



Herefordshire

Guidance on Performance & Decision Making - Cyber Quarter Ltd

Purpose

This document explains a governance framework between Herefordshire Council (Council), its directors and the company Cyber Quarter Ltd for reporting, management of performance & decision making

This guidance applies to:

- Shareholder Committee of Council
- Cyber Quarter Ltd
- Council appointed directors of Cyber Quarter

Version	Date	Description
1	01/11/23	New Procedure

Document Approvals	
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Approval:	Shareholder Committee of the Council

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1. Definitions

This document uses the following definitions:

Director(s)

Director(s) of Cyber Quarter appointed by the SHC.

Information

This includes:

- the final accounts (yearly only) in relation to the previous financial year in the June meeting;
- management accounts showing actual spend for each quarterly together with a committed spend and forecast against the budget for each budget line and/service provided;
- performance by service area against agreed Key Performance Indicators as set out in the Business Plan
- the Directors' narrative in respect to matters of significance, risk and/or overspend/underspend; and
- risks and mitigations as relate to services provided to the Council (17.1 SHA).

Cyber Quarter

Cyber Quarter Ltd - a company of which the Council is a joint shareholder.

Shareholder Committee (SHC)

The committee of the Council's Executive set up on 12 Jan 2023 with [Terms of Reference](#) whose purpose is to act as the shareholder representative in relation to Cyber Quarter and to exercise the shareholder rights as delegated by Executive.

Shareholder Agreement (SHA)

A document dated 01 April 2019 signed by the shareholders of Cyber Quarter that determines the relationship between the shareholders, the directors and Cyber Quarter.

SRO

The senior officer of the Council responsible for ensuring that the services are delivered to the Council or residents. Often described as the customer of Cyber Quarter

2. Shareholder

The Council is a minority shareholder in Cyber Quarter. The shareholder function within the Council is an executive function and was delegated to the SHC. The Council has loaned Cyber Quarter £3.5m secured by a first legal charge.

3. Cyber Quarter Ltd

Cyber Quarter is a wholly owned company owned by the Council and the University of Wolverhampton. The Council has a shareholding of 19 shares and the University 80 shares. Decision making is governed by the terms of the SHA. The University has loaned Cyber Quarter £1.518m.

Cyber Quarter does not deliver services to the Council but has been set up as a joint venture for-profit company with the purpose of promoting the site for use by business involved with cyber security. More information can be found at its [website](#).

4. The Board of Directors

The Council appoints (and remove) two Directors to the Board (8.5 SHA) and the University also appoints two Directors (8.6 SHA). A further 2 non-executive Directors are also appointed (total of 6 on Board).

The University appoints any Director as the Chair (9.18 SHA). The Chair has a casting vote (9.18 SHA).

The meetings of the Board are quarterly (9.1 SHA) or more frequent if required on 5 days notice (9.2 SHA).

Meetings can be physically present, virtual or by any other method of simultaneous communication (9.5 SHA)

The quorum is 1 director from the Council and 1 director from the University (total 2 directors) (9.8 SHA).

Financial and Performance Information is provided by Cyber Quarter to the Council by presenting the information to the Directors at the Director's board meeting (5.5.1 SHA).

5. Decisions by Directors

The Directors make decisions by a majority vote (9.13 SHA) on all operational decisions other than those reserved to the Shareholders in Schedule 1 or delegated to the operational staff of Cyber Quarter (through the Chief Executive).

Voting can be via email providing that all eligible Directors cast a vote (9.14 SHA).

6. Meetings of the SHC

The meetings of SHC shall be three times per year in **February, June and October**.

The meeting shall be attended by the members of SHC and the Directors.

Where required the meeting shall be attended by the following:

- the Council's finance representative;
- the SRO in respect to services; and
- any other officer of Cyber Quarter that the Directors and Chairperson consider as necessary.

7. Information (Finance & Performance) Reporting by Directors

Cyber Quarter will provide such information to the Directors as necessary (17.1 SHA) to keep the Council informed about the business of the company. This includes management accounts (17.2.1 SHA), statutory accounts (17.2.2 and 17.2.3 SHA) and any other account (17.2.4 SHA).

The Directors shall report the Information the meeting of the SHC but this must remain confidential (17.4 SHA) unless the information would be disclosed under the Freedom of Information Act 2000 (17.10 SHA).

The Directors will notify the SHC which information the Company considers is confidential or exempt under the Council's Access to Information rules. The Council will determine the extent of information that will be restricted from the public.

The SHC will escalate any unmitigated risks immediately to the Executive.

The Council's finance function shall provide views in respect to any matters in the Financial Information (whether by attendance or report).

The Council's SRO shall provide views in respect to any matters in the Performance Information (whether by attendance or report).

The SHC shall notify the Director of any changes in reporting of Financial Information or Performance Information (12.4.5 SHA).

8. Business Planning

Annual Remit

The Annual Remit document will be produced by SHC and issued to the Cyber Quarter in **October** of each year.

The Annual Remit shall outline what the SHC requires from Cyber Quarter in the following financial year (including requirements as required by Schedule 2 of the SHA). The SHC shall consult with SRO, Lead Members and other officers as necessary before issuing the Annual Remit.

The Annual Remit document shall set out what the Council requires from the Cyber Quarter in each year and includes:

- priorities and focus for Cyber Quarter together with any delivery requirements;
- Any additions, variations or reductions to services; and
- Changes to financial requirements

The SHC will share Annual Remit document with any other shareholder of Cyber Quarter and where possible agree a common Annual Remit.

Business Plan

Cyber Quarter shall formulate a Business Plan to deliver the requirements of the Annual Remit for approval by SHC by **January** in the financial year (12.2 SHA).

The Business Plan shall include those items in Schedule 2 and attached here as Appendix 1.

Cyber Quarter and representatives of the SHC shall discuss and negotiate any parts of the Business Plan that do not or cannot align with the Annual Remit and identify mitigations or corrective action required.

The final budget to the Business Plan (if any) shall be submitted to Executive for approval and onward recommendation to full Council as part of the Council's annual budget setting process.

The Business Plan is only approved when both the plan and the budget to the support the plan are approved by the Council.

Annual Report

The SHC shall produce an annual report to the Council's Audit and Governance Committee in respect to the Cyber Quarter's performance over the 12 month review period. This will be in **July** in each year.

9. Decision Making

Council & Executive

Council and Executive make the strategic decisions for Cyber Quarter including agreeing the budget and priorities. These decisions are made in accordance with the Council's existing governance framework and timetable. Where the Council is a joint shareholder, then the decision making is governed by the terms of company law and any SHA.

SHC

The SHC is a committee of Cabinet and the statutory governance framework (such as committee reports, open meetings and forward planning) apply to the SHC. The SHC has been delegated by Cabinet the ability to make the decisions set out in the SHC Terms of Reference and the SHA.

The most relevant being the appointment and removal of directors, monitoring performance and the approval of the business plan (including budget). Cabinet may also delegate further shareholder functions to the SHC.

The matters reserved for shareholder approval (by the SHC) are set out in Schedule 1 of the SHA marked 'Shareholders' and attached here as Appendix 2.

These decisions reserved to the shareholders must be agreed by both the Council (the SHC) and the University (11.1.1 SHA)

Directors

The Council has the right to appoint directors to Cyber Quarter and has made the decision to appoint senior officers to the boards. As statutory Directors of Cyber Quarter, they have authority under the Cyber Quarters' Articles of Association to make decisions.

The Directors have statutory duties to Cyber Quarter under the Companies Act 2006 under [general duties](#). These are duties to Cyber Quarter rather than to the Council as customer or as individual shareholder. However, the duties include 'to act...to promote the success of the company for the benefit of its members as a whole..'. In the circumstances where the shareholders are limited in number and are in agreement, then generally the interests of the Cyber Quarter and the Council will align.

Directors appointed by the Council shall not be remunerated other than by a decision of SHC. The Council shall provide the standard officer indemnity to each Director appointed by the Council.

Decisions that must be made by the Board of Directors are recorded in Schedule 1 of the SHA marked 'Board' and attached here as Appendix 2.

Operational Decisions

All operational decisions are vested in the Directors of Cyber Quarter and employees to facilitate delivery of services to the Council. These are governed by Companies Act 2006 and the terms of the SHA.

Version: 1.0

Approved by Shareholder Committee: Resolution dated []

Appendix 1 – Business Plan

2 SCHEDULE 2

Business Plan

Each Business Plan will, unless otherwise agreed by the Shareholders in respect of a Financial Year, include the following items:

- A budget
- The plan for the delivery and funding of the Objectives for the forthcoming year;
- Progress report against previous year's Business Plan and the Objectives;
- The activities and functions of the facilities operated from within the Centre and any other assets of JVCo;
- The placement strategy for users/occupiers;
- Products and service developments providing an income stream to JVCo through the commercialisation of intellectual property rights and knowledge transfer;
- Costs and income of JVCo capital expenditure (premises, equipment, website); target sales volumes; running costs (employees, raw materials, maintenance, utilities, insurance); proposed sales channels (including on-line); and tax/PAYE/VAT issues;
- Treatment of reserves/surpluses;
- Funding requirements of JVCo including further investment by the Shareholders or possible sources of external investment (e.g. grants, Government assisted borrowing).

Appendix 2 – Shareholder Committee & Board of Directors Decisions

1 SCHEDULE 1

Reserved Matters

	Shareholders	Board	Reserved Matter
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Financial and Business

1.	✓		Adopt any Business Plan or make any material changes to any Business Plan after its approval.
2.	✓		Extend the activities of JVCo outside the scope of the Business or close down any business operation.
3.	✓		Give any guarantee, suretyship or indemnity outside the ordinary course of business to secure the liabilities of any person or assume the obligations of any person.
4.	✓		Appoint or remove the auditors of JVCo.
5.	✓		Alter JVCo's accounting reference date.
6.	✓		Make any significant change to any of JVCo's accounting or reporting practices.
7.	✓		Create any Encumbrance over the whole or part of the undertaking or assets of JVCo.
8.	✓		Approve the annual accounts of JVCo.
9.	✓		Establish or amend any pension scheme.
10.	✓		Change the names or the scope of the authority of the persons authorised to sign cheques or other financial instruments on behalf of JVCo.
11.	✓		Incur in any Financial Year any item or series of items of capital expenditure including finance leases (but excluding operating leases) of more than £50,000, unless such capital expenditure is expressly provided for in the Business Plan.
12.		✓	Incur in any Financial Year any item or series of items of capital expenditure including finance leases (but excluding operating leases) of more than £30,000, unless such capital expenditure is expressly provided for in the Business Plan.
13.	✓		Enter into or vary any operating lease either as lessor or lessee, of any plant, property or equipment of a duration exceeding three years or involving aggregate premium and annual rental payments in excess of £50,000, unless such operating lease is

			expressly provided for in the Business Plan.
14.		✓	Enter into or vary any operating lease either as lessor or lessee, of any plant, property or equipment of a duration exceeding three years or involving aggregate premium and annual rental payments in excess of £30,000.
15.	✓		Factor or discount any book debts of JVCo.
16.	✓		Give or take any loans, borrowing or credit (other than normal trade credit in the ordinary course of business) in excess of £3,000 or cause the aggregate indebtedness of JVCo to exceed £50,000, unless expressly provided for in the Business Plan.
17.	✓		Make any agreement with any revenue authorities or any other taxing authority, or make any claim, disclaimer, election or consent of a material nature for tax purposes in relation to JVCo its business, assets or undertaking.
18.	✓		Change the bankers of JVCo or open or close any bank accounts.
19.		✓	Approve the remuneration of the auditors of JVCo.

Shares, shareholder loans and constitutional

20.	✓		Unless required for the purposes of clause 36 alter any of the provisions of the Articles or any of the rights attaching to the Shares.
21.	✓		Save as provided in clause 3.1 , reduce or cancel any share capital of JVCo, purchase its own shares, hold any shares in treasury, allot or agree to allot, whether actually or contingently, any of the share capital of JVCo or any security of JVCo convertible into share capital, grant any options or other rights to subscribe for or to convert any security into shares of JVCo or alter the classification of any part of the share capital of JVCo.
22.	✓		Make any capitalisation, repayment or other distribution of any amount standing to the credit of any reserve of JVCo or pay or declare any dividend (other than under clause 5) or other distribution to the Shareholders or redeem or buy any Shares or otherwise reorganise the share capital of JVCo.
23.	✓		Admit any person whether by subscription or transfer as a member of JVCo save as provided for in this Agreement.
24.	✓		Save as anticipated by this Agreement, increase the amount of any Shareholder Loans or the variation of the terms of any Shareholder Loans.
25.	✓		Repurchase, repay, redeem or cancel any Shareholder Loan other than in accordance with the terms of any Loan Agreement or the terms of this Agreement.
26.	✓		Enter into any agreement with a Shareholder for the provision of additional funds or financial support from that Shareholder which differ from the terms on which the other Shareholder is providing equivalent finance or support.
27.	✓		Change the name or any trading name of JVCo.

28.	✓		Apply for admission to listing or admission to trading on a stock exchange or on any other investment exchange.
29.	✓		Change the status of JVCo from a limited company to a public limited company or from a company limited by shares to any other form of legal entity.

Control, management, directors and employees

30.	✓		Appoint or remove any Chief Executive and approve their terms of appointment (and including whether appointed as a Director with voting rights on the Board).
31.	✓		Appoint or remove any director non-executive directors or any directors which are not A Directors or B Directors (including as to the voting rights of any non-executive director).
32.	✓		Pay any fees, remuneration or other sums to or in respect of the services of any director or vary any such fees or remuneration. For the avoidance of doubt this will not apply to the payment or reimbursement of expenses properly incurred by any director in the course of carrying out his duties in relation to JVCo nor to any payment under any indemnity by JVCo to which the director is entitled under the Articles or under any relevant law.
33.	✓		Enter into or vary any agreement for the provision of consultancy, management or other services by any person which will, or is likely to result in, JVCo being managed otherwise than by its directors.
34.	✓		Amalgamate or merge with any company, association, partnership or legal entity or acquire any business undertaking of any other person.
35.	✓		Move the central management and control of JVCo or JVCo's tax residence outside of the UK.
36.	✓		Approve (or amend) JVCo's policies which affect the statutory liability of the directors (eg. anti-corruption, health and safety, non discrimination)
37.	✓		Change the registered office of JVCo.
38.	✓		Form any Subsidiary of JVCo, or acquire any shares in any other company, whether through subscription or transfer, such that the company concerned becomes a Subsidiary of JVCo.

Contracts with related parties

39.	✓		Enter into or terminate in any Financial Year any contract of employment with or contract for the provision of services by any person or persons whose aggregate remuneration of fees exceeds £50,000 per annum (ignoring any contract terminated for gross misconduct) or change the terms of any such contracts, unless expressly provided for in the Business Plan.
40.	✓		Enter into or vary any contracts or arrangements with any of the Shareholders or Directors or any person with whom any Shareholder or Director is connected (whether as director, consultant, shareholder or otherwise) save the Related Agreements and otherwise as anticipated in this Agreement.

Insolvency and related proceedings

41.	✓		Commence or take steps to commence any insolvency proceedings under any law relating to insolvency anywhere in the world unless JVCo is at the relevant time unable to pay its debts as the fall due or the value of its assets are less than its liabilities, including its contingent and prospective liabilities and the directors reasonably consider (taking into account their fiduciary duties) that it ought to be wound up or it ought to enter into administration.
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Contracts and other arrangements

42.	✓		Enter into any partnership, joint venture or profit sharing arrangement with any person or create any share option, bonus or other incentive scheme.
43.	✓		Enter into or make any material variation to any agreement not in the ordinary course of the Business and/or which is not on an arm's length basis.
44.	✓		Sell, lease (as lessor), license (as licensor), transfer or otherwise dispose of any of its material assets.
45.	✓		Enter into or vary any licence or other similar agreement relating to intellectual property which is otherwise than in the ordinary course of business.
46.	✓		Enter into any agency, distribution or similar agreement which confers any element of exclusivity as regards any goods or services or as to the area of the agreement or vary such agreement to include any such exclusivity, save where expressly provided for in the Business Plan.
47.	✓		Buy, lease (as lessee), license (as licensee) or otherwise acquire any assets at a total cost to JVCo per transaction exceeding £50,000 otherwise than in the ordinary course of business.
48.	✓		Acquire or agree to acquire any freehold or leasehold interest in or licence over land
49.	✓		Enter into or make any contract with a cost to JVCo of more than £50,000 (other than a Related Agreement).
50.		✓	Amend its standard terms of business.
51.		✓	Give notice of termination of any agreements of a material nature in the context of the Business or make any material variation or amendment to any such agreements.
52.	✓		Engage professional advisers where (i) the advice is expected to cost £50,000 or more or (ii) change the terms of engagement of any such advisers or (iii) where the nature of the advice will or may involve material impact on the Business.

Disputes and proceedings

53.	✓		Commence, settle or defend any claim, proceedings or other litigation brought by or against JVCo, except: (a) in relation to debt collection not exceeding £50,000 in
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			the ordinary course of the Business; or
			(b) In relation to proceedings by or against a Shareholder to which the provisions of clauses 9.16 or 9.17 (as applicable) will apply.

General

54.	✓		Enter into or vary any agreement to do any of the things referred to in the above paragraphs of this Schedule 1 .
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