the company's constitution and exercise his or her powers only for the purposes allowed by law;
4. Not to benefit from or use the company's property, information or opportunities for his or her own or anyone else's benefit unless the company's constitution permits it or a resolution is passed in a general meeting;
5. Not to agree to restrict the Board member's power to exercise an independent judgment unless this is expressly permitted by the company's constitution;
6. To avoid any conflict between the Board member's duties to the company and the Board member's other interests unless the Board member is released from his or her duty to the company in relation to the matter concerned;
7. To exercise the care, skill and diligence which would be reasonably expected of a person in the same position with similar knowledge and experience as a Board member. A Board member may be held liable for any loss resulting from their negligent behaviour; and
8. To have regard to interests of the company's members.

The powers of governance and management of a company are delegated by the members of the company to the Board and the Board owe their duties, first and foremost, to the company.

9. Companies Act 2014

Under Section 228 the Companies Act 2014 there is specific statutory recognition for the fiduciary duties of directors of companies incorporated under the Companies Act, 2014 or the Companies Acts, 1963-2013 and it is the responsibility of each Board member to act in conformity with applicable provisions.

The Companies Act 2014 also includes a number of general duties for directors:

- Directors must ensure compliance with the Companies Act and the various tax acts.
- Directors must ensure that the company secretary is suitably qualified.
- Directors must acknowledge the existence of their duties by signing a declaration to that effect. (depending on certain financial thresholds)
- Directors must take into account the interests of the members of the company and have regard to the interests of the employees.
- Restrictions on loans, quasi loans, credit transactions and certain guarantees and security exist for directors, but will be subject to the new summary approval procedure.

- Directors must disclose any interests in contracts made by the company.
- Directors must notify the company of any interests in shares in the company, its parent or subsidiary but no obligation arises if the shares held represent less than 1% of the share capital of the company or the shares do not have voting rights.

Directors who are found to be in breach of their duties will be liable to account for any gains accrued and must indemnify companies for losses resulting from any breaches of duties. A court may grant relief from liability where it is satisfied that a director acted honestly and reasonably at all times.

a. Non-compliance:

If a Board member/Director finds evidence that there is non-compliance with any statutory obligations that apply to the company, he/she should immediately bring this to the attention of their fellow Board members/Directors with a view to having the matter rectified.

b. Professional Advice:

The Board should, in a Board resolution, lay down formal procedures whereby Board members, in the furtherance of their duties, may take independent professional advice, if necessary, at the reasonable expense of the company where they judge it necessary to discharge their responsibilities as Board members. The Board should have in place a procedure for recording the concerns of Board members that cannot be resolved.

c. Letter of Appointment:

A formal standard letter of appointment should be issued to each new Board members from the Secretary of the Board. The letter of appointment should include the following:

- Role of the Board and that of a Board member
- The Board's terms of reference
- Duration of appointment and renewal provisions
- Support and training to be provided
- The time commitment involved
- Level of remuneration
- Conflict of interest rules
- Termination arrangements, and
- Rules on confidentiality.

10. Briefing for New Board Members

On the appointment of new Board members, the Secretary of the Board should provide them with the following information:

- A formal schedule of matters reserved to the Board for decision
- Procedures for obtaining information on relevant new laws and regulations
- Procedures to be followed when, exceptionally, decisions are required between Board meetings
- A schedule detailing the composition of all Board committees and their terms of reference
- A statement explaining the Board members' responsibilities in relation to the preparation of the financial statements, the company's system of internal control and audit and for

reporting on the business as a going concern with supporting assumptions or qualifications as necessary
- A statement informing Board members that they have access to the advice and services of the Secretary of the Board, who is responsible to the Board for ensuring that Board procedures are followed and that these procedures comply with the applicable rules and regulations
- A copy of the code of ethics/conduct for Board members, including requirements for disclosure of Board members' interests and procedures for dealing with conflict of interest situations
- Specific information on the role and responsibilities of the Company
- A copy of relevant legislation (or excerpts thereof) together with the most up to date version of this Code and any relevant circulars and/or guidance notes, and
- A listing of the statutory requirements relating to the Company.

a. *Independent judgement:*

Non-executive Board members should bring an independent judgement to bear on issues of strategy, performance, resources**,** key appointments, and standards of conduct. This Code sets out the approach to dealing with any business or other interests of a Board member that could affect the Board members' independence.

b. *Attendance Requirement:*

Board members are appointed as they bring specific knowledge, skills, experiences and expertise to the deliberations of the Board and its committees and this is only possible if members attend all Board meetings and contribute as appropriate. The Board should clarify an expectation of 100% attendance at all Board meetings and as part of the assignment of a new Board member evaluate attendance when the member is due to be re-appointed.

c. *Access to Secretary of the Board:*

All Board members should have access to the advice and services of the Secretary of the Board, who is responsible to the Board for ensuring that Board procedures are complied with. The Secretary of the Board is also responsible for the formal induction of new Board members and organising mentoring for Board members where required.

11. Board Effectiveness

The Board and its committees should have the appropriate balance of skills and knowledge to enable them discharge their respective roles and responsibilities effectively. Board members should receive formal induction on joining the Board and should regularly update and refresh their skills and knowledge.

The Board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. Board members need to be able to allocate sufficient time to discharge their responsibilities effectively.

The Board should undertake a self-assessment annual evaluation of its own performance and that of its Board committees. Evaluation of the Board should consider the balance of skills, experience, independence and knowledge of the company on the Board, its diversity, including gender, how the Board works together as a unit, and other factors relevant to its effectiveness.

The Chairperson should act on the results of the performance evaluation by addressing any weaknesses identified through the Board self-assessment evaluation.

a. *Board Appointments:*

Board appointments should be made in accordance with best practice and in light of the needs of the company. The search for Board candidates should be conducted, and appointments made, on merit, against objective criteria and with due regard for the benefits of diversity on the Board, including gender.

The Board should satisfy itself that plans are in place for orderly succession for appointments to the Board and to senior management, so as to maintain an appropriate balance of skills and experience within the company and on the Board and to ensure progressive refreshing of the Board.

b. *Skills and Knowledge:*

Board members should have the appropriate skills and knowledge, updated as required, appropriate to the activities of the company, to enable them to discharge their respective duties and responsibilities effectively, recognising the nature of the company as a designer and provider of education and training. This should include the identification by the Board of any gaps in competencies and ways these gaps could be addressed through future appointments.

c. *Terms of Appointment:*

Consistent with best corporate governance practice it is recommended that non-Executive members of the Board should serve more than two full terms of appointment. In this context, a full term is regarded as five years. It is recommended that the first appointment be for a period of five years, which can be renewed for up to five years, to a maximum of ten years in total. If exceptionally it is decided that a Board member should serve a further additional Board term, this requires Board approval.

The length of Board appointments should vary to ensure that the Board does not have to be replaced *en masse* and to ensure that the Board has the necessary experience to discharge their responsibilities effectively.

d. *Performance Review:*

Monitoring of effective corporate governance by the Board includes continuous review of the internal structure of the company to ensure that there are clear lines of accountability for management throughout the organisation. In addition to requiring the monitoring and disclosure of corporate governance practices on a regular basis, the Board should undertake an annual self-assessment evaluation of its own performance and that of its committees. An external evaluation proportionate to the size and requirements of the Company should be carried out at least every 5 years.

e. *Statement of How the Board Operates:*

The annual report should include a statement of how the Board operates, including a high level statement of which types of decisions are to be taken by the Board and which are to be delegated to management.

f. Frequency of Board Meetings:

The frequency of meetings of the Board and its committees and the attendance of each Board member at Board meetings should be reported in the annual report.

12. Relations with shareholders

There should be a dialogue with shareholders based on the mutual understanding of objectives. The Board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place.

Whilst recognising that most shareholder contact is with the chief executive and finance director, the Chairperson should ensure that all directors are made aware of their major shareholders' issues and concerns.

The Board should keep in touch with shareholder opinion in whatever ways are most practical and efficient. The Board should use general meetings to communicate with investors and to encourage their participation.