

Corporate Governance Charter

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Encounter Resources Limited ACN 109 815 796 (**Company**)

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## Definitions

**Annual Report** means the annual report of the Company.

**Anti-bribery and Corruption Policy** means the policy set out in Section 11 developed from time to time by the Board establishing controls to ensure compliance with all applicable anti-corruption laws and regulations, and to ensure that the Company conducts business in a socially responsible manner.

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means the ASX Limited ABN 98 008 624 691.

**ASX Listing Rules or Listing Rules** means the Official Listing Rules of the ASX as amended or replaced from time to time.

**Audit and Risk Management Committee** means the Committee charged with determining, implementing and assessing controls for financial management, financial reporting and risk management generally for the Company.

**Board** means board of Directors of the Company.

**Chair** means the chair of the Board.

**Charter** means the charter adopted from time to time with respect to each Committee, as applicable to that Committee.

**Chief Executive Officer** means the person (if any) engaged by the Company in the role of the chief executive officer of the Company.

**Chief Financial Officer** means the person (if any) engaged the Company in the role of the chief financial officer of the Company.

**Committee** means a committee created by the Board under this Corporate Governance Charter including without limitation, the Audit and Risk Management Committee, the Remuneration Committee, the Corporate Governance Committee and the Nominations Committee (as applicable to the relevant section of this Corporate Governance Charter and as established from time to time).

**Company** means Encounter Resources Limited ACN 109 815 796.

**Company Secretary** means a person appointed by the Company to be the company secretary.

**Constitution** means the constitution of the Company.

**Corporate Ethics Policy** means the policy set out in Section 7 setting out directors' duties given their position with the Company, obligations with respect to trading in securities and general disclosure obligations.

**Corporate Governance Charter** means the policies, procedures and Charters set out in this document.

**Corporate Governance Committee** means the Committee charged with reviewing compliance by the Board with, among other matters, the provisions of this document.

**Corporate Governance Principles and Recommendations** means the *Corporate Governance Principles and Recommendations Fourth Edition* issued by the ASX Corporate Governance Council in 2019 as amended or replaced from time to time.

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**Corporate Governance Statement** means the statement referred to in Listing Rule 4.10.3 which discloses the extent to which the Company has followed the Corporate Governance Principles and Recommendations.

**Corporations Act** means the *Corporations Act 2001* (Cth) as amended or replaced from time to time.

**Director** means a director of the Company.

**Diversity** includes, but is not limited to, matters of gender, age, disability, ethnicity, marital or family status, sexual orientation, and religious or cultural background.

**Diversity Policy** means the policy set out in Section 8 developed from time to time by the Board establishing measurable objectives for achieving Diversity.

**Guidance Note** means the Guidance Notes published by the ASX as amended or replaced from time to time.

**Independent Director** means a Director who has a sufficient level of independence to the Company, determined in accordance with subclause 1.1(c) of this document.

**Listed** means admitted to the Official List of the ASX.

**Management** means the executive Directors and senior management of the Company.

**Managing Director** means the Director (if any) engaged by the Company in the role of the managing director of the Company.

**Nominations Committee** means the Committee for assisting the Board in relation to, among other things, the appointment of members to the Board and of senior management and in assessing the performance of such individuals.

**Non-Independent Director** means a Director who is not an Independent Director.

**Official List** means the official list of the ASX.

**Remuneration Committee** means the Committee charged with, among other things, reviewing remuneration levels for Directors and senior management.

**Securities** has the meaning given in section 92 of the Corporations Act.

**Standing Rules** means the general and procedural rules of each Committee set out in Section 6 of this Corporate Governance Policy.

**Trading Policy** means the policy set out in Section 9 developed from time to time by the Board setting out the procedure for trading in Securities of the Company by Directors, managerial staff, employees and any other persons who may be associated with the Company.

# Corporate Governance Charter

## Section 1 Principles of Corporate Governance

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### 1.1 Board of Directors

#### (a) General

This document sets out the main principles adopted by the Board of Directors of the Company to implement and maintain a culture of good corporate governance both internally and in its dealings with outsiders.

The Board of the Company is committed to administering the policies and procedures with openness and integrity, pursuing the true spirit of corporate governance commensurate with the Company's needs.

The matters set out in this document are subject to the Corporations Act, the Constitution and the ASX Listing Rules.

The purpose of preparing and disclosing the matters set out in this document is to:

- (1) formalise procedures to ensure the Company and the Board act in a transparent and appropriate manner in their respective internal and external dealings;
- (2) ensure that appropriate checks, balances and procedures are in place to monitor the operations of the Company and those charged with its management; and
- (3) provide shareholders with a transparent method to evaluate the performance of the Company from a corporate governance perspective.

In preparing and implementing these strategies, the Company and the Board are mindful of the Corporate Governance Principles and Recommendations.

#### (b) Functions, powers and responsibilities of Board

Generally, the powers and obligations of the Board are governed by the Corporations Act and the general law.

Without limiting those matters, the Board expressly considers itself responsible for the following:

- (1) ensuring compliance with the Corporations Act, the ASX Listing Rules and all other relevant laws;
- (2) providing leadership and developing, implementing and monitoring strategic operational and financial objectives for the Company and the overall performance of the Company;
- (3) appointing appropriate staff, consultants and experts to assist in the Company's operations;
- (4) ensuring appropriate financial and risk management controls are implemented;
- (5) setting, monitoring and ensuring appropriate accountability and a framework for remuneration of Directors and executive officers;
- (6) establishing and overseeing the Company's process for making timely and balanced disclosure of all material information in accordance with the ASX Listing Rules;

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- (7) implementing appropriate strategies to monitor performance of the Board in implementing its functions and powers;
- (8) implementing and overseeing the Company's risk management framework to enable risk to be identified, assessed and managed and to set the risk appetite the Board expects Management to operate within;
- (9) appointing the Chair;
- (10) appointing and removing the Chief Executive Officer and Company Secretary;
- (11) approving the appointment and, where appropriate, removal of members of Management;
- (12) contributing to and approving Management's development of corporate strategy and performance objectives;
- (13) monitoring Management's implementation of strategy and performance generally, and ensuring appropriate resources are available to Management;
- (14) monitoring the effectiveness of the Company's governance practices;
- (15) approving and monitoring the progress of major capital expenditure, capital management and acquisitions and divestitures;
- (16) approving the annual budget;
- (17) liaising with the Company's external auditors;
- (18) approving and monitoring financial and other reporting systems of the Company (including external audit) and the integrity of these systems; and
- (19) appointing and overseeing Committees where appropriate to assist in the above functions and powers.

## (c) **Structure of Board**

The structure of the Board is determined in accordance with the following principles:

- (1) to aim for, so far as is practicable given the size and the nature of the operations of the Company, a majority of the Board being Independent Directors;
- (2) to aim for, so far as is practicable given the size and the nature of the operations of the Company, the appointment of a Chair who is an Independent Director;
- (3) to aim for, so far as is practicable given the size and the nature of the operations of the Company, a Chair who is not the chief executive officer;
- (4) to aim for, so far as is practicable given the size and the nature of the operations of the Company, a Board comprising members with diverse backgrounds; and
- (5) to have a minimum of three Directors.

In assessing the independence of Directors, the Company has regard to Principle 2 of the Corporate Governance Principles and Recommendations and regards an Independent Director as a non-executive Director (that is, not a member of management) who:

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- (1) is not, and has not in the past three years been, a substantial shareholder of the Company or an officer of, or otherwise associated directly with, a substantial shareholder of the Company;
- (2) within the last three years has not been employed in an executive capacity by the Company or another group member;
- (3) does not receive excessive performance-based remuneration (including options or performance rights) from, or participate in an employee incentive scheme, of the Company;
- (4) within the last three years has not been in a material business relationship (by example, as a supplier, professional advisory, consultant or customer) with the Company or other group member, or an officer of, or otherwise associated with, someone in such a relationship;
- (5) does not have close family ties with any person who falls within any of categories (1) - (4) described above; and
- (6) has not served on the Board for a period which could, or could reasonably be perceived to, materially interfere with the Director's ability to act in the best interests of the Company or otherwise compromise their independence.

When considering whether a Director is an Independent Director, the materiality of such interest, position, association or relationship must be assessed to determine whether it might interfere, or might reasonably be perceived to interfere, in a material respect, with the Director's capacity to bring an independent judgement to bear on issues before the Board and to act in the best interests of the Company and its shareholders.

A Director must advise the Chair (or, in the case of the Chair, a member of the Nominations Committee) if there is a change in his or her interests, positions, associations or relationships that could bear on his or her independence at the earliest opportunity.

In an effort to ensure that the Board comprises members with a broad range of experience, expertise and skills relevant to the Company, the Board may establish a Nominations Committee or will otherwise consider the guidelines set out under the Nominations Committee Charter in Section 5.

In determining the composition of the Board, the Board and the Nominations Committee (if applicable), should consider the "skills matrix" below:

Skill	Skill	Skill
Geology and exploration	Acquisitions	Public Company Management experience
Risk management	Human resources	Finance
Health & safety	Technology	Project evaluation and development
Strategy	Marketing	Other sector experience - on a director-by-director basis
Accounting	Community development	

## 1.2 Chair

The Chair is responsible for leadership of the Board, for efficient organisation and conduct of the Board's function and the briefing of all Directors in relation to issues arising at Board



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meetings. The Chair is also responsible for shareholder communication and arranging Board performance evaluation.

## 1.3 Chief Executive Officer/Managing Director

The Chief Executive Officer or Managing Director (if any) is responsible for running the day to day affairs of the Company under delegated authority from the Board and to implement the policies and strategies set by the Board, within the risk appetite determined by the Board. In carrying out his or her responsibilities, the Chief Executive Officer or Managing Director must report to the Board in a timely manner and ensure that all reports to the Board are clear and accurate and present a true and fair view of the Company's financial position and operating results.

The Chief Executive Officer or Managing Director (if any) (together with the Chief Financial Officer, if there is one) will be required to state in writing to the Board that the financial records of the Company have been properly maintained and that the financial reports of the Company comply with relevant accounting standards and represent a true and fair view, in all material respects, of the Company's financial position and performance.

## 1.4 Company Secretary

The role of the Company Secretary is to support the effectiveness of the Board and the Committees. In carrying out his or her responsibilities, the Company Secretary is accountable directly to the Board in the performance of this role which includes, without limitation:

- (a) advising the Board and the Committees of governance matters;
- (b) monitoring compliance with Board and Committee policy and procedures;
- (c) coordinating the timely completion and despatch of Board and Committee papers;
- (d) ensuring that the business at Board and Committee meetings is accurately recorded in the minutes; and
- (e) helping to organise and facilitate the induction and professional development of Directors.

## 1.5 Induction of New Directors and Ongoing Director Education

On their first appointment, Directors will have the benefit of an induction program aimed at deepening their understanding of the Company, its activities and the business, environment and markets in which the Company operates. As part of the program Directors will be given briefings by Management, provided with minutes of meetings and copies of corporate governance policies.

Directors are also expected to keep themselves abreast of changes and trends in the Company's business, environment and markets and to keep abreast of changes and trends in the economic, political, social and legal climate generally. Directors are expected to have an appropriate base level of understanding on accounting matters. The Company will also provide, or arrange via its external auditor, briefings on developments in accounting standards.

## 1.6 Independent Advice

A Director may seek independent advice, including legal advice, where he or she believes it is necessary to properly discharge his or her duties as a Director. The Company will pay for the reasonable cost of this advice provided that the Director has obtained the prior written approval of the Chair (including for the cost of the advice).

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If the Chair wishes to seek independent advice and wishes for the Company to pay for the reasonable costs of that advice, the Chair must obtain the prior written approval (including for the cost of the advice) of the Managing Director.

Where a Director's request in respect of independent advice is approved as set out above, the Director and the Chair should agree who will provide instructions to the independent adviser. If the Chair has requested the advice, the Director who provided the approval to obtain the advice should undertake this role.

Where a Director's request in respect of independent advice is approved as set out above, a copy of the advice obtained will be provided to all Directors together with an explanation as to why the advice was obtained unless the Chair determines that this is not appropriate or that a different approach should be taken.

The other Directors will be advised if the Chair approves or declines a request to obtain independent advice unless the Chair determines such notification is not appropriate or that a different approach should be taken.

## 1.7 Corporate Ethics

The Company has adopted, under Section 7, a Corporate Ethics Policy which has been agreed to by each member of the Board setting out, in addition to these principles, the obligations of integrity and honesty on each member of the Board and his or her obligations with respect to trading in Securities in the Company (which is more comprehensively dealt with in the Trading Policy) and disclosure to the ASX.

In addition to the Corporate Ethics Policy, the Company also adheres to the following statement of principles and responsibilities with respect to both its internal dealings with employees and consultants, and external dealings with shareholders and the community at large.

The Company has separately adopted a Whistleblower Policy.

## 1.8 Corporate Code of Conduct

### (a) Introduction

This code of conduct sets out the standard which the Board, Management and employees of the Company are encouraged to comply with when dealing with each other, shareholders and the broader community.

### (b) Corporate values

In interpreting this code of conduct, regard should be had to the following values of the Company:

- (1) to conduct business with honesty, integrity, and fairness;
- (2) to comply with relevant laws and regulations applicable to it;
- (3) to ensure the safety and wellbeing of our representatives and other stakeholders; and
- (4) to respect and care for the environment and the wider communities in which we operate, in a sustainable manner.

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## (c) **Commitment of Board and Management to Code of Conduct**

The Board and Management approve and endorse this code of conduct. The Board and Management are committed to not only complying with the Company's legal obligations but also to acting ethically and responsibly.

The Board and Management encourage all employees to consider the principles of the code of conduct and use them as a guide to determine how to respond when acting on behalf of the Company.

## (d) **Responsibilities to shareholders and financial community generally**

The Company aims:

- (1) to increase shareholder value within an appropriate framework which safeguards the rights and interests of the Company's shareholders and the financial community;
- (2) to comply with systems of control and accountability which the Company has in place as part of its corporate governance; and
- (3) to act with honesty, integrity and fairness.

## (e) **Responsibilities to clients, customers and consumers**

The Company will comply with legislative and common law requirements which affect its business. Any material transgression from the applicable legal rules is to be reported to Management as soon as a person becomes aware of such a transgression.

## (f) **Employment practices**

The Company will seek to employ the best available staff and from diverse backgrounds with the skills required to carry out their roles. The Company may establish measurable objectives for achieving diversity outcomes.

The Company is committed to the ideal of equal employment opportunity, to providing a workplace that is free of harassment and discrimination. The Company will ensure a safe workplace and maintain proper occupational health and safety practices commensurate with the nature of the Company's business and activities. To this end, the Company will observe the rule and spirit of the legal and regulatory environment in which the Company operates.

## (g) **Responsibility to community and environment**

The Company will recognise, consider and respect legal requirements affecting its operations and comply with applicable legal requirements.

The Company will act with honesty, integrity and fairness in all dealings with the community and will act responsibly towards the environment.

## (h) **Responsibility to individuals**

The Company recognises and respects the rights of individuals and, to the best of its ability, will comply with the applicable legal rules regarding privacy, privileges, private and confidential information.

The Company and the Board will maintain the Company's and its shareholders', customers' and suppliers' information confidentiality unless required to be disclosed by law.

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## (i) **Obligations relative to fair trading and dealing**

The Company will deal with others in a way that is honest and fair and will not engage in deceptive practices. The Company is committed to complying with the laws and regulations of the countries in which its businesses operate and acting in an ethical manner, consistent with the principles of honesty, integrity, fairness and respect.

The Company believes that a fraudulent or corrupt act could significantly impact on the confidence of the Company's stakeholders and significantly diminish the Company's reputation. Accordingly, the Company has a zero tolerance policy to fraud and corruption and will thoroughly investigate and apply the full force of the law where sufficient evidence is obtained.

The Board may implement a fraud prevention and corruption control framework that addresses fraud and corruption prevention planning, resourcing, prevention, detection, response and reporting procedures.

All Directors, Management and employees of the Company and group members must exercise reasonable care and diligence in the prevention of fraud or corruption by or against the Company.

All Directors and employees of the Company or group members must:

- (1) understand and comply with this Code of Conduct;
- (2) not give, offer, accept or request bribes, facilitation payments, secret commissions or other prohibited payments or engage in money laundering or cause any of them to be given, offered, accepted or requested;
- (3) not approve any offers, or make, accept or request an irregular payment or other thing of value, to win business or influence a business decision in favour of the Company or the group members;
- (4) comply with any reporting and approval processes for gifts, entertainment or hospitality implemented by the Board from time to time;
- (5) not offer or receive any gifts, entertainment or hospitality to or from public or government officials or politicians, without approval from the Chair or the Board;
- (6) obtain required approvals for donations and sponsorship; and
- (7) immediately report to the Chair or the Managing Director (or Chief Executive Officer) if they uncover or suspect an incident of fraud or corruption.

The Company will comprehensively investigate all suspected incidents of fraud or corruption using the principles of independence, objectivity and the rules of natural justice. The Company is committed to ensuring no one suffers detrimental treatment as a result of refusing to take part in conduct that may constitute fraud or corruption or raises a genuine concern in respect of any such conduct.

The Company has a Whistleblower Policy which encourages the reporting of unethical or unlawful behaviour.

## (j) **Conflict of interest**

The Board, Management and employees of the Company must not involve themselves in situations where there is a conflict of interest between them as individuals and the interests of the Company (excluding those matters which may be subject to legal professional privilege). Where a conflict of interest arises the matter should be brought

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to the attention of the Chair in the case of a Director or the Managing Director or Chief Executive Officer in the case of a member of Management and a supervisor in the case of an employee, so that it may be considered and dealt with in an appropriate manner for all concerned.

(k) **Compliance with Code of Conduct**

Any breach of compliance with this code of conduct is to be reported directly to the Chief Executive Officer, Managing Director or Chair, as appropriate. Non-compliance with this code of conduct may result in disciplinary action.

(l) **Periodic review of Code of Conduct**

The Company will monitor compliance with this code of conduct periodically by liaising with the Board, Management and staff especially in relation to any areas of difficulty which arise from the code of conduct and any other ideas or suggestions for improvement of the code of conduct. Suggestions for improvements or amendments to the code of conduct can be made at any time.

(m) **Code of Conduct for Directors, employees and contractors**

The Company will endeavour to ensure that the above principles in this code of conduct are implemented and adopted by Directors, employees and contractors of the Company by importing the following principles into the terms of such engagements. Specifically, Directors, employees and contractors will be encouraged and expected to:

- (1) act in the best interests of the Company;
- (2) actively promote the highest standards of ethics and integrity in carrying out their duties for the Company and act honestly;
- (3) comply with the laws and regulations that apply to the Company and its operations;
- (4) not knowingly participate in any illegal or unethical activity;
- (5) disclose any actual or perceived conflicts of interest of a direct or indirect nature of which they become aware and not enter any arrangement or participate in any activity that would conflict with the Company's best interest or which they believe could compromise in any way the reputation or performance of the Company;
- (6) respect confidentiality of all information of a confidential nature which is acquired in the course of the Company's business and not disclose or make improper use of such confidential information to any person unless specific authorisation is given for disclosure or disclosure is legally mandated;
- (7) deal with the Company's customers, suppliers, competitors and each other with the highest level of honesty, fairness and integrity and to observe the rule and spirit of the legal and regulatory environment in which the Company operates;
- (8) protect the assets of the Company to ensure availability for legitimate business purposes and that no property, information or position belonging to the Company or opportunity arising from these is used for personal gain or to compete with the Company; and
- (9) report any breach of this code of conduct to Management, who will treat reports made in good faith of such violations with respect and in confidence.

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## 1.9 Communications with investors

The Company aims to ensure that shareholders are kept informed of all major developments affecting the state of affairs of the Company. To achieve this, the Company communicates information regularly to shareholders through a range of forums and publications.

The Company's website is one of its key communication tools and the Company endeavours to keep its website up-to-date, complete and accurate. The Company's website also contains a facility for shareholders to direct inquiries to the Company and to elect to receive communications from the Company via email.

The Company uses its annual general meeting (**AGM**) as an opportunity to further engage with its shareholders and seek their input on the management of the Company. The Company will undertake a number of steps to seek to maximise shareholders' ability to participate in the AGM process by:

- (a) making Directors, members of Management and the external auditor available at the AGM;
- (b) allowing shareholders in attendance at the AGM a reasonable opportunity to ask questions regarding the items of business, including questions to the external auditor regarding the conduct of the audit and the preparation and content of the auditor's report; and
- (c) providing shareholders who are unable to attend the AGM with an opportunity to submit questions in advance of the AGM, and make publicly available presentations and chair addresses provided at the meeting.

## 1.10 Selection of external auditor and rotation of audit engagement partner

### (a) Responsibility

The Board is responsible for the initial appointment of the external auditor and the appointment of a new external auditor when any vacancy arises. Any appointment made by the Board must be ratified by shareholders at the next AGM of the Company.

### (b) Selection criteria

#### (1) Mandatory criteria

Candidates for the position of external auditor of the Company must be able to demonstrate independence from the Company and an ability to maintain independence through the engagement period. Further, the successful candidate must have arrangements in place for the rotation of the audit engagement partner on a regular basis.

#### (2) Other criteria

Other than the mandatory criteria mentioned above, the Board may select an external auditor based on criteria relevant to the business of the Company such as experience in the industry in which the Company operates, references, cost and any other matters deemed relevant by the Board.

### (c) Review

The Audit and Risk Management Committee will review the performance of the external auditor on an annual basis.

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## 1.11 Committees

- (a) As set out in subclause 1.1(b), one of the functions of the Board is to form and monitor any special purpose Committees established to review certain aspects of the operations of the Company, having regard to the principles under this Section 1.
- (b) The Company has established an Audit and Risk Management Committee, which is comprised of its non-executive directors.

Having regard to the size of the Company, the Company has at this stage not established any other specific Committees. Rather, the Board undertakes roles that would otherwise be delegated to such committees.

- (c) In addition, the Company may in the future (if the Directors consider that the Company is of a size or its affairs of such complexity as to justify their formation) establish the following Committees:
  - (1) Corporate Governance Committee;
  - (2) Remuneration Committee; and
  - (3) Nominations Committee.
- (d) The Charters of each of these Committees are set out in this document.

# Corporate Governance Charter

## Section 2 Corporate Governance Committee Charter

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### 2.1 Committee members

The Company has not formally established a Corporate Governance Committee as the Directors consider that the Company is not of a size nor are its affairs of such complexity as to justify the formation of this Committee. The Board considers that it is able to efficiently and effectively oversee and address these issues without establishing a separate Corporate Governance Committee. In overseeing these matters, the Board will be guided by the Charter set out below. The Company will review this position periodically and determine whether a Corporate Governance Committee needs to be established.

### 2.2 Purpose

- (a) The Corporate Governance Committee Charter (in this Section 2, **Charter**) sets out the role, responsibilities, powers, authority and membership requirements of the Corporate Governance Committee (in this Section 2, **Committee**).
- (b) Key features of the Charter will be outlined in the Corporate Governance Statement or the Annual Report. The Charter is available to shareholders of the Company on the Company's website.

### 2.3 Definition and objectives of Committee

- (a) The Committee is a committee of the Board.
- (b) The Committee is responsible for:
  - (1) reviewing the performance of the Board and each individual Director;
  - (2) reviewing compliance by the Company with the Charter;
  - (3) ensuring an appropriate Board and Committee structure is in place to enable the Board to properly perform its review function, having regard to the size of the Company and the nature of its operations;
  - (4) assisting the Board in assessing the independence of Directors;
  - (5) preparing and reviewing the Company's annual public disclosures as required by the ASX Listing Rules regarding the Company's corporate governance system, including preparing the Corporate Governance Statement;
  - (6) periodically reviewing the Company's policies and procedures regarding meeting its continuous disclosure requirements;
  - (7) periodically considering areas of potential liabilities of Directors and seeking to ensure the Company adopts reasonable protective measures;
  - (8) assessing the adequacy and quality of information provided to the Board prior to and during its meetings;
  - (9) reviewing periodically this Charter, the Company's Corporate Governance Charter, Trading Policy, Corporate Ethics Policy and Diversity Policy and any other issues related to corporate governance, and recommending any proposed changes to the Board for approval;
  - (10) ensuring that the necessary controls are in place for risk management to be maintained;



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- (11) considering any changes to governance guidelines or recommendations of the ASX, and proposing any changes to the Board for approval;
  - (12) ensuring, so far as is practicable having regard to the size of the Company and the nature of its operations, compliance by the Company and the Board with the Corporate Governance Principles and Recommendations.
- (c) The purposes and provisions specified in this Charter are meant to serve as guidelines, and the Committee is delegated the authority to adopt such additional procedures and standards as it deems necessary from time to time to fulfil its responsibilities. Nothing in this Charter will, or is intended to, expand applicable standards of liability under the Corporations Act for directors of a corporation.

## **2.4 Powers and authority of Committee**

- (a) The Committee has the ability to direct any special investigations deemed necessary, to obtain access to the Company's professional advisors as needed and to consult independent experts, where considered necessary, to carry out its duties and has the authority to retain persons having special competencies (including, without limitation, legal or other consultants and experts) to assist the Committee in fulfilling its responsibilities.
- (b) The costs of consultations commissioned by the Committee will be borne by the Company.
- (c) The Committee has been, and will be, granted by the Board unrestricted access to all information and all employees have been, and will be, directed to cooperate as requested by members of the Committee.

## **2.5 Application of Standing Rules**

The Standing Rules for Committees apply to, and are deemed to be incorporated into this Charter, save where the Standing Rules conflict with any of the terms of this Charter.

# Corporate Governance Charter

## Section 3 Audit and Risk Management Committee Charter

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### 3.1 Committee members

- (a) The Board has established an Audit and Risk Management Committee which is comprised of three independent non-executive directors.
- (b) The Audit and Risk Management Committee (in this Section 3, **Committee**) will ideally consist of the following:
  - (1) a minimum of three members;
  - (2) only non-executive Directors (if the Company has three or more non-executive Directors, otherwise the Board may appoint executive Directors to the Committee);
  - (3) a majority of Independent Directors; and
  - (4) an Independent Director as the Chair who is not the Chair of the Board.
- (c) Each member of the Audit and Risk Management Committee is to be financially literate and at least one member of the Committee is to have accounting or related financial management experience. The members of the Audit and Risk Committee should, between them, have the accounting and financial expertise, technical knowledge and a sufficient understanding of the industry in which the Company operates, to discharge the Charter.
- (d) The Company Secretary, Chief Financial Officer, any accounting personnel for the Company and any representatives of the auditors or other experts may be invited to form part of the Committee or to attend meetings of the Committee from time to time.

### 3.2 Purpose

- (a) The Audit and Risk Management Committee Charter (in this Section 3, **Charter**) sets out the role, responsibilities, composition, authority and membership requirements of the Committee.
- (b) Key features of the Charter will be outlined in the Corporate Governance Statement, Annual Report or on the Company's website. The Charter is available to shareholders of the Company on the Company's website.

### 3.3 Definition and objectives of Committee

- (a) The Committee is a committee of the Board.
- (b) The Committee's primary function is to assist the Board in discharging its responsibility to exercise due care, diligence and skill in relation to the Company by:
  - (1) **Audit related**
    - (A) reviewing and making recommendations to the Board in relation to whether the Company's financial statements reflect the understanding of the members of the Committee, and otherwise provide a true and fair view of the financial position and performance of the Company;
    - (B) reviewing and ensuring that any corporate reports that are not audited are materially accurate, balanced and provide investors with appropriate information to make informed investment decisions;

# Corporate Governance Charter

- (C) reviewing and making recommendations to the Board in relation to the appropriateness of the accounting judgments or choices exercised by Management in preparing the Company's financial statements;
  - (D) ensuring that the quality of financial controls is appropriate for the business of the Company;
  - (E) reviewing the scope, results and adequacy of external and internal audits;
  - (F) requiring the external auditors to report to the Committee;
  - (G) monitoring corporate conduct and business ethics and ongoing compliance with laws and regulations, including with the Corporations Act, the ASX Listing Rules and other legislative and reporting requirements;
  - (H) maintaining open lines of communication between the Board, Management and the external auditors, thus enabling information and points of view to be freely exchanged;
  - (I) reviewing matters of significance affecting the financial welfare of the Company;
  - (J) ensuring that systems of accounting and reporting of financial information to shareholders, regulators and the general public are adequate and making recommendations in this regard;
  - (K) reviewing the Company's internal financial control system;
  - (L) considering and making recommendations regarding the appointment and removal of the external auditor and approving the remuneration and terms of engagement of the external auditor;
  - (M) monitoring and reviewing the external auditor's independence, objectivity and effectiveness, taking into consideration relevant professional and regulatory requirements and the performance and remuneration of the external auditor;
  - (N) developing and implementing policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provisions of non-audit services by the external audit firm and making recommendations on any proposal by the external auditor to provide non-audit services; and
  - (O) where the Company has an internal audit function, reviewing and making recommendations regarding:
    - (i) the appointment or removal of the head of internal audit;
    - (ii) the scope and adequacy of the internal audit work plan; and
    - (iii) the objectivity and performance of the internal audit function.
- (2) **Risk related**
- (A) reviewing and making recommendations to the Board in relation to the adequacy of the Company's processes for managing risks, including:

# Corporate Governance Charter

- (i) in relation to any incident involving fraud or other break down of the Company's internal controls; and
    - (ii) in relation to the Company's insurance program, having regard to the Company's business and the insurable risks associated with the business;
  - (B) ensuring the development and maintenance of an appropriate risk management policy framework that will provide guidance to Management in implementing appropriate risk management practices throughout the Company's operations, practices and systems and overseeing this framework;
  - (C) defining and periodically reviewing risk management as it applies to the Company;
  - (D) ensuring the Committee clearly communicates the Company's risk management philosophy, policies and strategies to Directors, Management, employees, contractors and appropriate stakeholders;
  - (E) ensuring that the Board and Management establish a risk aware culture which reflects the Company's risk policies and philosophies;
  - (F) reviewing methods of identifying broad areas of risk and setting parameters or guidelines for business risk reviews;
  - (G) making informed decisions regarding business risk management, internal control systems, business policies and practices and disclosures; and
  - (H) considering capital raising, treasury and market trading activities with particular emphasis on risk treatment strategies, products and levels of authorities.
- (c) Membership of the Committee will be disclosed in the Corporate Governance Statement, the Annual Report or the Company's website, together with details of the relevant experience and qualifications of members of the Committee.

## 3.4 Reporting

- (a) Proceedings of all meetings are minuted and signed by the Chair of the Committee (in this Section 3, **Committee Chair**).
- (b) The Committee, through the Committee Chair, is to report to the Board at the earliest possible Board meeting after each Committee meeting regarding the determinations and conclusions of the Committee at its meetings. Minutes of all Committee meetings (and circular resolutions of the Committee) are to be circulated to the Board.

## 3.5 Risk management policies

The Committee will ensure that the necessary controls are in place for an appropriate risk management framework to be maintained by:

- (a) devising a means of analysing the effectiveness of risk management and internal compliance and control systems and of the effectiveness of their implementation; and
- (b) reviewing the Company's risk management framework at least annually to satisfy the Committee that it continues to be sound.

# Corporate Governance Charter

## 3.6 Attendance at meetings

- (a) Other Directors (executive and non-executive) have a right of attendance at meetings. However, no Director is entitled to attend that part of a meeting at which an act or omission of that Director or a contract, arrangement or undertaking involving or potentially involving that Director or a related party of that Director is being investigated or discussed.
- (b) Notwithstanding subclause 3.6(a), if in the opinion of the Committee, their investigation or discussion will be assisted by hearing from the interested Director, the Committee may invite that Director to address the Committee. The Committee will give fair consideration to that address. The Director will not, however, be invited to take part in the deliberations following that address.

## 3.7 Access

- (a) The Committee will have unlimited access to the external and internal auditors, and to senior management of the Company and any group member. The Committee will also have the ability and authority to seek any information it requires to carry out its duties from any officer or employee of the Company and such officers or employees will be instructed by the Board to co-operate fully in provision of such information. The Committee will also have the ability to interview Management and internal and external auditors (with or without Management present).
- (b) The Committee also has the authority to consult independent experts where they consider it necessary to carry out their duties. Any costs incurred as a result of the Committee consulting an independent expert will be borne by the Company.

## 3.8 Application of Standing Rules

The Standing Rules for Committees apply to, and are deemed to be incorporated into this Charter, save where the Standing Rules conflict with any of the terms in this Charter.

# Corporate Governance Charter

## Section 4 Remuneration Committee Charter

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### 4.1 Committee members

The Board has not formally established a Remuneration Committee as the Directors consider that the Company is not of a size nor are its affairs of such complexity as to justify the formation of this Committee. The Board considers that it is able to deal efficiently and effectively with remuneration issues. In doing so, the Board will be guided by the Charter set out below.

The Company will review this position annually and determine whether a Remuneration Committee needs to be established. The Company will also provide details in its Corporate Governance Statement, the Annual Report or the Company's website of the processes it employs in relation to setting the level and composition of remuneration for directors and senior executives and ensuring that such remuneration is appropriate.

### 4.2 Purpose

- (a) The Remuneration Committee Charter (in this Section 4, **Charter**) sets out the role, responsibilities, composition, authority and membership requirements of the Remuneration Committee (in this Section 4, **Committee**).
- (b) Key features of the Charter will be outlined in the Corporate Governance Statement, the Annual Report or the Company's website. The Charter is available to shareholders of the Company on the Company's website.

### 4.3 Definition and objectives of Committee

- (a) The Committee is a committee of the Board which will ideally be comprised of:
  - (1) a minimum of three members;
  - (2) only non-executive Directors (if the Company has three or more non-executive Directors, otherwise the Board may appoint executive Directors to the Committee);
  - (3) a majority of Independent Directors; and
  - (4) an Independent Director as the Chair.

If the Committee includes an executive Director, the executive Director should not be involved in deciding his or her own remuneration and should be cognisant of any potential conflict of interest if he or she is involved in setting remuneration for other executives that may indirectly affect his or her own remuneration.

- (b) In developing the structure for executive remuneration, consider matters including that:
  - (1) Management should be remunerated by an appropriate balance of fixed remuneration and performance based remuneration;
  - (2) levels of fixed remuneration should be reasonable and fair, relative to the scale of the Company's business, and should reflect core performance requirements and expectations;
  - (3) any performance based remuneration should be clearly linked to specific performance targets which are aligned to the Company's short and long term performance objectives. Such targets should be appropriate to the Company's circumstances, goals and risk appetite;

# Corporate Governance Charter

- (4) equity based remuneration may include, among other things, options or performance rights. Such remuneration should be aligned to the Company's longer term performance objectives and should be structured in a manner so as to ensure they do not lead to a short term focus or the taking of undue risks; and
  - (5) any termination payments for Management should be agreed in advance and should not be applied in the case of removal for misconduct.
- (c) The Committee is responsible for reviewing the remuneration policies and practices of the Company and making recommendations to the Board in relation to:
- (1) Management remuneration and incentive plans including, but not limited to:
    - (A) pension and superannuation rights and compensation payments and any amendments to that policy proposed from time to time by Management;
    - (B) reviewing the on-going appropriateness and relevance of the Management remuneration policy and other Management benefit programs;
    - (C) considering whether to seek shareholder approval of the Management remuneration policy; and
    - (D) overseeing the implementation of the remuneration policy,and in respect of such Management remuneration, reviewing the competitiveness of the Company's Management compensation programmes to ensure:
    - (A) the programmes are attractive, with a view to ensuring the retention of the Company's Management;
    - (B) the motivation of the Company's Management to achieve the Company's business objectives; and
    - (C) the alignment of the interests of key leadership with the long term interests of the Company's shareholders;
  - (2) non-executive Director remuneration including, but not limited to:
    - (A) the Company's remuneration framework for non-executive Directors, including the process by which any pool of non-executive Directors' fees approved by shareholders are allocated to non-executive Directors;
    - (B) in developing the structure, considering matters including that:
      - (i) non-executive Directors should normally be remunerated by way of fees (in the form of cash, non-cash benefits or superannuation contributions);
      - (ii) levels of fixed remuneration for non-executive directors should reflect the time commitment and responsibilities of the role;
      - (iii) non-executive Directors may receive appropriate performance-based remuneration (including options or performance rights) as part of their remuneration,; and

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- (iv) non-executive directors should not be provided with retirement benefits (other than statutory superannuation),
  - (C) ensuring that the fees for non-executive members of the Board are within the aggregate amount approved by shareholders; and
  - (D) providing, in the Corporate Governance Statement, any departures from recommendation 8.2 if necessary;
- (3) the Company's recruitment, retention and termination policies and procedures for senior management;
- (4) incentive plans (equity and cash based) including, but not limited to:
  - (A) reviewing and approving the design of all equity based plans;
  - (B) keeping all plans under review in light of legislative, regulatory and market developments;
  - (C) for each equity-based plan, determining each year whether awards will be made under that plan;
  - (D) ensuring that the equity-based executive remuneration is made in accordance with the thresholds set in plans approved by shareholders and;
  - (E) reviewing and approving total proposed awards under each plan;
- (5) superannuation arrangements;
- (6) remuneration of members of other Committees of the Board; and
- (7) whether there is any inappropriate bias in remuneration for Directors, Management or other employees of the Company.

## 4.4 Remuneration policies

- (a) The Committee should design the remuneration policy in such a way that it:
  - (1) motivates Directors and Management to pursue the long-term growth and success of the Company within an appropriate control framework; and
  - (2) demonstrates a clear relationship between key executive performance and remuneration.
- (b) In performing its role, the Committee is required to ensure that:
  - (1) the remuneration offered is in accordance with prevailing market conditions, and that exceptional circumstances are taken into consideration;
  - (2) contract provisions reflect market practice; and
  - (3) targets and incentives are based on realistic performance criteria.
- (c) The Committee will also:
  - (1) overview the application of sound remuneration and employment practices across the Company; and



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- (2) ensure the Company complies with legislative requirements related to employment practices.

## 4.5 Approval

The Committee must approve the following prior to implementation:

- (a) changes to the remuneration or contract terms of Executive Directors and Management;
- (b) the design of new, or amendments to current, equity plans or Management cash-based incentive plans;
- (c) the total level of compensation proposed from equity plans or executive cash-based incentive plans; and
- (d) termination payments to executive Directors or Management, including consideration of early termination, except for removal for misconduct.

## 4.6 Access

- (a) The Committee will have access to employees of the Company and appropriate external advisers. The Committee may meet with these external advisers with or without Management being present. The Committee will also have the ability and authority to seek any information it requires to carry out its duties from any officer or employee of the Company and such officers or employees will be instructed by the Board to co-operate fully in provision of such information. The Committee will have the ability to interview Management and Directors where considered necessary or appropriate.
- (b) The Committee also has the authority to consult independent experts where they consider it necessary to carry out their duties. Any costs incurred as a result of the Committee consulting an independent expert will be borne by the Company.

## 4.7 Application of Standing Rules

The Standing Rules for Committees apply to, and are deemed to be incorporated into this Charter, save where the Standing Rules conflict with any of the terms in this Charter.

# Corporate Governance Charter

## Section 5 Nominations Committee Charter

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### 5.1 Committee members

The Company has not formally established a Nominations Committee as the Directors consider that the Company is not of a size nor are its affairs of such complexity as to justify the formation of this Committee. The Board considers that it is able to deal efficiently and effectively with Board composition and succession issues without establishing a separate Nomination Committee and in doing so, the Board will be guided by the Charter set out below.

The Company will review this position annually and determine whether a Nominations Committee needs to be established. The Company will also provide details in its Corporate Governance Statement, the Annual Report or the Company's website of the processes it employs to ensure that the Board has the appropriate balance of skills, knowledge, experience, independence and diversity to enable it to discharge its duties and responsibilities effectively.

### 5.2 Purpose

- (a) The Nominations Committee Charter (in this Section 5, **Charter**) sets out the role, responsibilities, powers, authority and membership requirements of the Nominations Committee (in this Section 5, **Committee**).
- (b) Key features of the Charter will be outlined in the Corporate Governance Statement, the Annual Report or the Company's website. The Charter is available to shareholders of the Company on the Company's website.

### 5.3 Definition and objectives of Committee

- (a) The Committee is a Committee of the Board which will ideally be comprised of:
  - (1) a minimum of three members;
  - (2) only non-executive Directors (if the Company has three or more non-executive Directors, otherwise the Board may appoint executive Directors to the Committee);
  - (3) a majority of Independent Directors; and
  - (4) an Independent Director as Chair.
- (b) If the Chair of the Committee is also the Chair of the Board, a separate Chair should be appointed if and when the Committee is dealing with the appointment of a successor to the Chair of the Board.
- (c) The Committee is responsible for assisting the Board in relation to the appointment of members to the Board and of Management (including, without limitation, a Chief Executive Officer, a Chief Financial Officer or a Chief Operating Officer (to the extent that the Company has or requires such positions)), and for the review of the performance of such persons.
- (d) The Committee is also responsible for implementing the Diversity Policy and ensuring that the Company seeks to achieve its objectives set out in the Diversity Policy.
- (e) The Committee will discharge its responsibility by:
  - (1) developing criteria for seeking and reviewing candidates for a position on the Board, or as a senior executive of the Company (as applicable), including implementation of processes to assess the necessary and desirable attributes

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of Board members and senior executives including relevant industry expertise, prior public company experience (especially at the board and committee levels), and other specialized knowledge and technical, professional and social skills most likely to result in superior performance in exercising the duties and discharging the obligations and responsibilities as a member of the Board or a Committee established by the Board or in their role as a senior executive of the Company;

- (2) identifying suitable candidates from diverse backgrounds for appointment to the Board, Management or senior executive positions;
- (3) undertaking appropriate checks on candidates for Board or senior executive positions, including as to the person's character, experience, education, criminal history and bankruptcy. A review should also be undertaken of the candidate's other commitments and whether the candidate will have sufficient time to fulfil his or her responsibilities as a Director or member of the Board or in their role as a senior executive of the Company;
- (4) reviewing appropriate applications for positions on the Board and for senior executive roles and recommending individuals for consideration by the Board;
- (5) ensuring the Company enters a written agreement with each Director, senior executive and member of Management, setting out the terms of their appointment to ensure both parties have a clear understanding of their roles and responsibilities;
- (6) in the case of a non-executive Director, the agreement should set out, among other things:
  - (A) the term of appointment and circumstances in which the office will become vacant;
  - (B) time commitments envisaged, as well as expected involvement with Committees or special duties;
  - (C) remuneration (including superannuation) and indemnity and insurance arrangements;
  - (D) requirements regarding disclosure of Director's interests and any matters which may affect the independence of the Director;
  - (E) the requirement to comply with key policies of the Company, including the Corporate Governance Charter, Disclosure Policy, Diversity Policy and Trading Policy;
  - (F) the Company's policy as to when Directors may seek independent advice at the expense of the Company; and
  - (G) ongoing rights of access to corporate information and ongoing confidentiality obligations;
- (7) in the case of a member of Management or senior executive, the agreement should generally address the above-mentioned information, as well as a clear description of the individual's position, duties and responsibilities, the person to whom they should report, circumstances which may result in termination and any entitlements on termination;
- (8) complete a Board "skills matrix" (with reference to clause 1.1(c) above) to identify any gaps in the collective skills of the Board that should be addressed as part of professional development initiatives and succession planning;

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- (9) implementing a program for inducting new Directors and providing appropriate professional development opportunities for Directors to develop and maintain the skill and knowledge required to perform their roles effectively;
  - (10) reviewing and making recommendations in respect of Board succession planning generally and ensuring there are plans in place to manage the succession of Management;
  - (11) reviewing Board performance, and reporting to the Board on, and providing recommendations to address, any issues that may emerge from a review of the Board, its Committees, each member of the Board and Management;
  - (12) periodically reviewing the composition of each Committee established by the Board and presenting to the Board recommendations for membership of those Committees; and
  - (13) reviewing and making recommendations to the Board in relation to the development and implementation of a process for evaluating the performance of the Board, its Committees and Directors.
- (f) Membership of the Committee will be disclosed in the Corporate Governance Statement, the Annual Report or the Company's website.

## **5.4 Access**

- (a) The Committee will have access to the Directors and Management. The Committee will also have the ability and authority to seek any information it requires to carry out its duties from any officer or employee of the Company and such officers or employees will be instructed by the Board to co-operate fully in provision of such information.
- (b) The Committee also has the authority to consult independent experts where they consider it necessary to carry out their duties. Any costs incurred as a result of the Committee consulting an independent expert will be borne by the Company.

## **5.5 Application of Standing Rules**

The Standing Rules for Committees apply to, and are deemed to be incorporated into this Charter, save where the Standing Rules conflict with any of the terms in this Charter.

# Corporate Governance Charter

## Section 6 Standing Rules of Committees

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### 6.1 Application

These Standing Rules apply to, and are deemed to be incorporated into the Charter of each Committee, except where the terms of these Standing Rules conflict with those of the relevant Charter.

### 6.2 Composition

- (a) The composition of each Committee will be determined in accordance with the following principles:
  - (1) each Committee will aim to have membership which comprises only non-executive Directors, save where there is not a sufficient number of non-executive Directors or the Board considers that to do so for a particular Committee would be unnecessary or desirable, in which case, the Board may appoint one or more executive Directors to the Committee;
  - (2) each Committee will aim to have a majority of its members being Independent Directors (where appropriate, given the size of the Company and the Board);
  - (3) provided the Committee includes at least one Independent Director, the Chair of the Committee will be an Independent Director; and
  - (4) the Committee will comprise at least three members (where appropriate, given the size of the Company and the Board).
- (b) Membership of each Committee will be disclosed in the Corporate Governance Statement, the Annual Report or the Company's website.
- (c) Committee members are appointed by the Board.
- (d) The term of appointment as a member is for a period of no more than one year, with Committee members generally being eligible for re-appointment for so long as they remain Directors. The effect of ceasing to be a Director is the automatic termination of that individual's appointment as a member of each Committee.
- (e) Membership of each Committee should be confirmed annually by the Board at the Board's first meeting following its annual shareholder meeting.
- (f) Each Director may attend Committee meetings but will have no voting rights unless he or she is a member of the relevant Committee.

### 6.3 Chair

- (a) The Chair of each Committee is selected by the Board.
- (b) Should the Chair be absent from a meeting and no acting Chair has been appointed, the members of the relevant Committee present at the meeting have authority to choose one of their number to be Chair for that particular meeting.

### 6.4 Meetings

- (a) Each Committee will meet at such intervals as required to fulfil its obligations but must meet at least two times annually, unless otherwise specified in the Charter applicable to that Committee.

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- (b) In addition, the Chair of a Committee is required to call a meeting of that Committee if requested to do so by any member of that Committee, the external auditors, the internal auditors, the Chair or another Board member.
- (c) The Chair of each Committee will appoint an executive or the Company Secretary to act as secretary to that Committee who will be responsible:
  - (1) in conjunction with the Chair, for drawing up the agenda, supported by explanatory documentation, and circulating it to the relevant Committee members prior to each meeting; and
  - (2) for keeping the minutes of each meeting of that Committee and circulating them to Committee members and to the other members of the Board.
- (d) A quorum will consist of two members.
- (e) The Chair of each Committee will report to the Board following each meeting of that Committee on the decisions made by the Committee.
- (f) Meetings may be held in any location and may be held by means of teleconference or videoconference.

## **6.5 Fees**

A member of each Committee may be entitled to receive remuneration as determined from time to time by the Remuneration Committee.

## **6.6 Review of Charter**

- (a) Each Charter is to be reviewed annually by the relevant Committee to ensure it remains consistent with that Committee's authority, objectives and responsibilities.
- (b) Significant changes to the Charter must be recommended by the relevant Committee and approved by the Board.

## **6.7 Duties and responsibilities**

- (a) The duties and responsibilities of a member of each Committee are in addition to those duties set out for a Director of the Board.
- (b) The duties and responsibilities of a member of each Committee are set out in each Charter.

# Corporate Governance Charter

## Section 7 Corporate Ethics and Continuous Disclosure Policy

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### 7.1 Introduction

Directors are subject to certain stringent legal requirements regulating their conduct, both in terms of their internal conduct as Directors and in their external dealings with third parties both on their own behalf and on behalf of the Company.

To assist Directors in discharging their duty to the Company in compliance with the relevant laws to which they are subject, the Company has adopted a Corporate Ethics Policy (**Policy**).

This Policy sets out rules binding Directors in respect of:

- (a) a Director's legal duties as an officer of the Company;
- (b) a Director's obligations to make disclosure to the ASX and the market generally; and
- (c) dealings by Directors in shares in the Company.

### 7.2 Directors' powers and duties

Each Director is required to comply strictly with the legal, statutory and equitable duties as an officer of the Company. Broadly, these duties are:

- (a) to act in good faith and in the best interests of the Company;
- (b) to act with due care and diligence;
- (c) to act for proper corporate purposes;
- (d) to avoid conflicts of interest or duty; and
- (e) to refrain from making improper use of information gained through the office of Director, or taking improper advantage of the office of Director.

### 7.3 General

Directors owe a variety of duties to the Company which may affect the appropriateness of their attendance at, and participation in, meetings of the Board. These duties arise as a result of the general law and also under the Corporations Act.

The Directors should be aware that if they breach their fiduciary duties to the Company, they may be liable to account to the Company for any profit they derive or to indemnify the Company against any loss their breach has caused.

Breaches of the Corporations Act duties may also give rise to an action for damages, fines and penalties or disqualification.

#### (a) Common law fiduciary duties

A director is said to be in a fiduciary, as opposed to an arm's length, relationship with the Company. As such a Director will owe various fiduciary duties to the Company which underlie matters relating to the conduct of a Director, including attendance at, and participation in, meetings. The positive duties of a Director include the duty to act in good faith in the best interests of the Company, to act for proper corporate purposes to give adequate consideration to matters for decision and to keep discretions unfettered.

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## (b) **Corporations Act**

A Director will also be subject to duties imposed by the Corporations Act. They include the duty to exercise care and diligence, to exercise their powers in good faith and for a proper purpose and not to misuse their position or information obtained from their position to gain an advantage for themselves or others or cause detriment to the Company.

## 7.4 **General duties of Directors**

### (a) **General law duty - to act for proper corporate purposes**

The duty to act for proper corporate purposes requires Directors to exercise the powers granted to them for the purpose for which they were given, not for collateral purposes.

### (b) **General law duty - to give adequate consideration and duty not to fetter a director's discretion**

The duty to give adequate consideration to matters for decision and to keep discretions unfettered requires Directors to give adequate consideration to matters when exercising their discretion. They must take positive steps to inform themselves about matters and not simply acquiesce in the decision making process.

### (c) **Care and diligence**

#### (1) **General law and Corporations Act duty - to act with a reasonable degree of care and diligence in exercising a director's powers and discharging a director's duties**

Under the Corporations Act, a Director must exercise the Director's powers and discharge the Director's duties with the degree of care and diligence that a reasonable person would exercise if that person:

- (A) was a director of a company in the same circumstances as the Company; and
- (B) occupied the same office and had the same responsibilities as the Director.

Case law on these provisions illustrates that the scope of the obligation of care and diligence will depend on the nature of the director's role and his or her position with the Company. For instance, generally executive directors will be subject to a higher standard of care and it has been held that a Chair of a company who is also Chair of the company's audit and risk management committee may have a higher duty of care than a mere non-executive director.

#### (2) **Business Judgment Rule**

The Corporations Act provides for a mechanism for a Director to avoid a breach of the Director's duty of care and diligence where certain parameters are met. This is known as the "business judgment rule". All Directors are expected to be familiar with this rule.

In summary, a Director who makes a business judgment is taken to meet the duty of care and diligence (whether under statute or the general law) if the Director:

- (A) makes the judgment in good faith and for a proper purpose;



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- (B) does not have a material personal interest in the subject matter of the judgment;
- (C) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and
- (D) rationally believes that the judgment is in the best interests of the corporation.

The Director's belief that the judgment is in the best interests of the Company is a rational one unless that belief is one that no reasonable person in the Director's position would hold.

A "business judgment" is any decision to take or not take action in respect of a matter relevant to the business operations of the Company.

While the business judgment rule assists Directors to avoid a breach of their duty of care and diligence under both the Corporations Act or under the general law, it does not relieve breaches of the other duties of Directors, whether under the Corporations Act or otherwise, described above.

## (d) **Act in good faith**

There are general law and Corporations Act duties:

- (1) to act in good faith in the best interests of the Company;
- (2) to act for a proper purpose;
- (3) not to improperly use the Director's position; and
- (4) not to improperly use information obtained by virtue of the Director's position.

The duty to act in good faith in the best interests of the Company requires Directors to use their discretion honestly and with reasonable care and diligence for the purposes for which it was conferred. A Director must not promote his or her personal interest by making or pursuing a gain in circumstances in which there is a conflict, or a real possibility of a conflict, between his or her personal interests and those of the Company. Additionally, a Director must not act to promote the interest of a third person where there is a conflict, or a real possibility of conflict, between their fiduciary duties to the Company and any duties owed to the third person.

## 7.5 **Avoiding conflicts**

### (a) **Attending and participating in Board meetings**

The duties in relation to conflict are of particular importance when a Director is considering whether or not he or she should attend and participate in Board meetings.

This rule requires a Director to avoid situations in which there is a "real and sensible possibility" of conflict between the Director's personal interests and the Company's interests. This duty is also of particular significance where Directors hold multiple directorships. While merely holding multiple directorships, even in competing companies, is not a breach of the rule against conflict, the rule will be breached if the Director discloses confidential information which the Director has gained as a result of their directorship of the other company.

Consequently, if a Director has a conflicting personal interest, whether direct or indirect, in a matter to be discussed at a meeting of the Board, they should first

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disclose this matter to the Board and then consider whether participating in the matter would result in a breach of their fiduciary duties.

## (b) **Material personal interest**

A Director who has a material personal interest in a matter that relates to the affairs of the Company is required to disclose this to the Company.

Directors who have a material personal interest in a matter generally must not attend a meeting of the Board while that matter is being considered or vote on the matter. However, a Director may do these things if a resolution of the Board is passed to this effect or if ASIC has given its consent.

Despite this, the same caution must be exercised as discussed above if the other Directors consent to the conflicted Director participating in the meeting. The conflicted Director should ensure that participation won't be in breach of his or her fiduciary duties or the duties imposed by the Corporations Act.

## (c) **Common directorships**

These duties become particularly relevant where companies have directors in common and a decision involving a potential conflict of interest is required to be taken by one of the companies. In this case, it will generally be prudent for a director who is on the board of both companies not to participate in the decision making process of either company on that matter.

## (d) **Directors providing services to Company**

To capitalise on the professional/technical expertise or experience of the Directors from time to time (other than in their capacity as Directors), the Company may engage the services of a Director (or a firm associated with the Director) **only** on the following terms and conditions:

- (1) the scope of the consultancy (or other services) is identified, together with a schedule of estimated costs and charge-out rates to be incurred with the Director or their firm;
- (2) (where considered necessary or appropriate) the Board may seek additional quotations for the same services; and
- (3) the consultancy services are approved by the Board.

## **7.6 Confidentiality**

The Directors will have access to any information which the Directors may consider necessary to perform their responsibilities and exercise their independent judgment when making decisions. All information received by a Director in these circumstances must be considered confidential and at all times remains the property of the Company.

Any confidential information of the Company acquired by a Director during the Director's appointment must not be disclosed by the Director, or the Director must not allow it to be disclosed, to any other person unless the disclosure is authorised by the Chair or is required by law or regulatory body (including a relevant stock exchange).

## **7.7 Independence**

The Board is required to regularly assess the independence of Directors to ensure that Directors do not have any relationship or interest that interferes with their unfettered and independent judgment, or could reasonably give the impression that the Director's independence has been compromised.

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Set out in Section 2 is the Corporate Governance Committee Charter under which the Corporate Governance Committee is charged with assessing the independence of each Director on behalf of the Board.

Directors are required to co-operate fully with any assessment process and give all reasonable information requested.

Directors are also required to fully and frankly tell the Board about anything that:

- (a) may lead to an actual or potential conflict of interest or duty;
- (b) may lead to a reasonable perception of an actual or potential conflict of interest or duty;
- (c) interferes with a Director's unfettered and independent judgment; or
- (d) could reasonably give the impression that a Director's independence has been compromised.

Directors are also required to tell the Company about any interest which they may have in Securities of the Company (or of a related body corporate) or interest in any contract relating to those Securities. This is discussed in greater detail below.

## 7.8 Dealings by Directors in Securities of Company

The Company has adopted the Trading Policy set out in Section 9 which is designed to ensure that Directors and others associated with the Company do not deal in Securities of the Company at inappropriate times or in inappropriate circumstances.

## 7.9 Notification to the ASX of Directors' interests

### (a) Relevant interests

Directors must also be aware that pursuant to the provisions of the Corporations Act they are obliged to provide the ASX with appropriate notifications of their interests in the Company.

Pursuant to section 205G of the Corporations Act, Directors must notify the ASX of their:

- (1) relevant interests in Securities of the Company or of a related body corporate; and
- (2) contracts:
  - (A) to which the Director is a party or under which the Director is entitled to a benefit; and
  - (B) that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by the Company or a related body corporate.

Directors must also ensure that the ASX is notified of the above interests in accordance with Listing Rule 3.19A. This Rule requires the Company, not the particular Director, to notify the ASX of the above interests.

### (b) Agreements with Directors

Accordingly, the Company will enter into an agreement with each Director under which each Director will be obliged to provide the necessary information to the Company. An agreement of this nature recognises that much of the information required by the ASX,

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under section 205G, is held by each Director, by virtue of their position and role within the Company. By entering into a formal agreement, the Company ensures that each Director has been notified of his or her disclosure obligations under the Corporations Act and each Director authorises the Company to give the information provided by him or her to the ASX on his or her behalf and as his or her agent.

## (c) **Notifiable interest**

In particular, Listing Rule 3.19A provides that when a Director is appointed the Company must notify the ASX of the above interests within five business days after the appointment (the appropriate form is ASX appendix 3X).

Listing Rule 3.19A requires disclosure of all **notifiable interests** in securities in the Company.

Under Listing Rule 19, a person has a **notifiable interest** in shares if the person has a relevant interest in shares within the meaning of the term **relevant interest** in section 9 of the Corporations Act.

Under section 9 of the Corporations Act the term **relevant interest** is defined by reference to sections 608 and 609 of the Corporations Act.

Directors need to exercise care in any assessment of whether they have a notifiable interest in securities that may be held by a third party such as:

- (1) an entity (such as a company, partnership or a trust) which they hold shares in;
- (2) a spouse; or
- (3) a relative, such as a son or daughter.

Under section 608(1) of the Corporations Act, a person has a relevant interest in securities if they:

- (1) are the holder of the securities;
- (2) have power to exercise, or control the exercise of, a right to vote attached to the securities; or
- (3) have power to dispose of, or control the exercise of a power to dispose of, the securities.

Also by virtue of section 608(3):

- (1) if a person has in respect of any body corporate, or managed investment scheme, a voting power that is above 20% , then the person is deemed to have the same relevant interests in any securities that the body corporate or managed investment scheme holds in respect of any securities; and
- (2) a person, who controls any body corporate, or managed investment scheme, has the relevant interests in any securities that the corporate, or managed investment scheme has.

Under section 608(4), a person controls a body corporate if the person has the capacity to determine the outcome of decisions about the body corporate's financial and operating policies.

It is recommended that a conservative approach be taken in respect of determination of a Director's notifiable interest.

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## (d) **Provision of information**

Accordingly, each Director must provide the following information as at the date of his or her appointment as a Director:

- (1) details of all Securities registered in his or her name, including the number and class of the Securities;
- (2) details of all Securities not registered in the Director's name but in which he or she has a relevant interest within the meaning of section 9 of the Corporations Act, including the number and class of the Securities, the name of the registered holder and the circumstances giving rise to the relevant interest; and
- (3) details of all contracts to which the Director is a party or under which the Director is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by the Company or a related body corporate, including the number and class of the shares, debentures or interests, the name of the registered holder if the shares, debentures or interests have been issued, and the nature of the Director's interest under the contract.

## (e) **Change in interests**

Where a change in the above interests of a Director occurs the Company must advise the ASX of the change in the Director's interests no more than five business days after the change occurs (the appropriate form is ASX appendix 3Y). Directors will need to provide to the Company on an on-going basis, as soon as reasonably possible after the date of the change and, in any event, no later than three business days after the date of the change:

- (1) details of changes in Securities registered in the Director's name, including the following:
  - (A) the date of the change;
  - (B) the number and class of Securities held before and after the change;
  - (C) the nature of the change (eg, on-market, off-market);
  - (D) the consideration paid or received in connection with the change; and
  - (E) if an off-market transaction, the value of the Securities that are the subject of the change;
- (2) details of changes in Securities not registered in the Director's name but in which he or she has a relevant interest within the meaning of section 9 of the Corporations Act, including the following:
  - (A) the date of the change;
  - (B) the number and class of Securities held before and after the change;
  - (C) the name of the registered holder before and after the change;
  - (D) the circumstances giving rise to the relevant interest;
  - (E) the nature of the change (eg, on-market, off-market);
  - (F) the consideration paid or received in connection with the change; and

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- (G) if an off-market transaction, the value of the Securities that are the subject of the change; and
- (3) details of all changes to contracts to which the Director is a party or under which the Director is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by the Company or a related body corporate, including the following:
  - (A) the date of the change;
  - (B) the number and class of the shares, debentures or interests to which the interest relates before and after the change;
  - (C) the name of the registered holder if the shares, debentures or interests have been issued; and
  - (D) the nature of the Director's interest under the contract.
- (f) **Cessation of directorship**

Where a Director ceases to be a Director the Company must notify the ASX of the interests of the Director at the time the Director ceases to be a Director, no more than five business days after the director ceases to be a Director (the appropriate form is ASX appendix 3Z). Directors must supply to the Company as soon as reasonably possible after the date of ceasing to be a Director and, in any event no later than three business days after the date of ceasing to be a Director, the following information:

- (1) details of all Securities registered in the Director's name, including the number and class of the Securities;
  - (2) details of all Securities not registered in the Director's name but in which he or she has a relevant interest within the meaning of section 9 of the Corporations Act, including the number and class of the Securities, the name of the registered holder and the circumstances giving rise to the relevant interest; and
  - (3) details of all contracts to which the Director is a party or under which he or she is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the Company or a related body corporate, including the number and class of the shares, debentures or interests, the name of the registered holder if the shares, debentures or interests have been issued, and the nature of the Director's interest under the contract.
- (g) **Substantial shareholder provisions**

Directors should also be aware of the substantial shareholder provisions contained in section 671B of the Corporations Act which require certain notices to be served on the Company and the ASX when a shareholder has a relevant interest in at least 5% of the issued shares in the Company and any changes of more than 1% to that relevant interest.

## 7.10 Company's obligation of disclosure

### (a) **ASX Listing Rules**

As a Listed entity, the Company must comply with certain continuous disclosure obligations imposed by the Corporations Act and the ASX Listing Rules. Chapter 3 of the ASX Listing Rules requires the Company to provide the ASX with immediate notice of certain material information.

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The general disclosure rule imposed on the Company is contained in Listing Rule 3.1 of the ASX Listing Rules:

*"3.1 Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell ASX that information."*

ASX Listing Rule 3.1A provides that Listing Rule 3.1 does not apply to particular information while each of the requirements of Listing Rule 3.1A are satisfied (see subclause 7.10(f) below).

There is also the "false market"/"rumours" disclosure rule in Listing Rule 3.1B as follows:

*"3.1B If ASX considers that there is or is likely to be a false market in an entity's securities and asks the entity to give it information to correct or prevent a false market, the entity must immediately give ASX that information."*

The provisions of chapter 3 are reinforced by chapter 6CA of the Corporations Act. In particular, section 674(2) provides that if:

- (1) provisions of the listing rules of a listing market in relation to an entity require an entity to notify the market operator of information about specified events or matters as they arise for the purpose of the operator making that information available to participants in the market;
- (2) the entity has information that those provisions require the entity to notify to the market operator; and
- (3) that information:
  - (A) is not generally available; and
  - (B) is information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of securities of the entity,

the entity must notify the market operator of that information in accordance with those provisions.

It is therefore essential that Directors acquaint themselves not only with their personal obligations of disclosure, but also the disclosure obligations imposed on the Company.

## (b) **The disclosure obligation**

Under the provisions of Listing Rule 3.1, the Company is required to immediately notify the ASX of any information concerning the Company of which it is, or becomes, aware, and which a reasonable person would expect to have a material effect on the price or value of the Company's shares.

### (1) **When is the Company aware of information?**

The Listing Rules provide that the Company is aware of information if a Director or executive officer has, or ought reasonably to have, come into possession of the information in the course of the performance of his or her duties as a Director or executive officer of the Company.

An "executive officer" of the Company means a person who is concerned in, or takes part in, management of the Company. A person can be an executive

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officer regardless of his or her designation, and irrespective of whether or not the person is a Director.

## (2) **The meaning of immediately**

The ASX has issued a guidance note that provides guidance on how the ASX interprets the word “immediately” in the context of disclosure. The guidance note provides that the word “immediately” should not be read as meaning instantaneously, but rather as meaning promptly and without delay. Doing something promptly and without delay means doing it as quickly as it can be done in the circumstances (acting promptly) and not deferring, postponing or putting it off to a later time (acting without delay).

The ASX recognises that the following circumstances may dictate how quickly an entity can give an announcement of particular information to the ASX and will take them into consideration when assessing whether an entity has complied with its disclosure obligations:

- (A) where and when the information originated;
- (B) the forewarning (if any) the entity had on the information;
- (C) the amount and complexity of the information concerned;
- (D) the need in some cases to verify the accuracy or bone fides of the information;
- (E) the need for an announcement to be carefully drawn so it is accurate, complete and not misleading;
- (F) the need for an announcement to comply with specific legal or listing rule requirements, such as the requirement for an announcement that relates to mining or oil and gas activities to comply with chapter 5 of the Listing Rules; and
- (G) the need in some cases for an announcement to be approved by the entity’s board or disclosure committee.

## (3) **What information has a material effect on price?**

The effect of information on the price or value of the Company shares is to be judged by the expectations of a “reasonable person”. A reasonable person would expect information to have a material effect on the price or value of the Company shares if the information would, or would be likely to, influence investors who commonly invest in shares in deciding whether or not to deal in the Company shares.

ASX Guidance Note 8 states that an officer faced with a decision on whether information needs to be disclosed under Listing Rule 3.1 may find it helpful to ask two questions in deciding whether information is information that a reasonable person would expect to be disclosed:

- (A) Would this information influence my decision to buy or sell securities at their current market value?
- (B) Would I feel exposed to an action for insider trading if I were to buy or sell securities in the entity at their current market price, knowing this information had not been disclosed to the market?



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If the answer to either question is “yes”, then that should be taken to be a cautionary indication that the information may be market sensitive and, if the carve-out from immediate disclosure in Listing Rule 3.1A does not apply, may need to be disclosed under Listing Rule 3.1.

The Company and each Director should be aware of ASX policy with respect to the disclosure of material information relating to the:

- (A) financing arrangements of the Company; and
- (B) existence and terms of any finance arrangements that may be in place in relation to a Director’s shareholdings (for example margin loans).

## (4) **Trading halts**

Where the Company is or will be trading at any time after it first becomes obliged to give market sensitive information to the ASX under Listing Rule 3.1 and before it can give an announcement with that information to the ASX for release on the market, the Company should consider requesting a trading halt to ensure its Securities are not being traded on an uninformed basis.

The Chair and the Managing Director (or Chief Executive Officer) are authorised to make a decision to request a trading halt. In the absence of the Chair or the Managing Director (or Chief Executive Officer), the Chief Financial Officer, the Company Secretary or a Director are each authorised to make a decision to request a trading halt. An authorised person will endeavour to consult with the Chair and as many Board members as practicable regarding the decision to request a trading halt. No other employees are authorised to request a trading halt or suspension on behalf of the Company.

The Company will have a template letter requesting the ASX to grant a trading halt ready for use at all times. The Company will ensure that the ASX can always contact someone who can speak on behalf of the Company.

## (5) **Finance arrangements**

Where the Company has in place or enters into new material financing arrangements or alters existing material financing arrangements which include terms that may be activated on the occurrence of certain events (particularly those beyond the control of the Company, such as market events) disclosure may be required under Listing Rule 3.1 at the time of entry or alteration on the time any such term is activated or becomes likely to be activated.

The disclosure required may include the nature and terms of the arrangements, the trigger event, any other material information such as any impact that triggering of the term may have on the Company’s relationship with its bankers, or financial position or financial performance. It may also be appropriate in some circumstances for the Company to request a trading halt if the Company is unable to immediately release the information.

## (6) **Employment Contracts**

Listing Rule 3.16 requires the Company to immediately tell the ASX of a change of Chair, Director, Chief Executive Officer (or equivalent), or Company Secretary, and disclose details of certain material terms of an engagement of a Chief Executive Officer or Director, or a related party thereof.

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## (7) **Margin loans**

Listing Rule 3.19A and 3.19B require the Company to disclose the notifiable interests of a Director within five business days of the appointment or resignation of the Director or a change occurring to the notifiable interests. Information about shareholders and their shareholdings can be material under Listing Rule 3.1 and require immediate disclosure.

A Director must disclose to the Company any financial arrangements or margin loan the Director has entered into in respect of any Securities which the Director holds in the Company. Such disclosure by the Director should be on entering into the arrangements and should include key terms of the arrangements, including the number of Securities involved, the trigger points, any right of the lender to sell unilaterally and any other material details.

Where a Director has entered into a margin loan or similar funding arrangements, the Company may be under an obligation under Listing Rule 3.19A to disclose the key terms of the arrangements, including the detail of the contract, the nature of the interest, the interest acquired and disposed, and the value/consideration.

## (c) **Exemption from disclosure**

The Listing Rules provide that the Company does not need to disclose information under Listing Rule 3.1A if **each** of the following is satisfied:

- (1) one or more of the following applies (Listing Rule 3.1A.1):
  - (A) it would be a breach of a law to disclose the information;
  - (B) the information concerns an incomplete proposal or negotiation;
  - (C) the information comprises matters of supposition, or is insufficiently definite to warrant disclosure;
  - (D) the information is generated for internal management purposes of the Company; or
  - (E) the information is a trade secret;
- (2) the information is confidential (Listing Rule 3.1A.2); and
- (3) a reasonable person would not expect the information to be disclosed (Listing Rule 3.1A.3).

It must be noted that the above exemption from the requirement to make disclosure only operates while all three elements are satisfied. If any of the requirements cease to be satisfied, the Company must disclose the information immediately.

The Listing Rules and accompanying Guidance Notes issued by the ASX provide a number of examples of matters that may require disclosure.

## (d) **ASX policy**

The ASX has issued Guidance Note 8 in relation to continuous disclosure under Listing Rules 3.1 - 3.1B. Although not necessarily binding on the ASX, the Guidance Note gives some insight into the factors the ASX will take into consideration when determining if a Company has complied with its continuous disclosure obligations and provides worked examples of the operation of Listing Rule 3.1.

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(1) **Prime importance**

The ASX states that timely disclosure of relevant information is of prime importance to the operation of an efficient market. The fundamental principle under which the Listing Rules operate is that *“timely disclosure of market sensitive information is essential to maintaining and increasing the confidence of investors in Australian markets, and to improving the accountability of company management.”*

(2) **Continuous disclosure practice**

The Listing Rules make it clear that all Listing Rules (including Listing Rule 3.1A) must be complied with in the “spirit” of continuous disclosure. The ASX states that the Listing Rules are not intended to be interpreted in a legalistic or restrictive manner.

(3) **Market speculation**

The ASX notes that from time to time it may be necessary to respond to speculation (whether this be a report or rumour) in order for the market to remain properly informed.

The ASX states that it does not expect companies to respond to all comments made in the media, or to respond to all market speculation. However, when the comment or speculation appears to be based on credible market sensitive information (whether that information is accurate or not) and the market moves in a way that appears to reference the comment or speculation, the Company should make a statement in response to ensure the market remains properly informed.

It is ASX policy that whatever the information, and however much it might otherwise have been reasonable not to disclose it, the information should be released to the whole market once it becomes known to any part of the market.

(4) **ASX review**

In considering whether information is sufficiently material to require disclosure, it is important to bear in mind the test the ASX will apply when analysing the Company’s actions after the disclosure might have otherwise been made.

In particular, if information is announced later than when the ASX thinks it should have been and the trading in the lead up to, and shortly after, the announcement suggests that it has moved the market price of the Company’s Securities (relative to other Securities in the same sector) by:

- (A) 10% or more, the ASX will generally regard that as confirmation that the information was market sensitive; or
- (B) 5% or less, the ASX will generally regard that as confirmation that the information was not market sensitive.

The ASX has also set out in the notes to Listing Rule 3.1 a number of specific circumstances that may require disclosure under Listing Rule 3.1.

(5) **Disclosure of information to brokers and the media**

Listing Rule 15.7 has the effect that the Company must not release information which is for release to the market to any person (including the media, even on an embargoed basis) until it has given the information to the ASX, and has received an acknowledgement that the ASX has released it to the market.

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With respect to analysts, the ASX states that a company must only disclose public information in answering analysts' questions, or reviewing analysts' draft reports. The ASX states that it is inappropriate for a question to be answered, or a report corrected, if doing so involves providing material information that is not public. The ASX states that when analysts visit a company, care should be taken to ensure that they do not obtain material information that is not public.

(e) **Information disclosure program procedures**

As will be apparent from the above, it is essential for the Company to design a disclosure system to ensure:

- (1) a breach of Listing Rule 3.1A does not occur; and
- (2) that information is made available to all investors equally.

(f) **Directors and executive officers**

Each of the following personnel (**Reporting Group**) will need to participate in the "continuous disclosure" system, because information in their possession will need to be considered to comply with the continuous disclosure obligation:

- (1) the Directors;
- (2) Managing Director or Chief Executive Officer; and
- (3) Chief Financial Officer and Company Secretary.

(g) **Overseeing and co-ordinating disclosure**

The Chair, Managing Director (or Chief Executive Officer) and Company Secretary will individually and collectively be responsible for:

- (1) ensuring the Company complies with its continuous disclosure obligations (ie, market sensitive material);
- (2) overseeing and co-ordinating disclosure of information to the ASX;
- (3) reviewing information to be provided to analysts, brokers, the media and the public, to be able to ensure any market sensitive material has been released to the ASX;
- (4) overseeing and co-ordinating any request for a trading halt for the purpose of dealing with a potential disclosure issue; and
- (5) educating Directors, Management and employees on the Company's disclosure policy and raising awareness of the principles underlying continuous disclosure.

(h) **Information collecting procedures to ensure Listing Rule 3.1A (market sensitive information) is identified**

The responsibilities of each member of the Reporting Group are:

- (1) to ensure all notifiable (market sensitive) information is kept confidential within the Reporting Group;
- (2) to collect and forward to the Chair, Managing Director (or Chief Executive Officer) and Company Secretary, as the case may be, all information which is, or may be required to be disclosed and consult with them if in doubt; and

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- (3) to make senior personnel within his or her area of responsibility aware of the Company's disclosure obligations to ensure that all relevant information is provided to them.

- (i) **Company spokespersons**

To maintain control over disclosures, only the following persons will be authorised to speak on the Company's behalf to analysts, brokers and institutional investors, and to respond generally to shareholder queries:

- (1) Chairperson;
- (2) Managing Director (or Chief Executive Officer);
- (3) Chief Financial Officer;
- (4) Company Secretary; and
- (5) any other persons authorised by the Chairman, Managing Director or Chief Executive Officer.

- (j) **Company website**

Information released to the ASX should also be disclosed on the Company's website. In addition, it is good practice to include on the Company's website other materials presented to analysts and institutions.

- (k) **Periodic disclosure**

In addition to the Corporations Act obligations, Chapter 4 of the ASX Listing Rules requires Listed entities to prepare and disclose annual and half yearly financial reports. The continuous disclosure policy applies equally to the periodic disclosure requirements.

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## Section 8 Diversity Policy

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### 8.1 General purpose and principle

- (a) The Company respects and values the competitive advantage of Diversity and the benefit of its integration throughout the Company to enrich the Company's perspective, improve corporate performance, increase shareholder value and maximise the probability of achievement of the Company's goals. The Company acknowledges that Diversity is important to the Company's ability to attract, retain and motivate employees from the widest possible pool of available talent (**Principle**).
- (b) In furtherance of the Company's commitment to the Principle, the Board wishes to give effect to recommendation 1.5 of the Corporate Governance Principles and Recommendations. The Company will in broad terms put the Principle into practice in the following manner:
  - (1) strategically and operationally, by:
    - (A) being attuned to diverse strategies to deliver the Company's objectives with respect to Diversity;
    - (B) being attuned to diverse corporate, business and market opportunities; and
    - (C) being attuned to diverse tactics and means to achieve those strategies in 8.1(b)(1)(A) and to take advantage of those opportunities in 8.1(b)(1)(B) above;
  - (2) through management, by:
    - (A) adding to, nurturing and developing the collective relevant skills, and diverse experience and attributes of personnel within the Company; and
    - (B) ensuring that the Company's culture and management systems are aligned with and promote the attainment of the Principle.
- (c) In addition, the Company will put the Principle into practice in the following specific ways:
  - (1) the Company will ensure that recruitment and selection practices at all levels are appropriately structured so that a diverse range of candidates are considered. To hire the best person for the job, there needs to be a consideration of a broad and diverse pool of talent;
  - (2) the Company will identify, implement and develop strategies, initiatives and programs to develop a broader and more diverse pool of skilled and experienced employees with a view to preparing those employees over time, for senior management positions;
  - (3) the Company will not tolerate discrimination, harassment, vilification or victimisation of any employee of the Company or group member;
  - (4) the Company will foster an inclusive culture and Diversity at all levels of the organisation; and
  - (5) the Company will ensure equal pay for equal work across its workforce, with strategies in place to manage pay equity.

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- (d) Management will monitor, review and report to the Board (including via the Corporate Governance Committee) on the achievement of Diversity with respect to the matters referred to in paragraph 8.1(b)(2)(B), the Company's progress under this Policy.

## 8.2 Responsibility for Policy

The Board retains ultimate accountability for this Policy and is responsible for its implementation.

## 8.3 Measurable objectives, targets and key performance indicators

With respect to gender diversity, Management may:

- (a) develop, for approval by the Board (or the Nominations Committee), as appropriate for the relevant stage of the Company's development, measurable objectives for achieving gender diversity including concerning the strategies, initiatives and programs referred to in subclause 8.1(c); and
- (b) report from time to time (at least annually) on the measurable objectives and the progress of the matters referred to in paragraph 8.3(a).

## 8.4 Compliance requirements

- (a) The Company will meet its obligations with respect to the issue of Diversity, as required under the Corporate Governance Principles and Recommendations and other regulatory requirements (if any), including by:
  - (1) establishing this Policy as a compliant policy under recommendation 1.5 of the Corporate Governance Principles and Recommendations by:
    - (A) establishing measurable objectives for achieving gender diversity which are appropriate for the relevant stage of the Company's development; and
    - (B) the Board assessing annually the measurable objectives for achieving gender diversity and the progress towards achieving them;
  - (2) disclosing this Policy or a summary of it on the Company's website; and
- (b) The Company Secretary will assume line responsibility to ensure that the Company meets its compliance and reporting obligations referred to in this clause 8.4, including by collecting and collating all relevant data and ensuring that management processes and systems are adequate and effective for such reporting obligations to be met.

## 8.5 Accountability

- (a) At least annually the Nominations Committee will report to the Board on progress towards attainment of the Principle, and otherwise to facilitate the Board in meeting its Compliance Requirements under clause 8.4.

## 8.6 Overriding caveat

Nothing in this Policy shall be interpreted so as to endorse any of the following matters:

- (a) the principal criteria for selection and promotion of people to work within the Company being other than their overall relative prospect of adding value to the Company and enhancing the probability of achievement of the Company's objectives, taking into account matters such as the nature of the industry in which the Company operates;

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- (b) any discriminatory behaviour by or within the Company contrary to the law, or any applicable codes of conduct or behaviour for the Company and its personnel.



# Corporate Governance Charter

## Section 9 Trading Policy

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### 9.1 Purpose of this policy

- (a) This trading policy (**Policy**) is intended to ensure that persons who are discharging managerial responsibilities including but not limited to Directors, do not abuse, and do not place themselves under suspicion of abusing Inside Information that they may be thought to have, especially in periods leading up to an announcement of the Company.
- (b) The Policy sets out the procedure for trading in Securities of the Company and aims to provide Directors and Employees and any other persons who may be associated with the Company, with guidance on how and when trades in the Company's Securities may take place and when trading of the Company's Securities is strictly prohibited.
- (c) For the avoidance of doubt, nothing in this Policy sanctions a breach of the market misconduct or insider trading provisions of the Corporations Act. A person who possesses Inside Information about an entity's securities is generally prohibited from trading in those securities under the insider trading provisions of the Corporations Act and this applies even where the trade occurs as permitted within the operation of this policy.
- (d) References to the Company in this Policy are references to the Company and its subsidiaries.
- (e) Defined terms are set out in clause 9.21 of this Policy.

### 9.2 Who this policy applies to

This policy applies to Restricted Persons.

### 9.3 Dealing by Restricted Persons

- (a) A Restricted Person must not Deal in any Securities of the Company unless:
  - (1) a clearance to Deal is obtained in accordance with clause 9.4 of this Policy; or
  - (2) the Dealing is an Excluded Dealing.
- (b) Notwithstanding that a clearance to Deal may be granted by the Company (even in exceptional circumstances) or that a Dealing may be an Excluded Dealing, a Restricted Person must not Deal in Company Securities where clauses 9.7 (Inside Information), 9.14 (short-term selling), 9.15 (short selling) and 9.16 (hedging transactions) of this Policy are applicable.

### 9.4 Clearance to Deal

- (a) All Restricted Persons (except those who are Directors, the Chief Executive Officer or the Company Secretary) must not Deal in any Securities of the Company (unless the Dealing is an Excluded Dealing) without first notifying the Company Secretary and the Chair or Managing Director or this purpose and receiving clearance to Deal from the Chair or Managing Director (or the Company Secretary on their behalf).
- (b) A Director (other than the Chair or a Managing Director or Chief Executive Officer) must not Deal in any Securities of the Company (unless the Dealing is an Excluded Dealing) without first notifying the Chair (or a Director designated by the Board for this purpose) and the Company Secretary and receiving clearance to Deal from the Chair (or the designated Director) (or the Company Secretary on their behalf).

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- (c) The Chair must not Deal in any Securities of the Company (unless the Dealing is an Excluded Dealing) without first notifying the Managing Director (or Chief Executive Officer) and the Company Secretary and receiving clearance to Deal from the Managing Director (or Chief Executive Officer) (or the Company Secretary on their behalf)
- (d) The Managing Director (or Chief Executive Officer) must not Deal in any Securities of the Company (unless the Dealing is an Excluded Dealing) without first notifying the Chair and the Company Secretary and receiving clearance to Deal from the Chair (or the Company Secretary on their behalf)
- (e) If the role of Chair and Managing Director (or Chief Executive Officer) are combined, that person must not Deal in any Securities of the Company (unless the Dealing is an Excluded Dealing) without first notifying the Board and the Company Secretary and receiving clearance to Deal from the Board (or the Company Secretary on its behalf).
- (f) The Company Secretary must not Deal in any Securities of the Company (unless the Dealing is an Excluded Dealing) without first notifying the Chair or Managing Director and receiving clearance to Deal from the Chair or Managing Director
- (g) The Company reserves the right of a Clearance Officer to:
  - (1) give or refuse a request for a clearance to Deal at its sole discretion and without giving any reasons; or
  - (2) withdraw a clearance to Deal if there is a change in circumstances or new information becomes available.
- (h) A written or email response to a request for a clearance to Deal must be given to the relevant Restricted Person within two Business Days of the request being made.
- (i) The Company must maintain a record of the response to a request for a clearance to Deal made by a Restricted Person and of any clearance given. A copy of the response and clearance (if any) must be given to the Restricted Person concerned.
- (j) A Restricted Person who is given a clearance to Deal in accordance with this clause 9.4 must deal as soon as possible in any event within ten Business Days of clearance being received by the Restricted Person.
- (k) The grant of a clearance to Deal by the Company is not an endorsement of the Dealing by the Company. The person seeking the clearance to Deal is solely responsible for the investment decision to Deal in Securities in the Company and compliance with insider trading laws.
- (l) The grant of a clearance to Deal by the Company does not relieve a Restricted Person from their legal obligations under the insider trading provisions of the Corporations Act. The person granted the clearance to Deal should carefully consider whether or not they are in possession of Inside Information that might preclude them from trading in those Securities and if they are in possession of Inside Information (including if they come into possession of Inside Information after obtaining a clearance to Deal), then they must not trade despite having received the clearance.
- (m) Before a Restricted Person Deals in the Company's Securities (even if it is an Excluded Dealing), they should consider carefully whether they are in possession of any Inside Information that might preclude them from trading at that time and, if in any doubt, they should not trade.
- (n) A refusal by a Clearance Officer to give a clearance to Deal is final and binding on the person seeking the clearance.

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- (o) Where the Company refuses to give a clearance to Deal, this information is confidential between the Company and the person seeking the clearance and must not be disclosed to any other person.
- (p) In complying with the obligations under this section 9.4, reference should be made to the Clearance to Deal flowchart.

## 9.5 Circumstances for refusal

A Restricted Person must not be given clearance to Deal in any Securities of the Company during a Prohibited Period unless an exceptional circumstance arises in accordance with clause 9.6 of this Policy.

## 9.6 Dealing in exceptional circumstances

- (a) A Restricted Person, who is not in possession of Inside Information in relation to the Company, may be given clearance to Deal during a Prohibited Period if that person is in severe financial difficulty or there are other exceptional circumstances. Clearance may be given for such a person to sell (but not purchase) Securities of the Company when that person would otherwise be prohibited by this Policy from doing so. The determination of whether the person in question is in severe financial difficulty or whether there are other exceptional circumstances can only be made by the Clearance Officer designated by the Board for this purpose under clause 9.4.
- (b) A person may be in severe financial difficulty if that person has a pressing financial commitment that cannot be satisfied otherwise than by selling the relevant Securities of the Company. A liability of a person to pay tax would not normally constitute severe financial difficulty unless the person has no other means of satisfying the liability. A circumstance will be considered exceptional if the person in question is required by a court order to transfer or sell the Securities of the Company or there is some other overriding legal requirement to do so.
- (c) If required by the Listing Rules, the Company should consult the ASX at an early stage regarding any application by a Restricted Person to deal in exceptional circumstances.

## 9.7 Prohibition on Insider Trading

No Restricted Person may Deal in Company Securities at any time (including a Prohibited Period), if that person is or could reasonably be expected to be in possession of Inside Information.

## 9.8 Communicating Inside Information

A Restricted Person in possession of Inside Information must not, directly or indirectly, communicate the information, or cause the Inside Information to be communicated, to another person if the Restricted Person knows, or ought reasonably to know, that the other person would be likely to Deal in the Company's Securities.

## 9.9 Dealing by persons and entities associated with Restricted Persons

- (a) A Restricted Person must take all reasonable steps to prevent an Associate, Related Person or Related Entity of the Restricted Person from Dealing in the Company's Securities during a Prohibited Period.
- (b) A Restricted Person must take reasonable steps to advise any Associate, Related Person or Related Entity of the Restricted Person that:
  - (1) they are a Restricted Person of the Company; and

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- (2) of the Prohibited Periods during which the Associate, Related Person or Related Entity cannot Deal in the Company's Securities.
- (c) A Restricted Person must immediately notify a Clearance Officer if he or she becomes aware of or suspects an Associate, Related Person or Related Entity of Dealing in the Company's Securities during a Prohibited Period.

## 9.10 Disclosure of Dealings by Directors and substantial shareholders

- (a) In accordance with section 250G of the Corporations Act and ASX Listing Rule 3.19A, Directors must notify the ASX of any Dealings (whether in a Prohibited Period or otherwise) in the Company's Securities within five Business Days of such Dealing.
- (b) To the extent required to do so under the Listing Rules, the Company will disclose to the market when a Restricted Person has been given a clearance to Deal during a Prohibited Period.
- (c) In accordance with section 671B of the Corporations Act, a Restricted Person must notify the Company and the ASX if he or she:
  - (1) has obtained a Substantial Holding in the Company;
  - (2) already holds a Substantial Holding - if he or she increases or decreases that Substantial Holding by at least 1%; or
  - (3) ceases to hold a Substantial Holding,such notice to be provided within two Business Days of becoming aware of that information.

## 9.11 Dealings in Securities of other companies

A Restricted Person who has Inside Information about another Third Party Listed Entity as a result of his or her position in the Company is prohibited from:

- (a) dealing in any Securities of that Third Party Listed Entity unless a clearance to Deal is obtained in accordance with clause 9.4 of this Policy; or
- (b) communicating the Inside Information.

Examples (without being exhaustive) of how Inside Information about a Third Party Listed Entity may be obtained are as follows:

- (a) during the course of a proposed transaction;
- (b) during the course of due diligence investigations;
- (c) Board deliberations;
- (d) negotiations; or
- (e) information provided by others during the ordinary course of business.

## 9.12 Penalties

- (a) There are penalties under the Corporations Act for a breach of Insider Trading provisions under the Corporations Act.

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- (b) A breach of this Policy will also be regarded as serious misconduct which may lead to disciplinary action, up to and including dismissal.

## 9.13 Policy on Margin Loan Arrangements

- (a) A Restricted Person may enter into a margin loan or similar funding arrangement in respect of any Company Securities (**Funding Arrangements**) but must disclose the existence, nature and terms of the Funding Arrangements to a Clearance Officer who will notify the Board.
- (b) The Company and its Board will disclose any Funding Arrangements which would require disclosure under Listing Rule 3.1.
- (c) Without limiting subclause 9.13(b), where a Restricted Person's Funding Arrangement involves 5% or more of the Company's shares, the Board and Company Secretary will make appropriate disclosure to the market of any key terms of the Funding Arrangements.

## 9.14 Policy on Short-term trading

A Restricted Person must not Deal in any Securities of the Company where the Dealing involves the short-term trading of Securities in the Company, being instances where trading in and out of Securities occurs within a period of less than three months.

## 9.15 Policy on Short Selling

A Restricted Person must not Deal in any Securities of the Company where the Dealing involves the short selling of Securities in the Company.

## 9.16 Hedging Transactions

The Corporations Act prohibits Key Management Personnel and a closely related party of Key Management Personnel from entering into an arrangement if the arrangement would have the effect of limiting the exposure of the member to risk relating to an element of the members remuneration that has not vested or has vested but remains subject to a holding lock. Key Management Personnel of the Company and their closely related parties should not Deal in Securities in the Company which may infringe this prohibition under the Corporations Act nor should any other Restricted Person enter into hedging transactions to limit his or her exposure in respect of any unvested entitlement to Securities he or she receives under any equity based remuneration scheme of the Company.

## 9.17 What is Inside Information?

Inside Information is Information that is not Generally Available and, if it were Generally Available, a reasonable person would expect it to have a Material Effect on either the price or the value of the Company's Securities.

## 9.18 When is Information Generally Available?

Information is Generally Available if:

- (a) it consists of readily observable matter;
- (b) where the Information has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in Securities, a reasonable period for it to be disseminated among such persons has elapsed (for example, it has been released to the ASX or published in an annual report or prospectus); or
- (c) it may be deduced, inferred or concluded from the Information referred to above.

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## 9.19 What is a Material Effect?

- (a) Material Effect, in relation to Inside Information, is where that Information would, or would be likely to, influence persons who commonly acquire Securities in deciding whether or not to acquire or dispose of Securities of that nature.
- (b) Examples of information, that may have a Material Effect on the price or value of Securities when it becomes Generally Available, include:
  - (1) revenue;
  - (2) profit forecasts;
  - (3) inventory levels;
  - (4) forecasts;
  - (5) items of major capital expenditure;
  - (6) borrowings;
  - (7) liquidity and cashflow information;
  - (8) management restructuring;
  - (9) changes in distribution arrangements;
  - (10) litigation;
  - (11) impending mergers and acquisitions, reconstructions or takeovers;
  - (12) major asset purchases or sales;
  - (13) exploration results; or
  - (14) new product and technology.

## 9.20 What is Dealing in Securities?

Dealing in Securities means:

- (a) applying for, acquiring or disposing of Securities;
- (b) entering into an agreement to apply for, acquire or dispose of Securities; or
- (c) Procuring another person to:
  - (1) apply for, acquire or dispose of Securities; or
  - (2) enter into an agreement to apply for, acquire or dispose of Securities.

## 9.21 Definitions

In this Section 9:

**Associate** has the same meaning as set out in the Corporations Act.

**ASX** means the Australian Securities Exchange owned and operated by ASX Limited.

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**Blackout Period** means:

- (a) for the calendar quarters ending 31 March, 30 June, 30 September and 31 December, the period starting five Business Days before the planned date for release of the relevant quarterly report and ending on the Business Day after the release of that report to the ASX;
- (b) the period starting five Business Days before the planned date for release of the full year financial report to the ASX;
- (c) the period starting five Business Days before the planned date for release of the half year financial report to the ASX;
- (d) the period commencing from the release of information to the ASX which a reasonable person would expect to have a Material Effect on either the price or the value of the Company's Securities and ending the Business Day after the release of such information to the ASX; and
- (e) any other period determined by the Directors in their absolute discretion.

**Board** means board of Directors.

**Business Day** means a day, other than a Saturday or Sunday, on which banks are open for general banking business in Brisbane.

**Clearance Officer** means:

- (a) the Company Secretary;
- (b) the Chair;
- (c) the Managing Director or Chief Executive Officer; or
- (d) a Director designated by the Board for the purposes of clause 9.4.

**Clearance to Deal flowchart** means the clearance to deal flowchart set out in section 9.22.

**Dealing** has the meaning set out in clause 9.20 of this Policy.

**Director** means a director of the Company.

**Employee** means an individual who works for the Company (or its subsidiary) under a contract of employment.

**Excluded Dealings** means:

- (a) dealing where the beneficial interest in the relevant Security does not change;
- (b) transfers of Securities in the Company between a Restricted Person and someone closely related to the Restricted Person (such as a spouse, minor child, family company, family trust or superannuation fund) or by a Restricted Person to their superannuation fund, in respect of which prior clearance has been provided in accordance with this Policy;
- (c) if the Restricted Person is a trustee of a trust but is not a beneficiary of the trust, trading in the Company's Securities by that trust provided any decision to trade during a Blackout Period is taken by the other trustees or investment manager independently of the Restricted Person;

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- (d) the exercise of an option or right under an incentive scheme or the conversion of a convertible security, where the final date for the exercise or conversion falls during a Blackout Period and the Restricted Person could not reasonably have been expected to exercise or convert the Security at a time when it was entitled to, due to the Company having an exceptionally long Blackout Period or a number of consecutive Blackout Periods;
- (e) bona fide gifts to a Restricted Person by a third party.
- (f) a disposal of Securities arising from the acceptance of a takeover offer, scheme of arrangement or equal access buy-back;
- (g) a disposal of rights acquired or an acquisition of Securities in the Company under a pro rata issue;
- (h) an acquisition of Securities in the Company under a security purchase plan or a dividend or distribution reinvestment plan where:
  - (1) the Restricted Person did not commence or amend their participation in the plan during a Blackout Period; and
  - (2) the Policy does not permit the Restricted Person to withdraw from the plan during a Blackout Period other than in exceptional circumstances;
- (i) the obtaining by a Director of a share qualification;
- (j) acquiring Securities in the Company under an employee incentive scheme or the cancellation or surrender of an option or other right under an employee incentive scheme;
- (k) where a Restricted Person is the trustee of an employee incentive scheme, an acquisition of Securities in the Company by the Restricted Person in his or her capacity as a trustee of the scheme;
- (l) an acquisition or disposal of Securities in the Company under a pre-determined investment or divestment plan for which prior clearance has been provided in accordance with the Policy and where:
  - (1) the Restricted Person did not enter into or amend the plan during a Prohibited Period;
  - (2) the plan does not permit the Restricted Person to exercise any discretion over how, when, or whether to acquire or dispose of Securities; and
  - (3) the Policy does not allow for the cancellation of the plan during a Blackout Period other than in exceptional circumstances;
- (m) indirect and incidental trading that occurs as a consequence of a Restricted Person dealing in Securities issued by a managed investment scheme, listed investment company, exchange-traded fund or similar investment vehicle that is managed by a third party and that happens to hold as part of its portfolio Securities in the Company; and
- (n) an involuntary disposal of Securities in the Company that results from a margin lender or financier exercising its rights under the arrangement.

**Generally Available** has the meaning given in clause 9.18 of this Policy.



# Corporate Governance Charter

**Information** includes:

- (a) matters of supposition and other matters that are insufficiently definite to warrant being made to the public; and
- (b) matters relating to the intentions, or likely intentions, of a person.

**Inside Information** has the meaning given in clause 9.17 of this Policy.

**Key Management Personnel** has the definition given in the Accounting Standard AASB 124 *Related Party Disclosure* as 'those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly and indirectly, including any director (whether executive or otherwise) of that entity'.

**Listing Rules** means the Official Listing Rules of the ASX as amended or replaced from time to time.

**Material Effect** has the meaning given in clause 9.19 of this Policy.

**Procuring** means to incite, induce or encourage an act or omission by another person.

**Prohibited Period** means:

- (a) any Blackout Period; or
- (b) any period where any matter exists which could constitute Inside Information in relation to the Company.

**Restricted Person** means:

- (a) any persons or entities discharging managerial responsibilities for the Company including, but not limited to:
  - (1) the Directors;
  - (2) the Company Secretary;
  - (3) Key Management Personnel;
  - (4) any Employee, contractor or consultant who provides managerial or administrative services to the Company; or
  - (5) any Employee who, depending on their individual circumstances, the Managing Director (or the Chief Executive Officer) specifies from time to time to be a Restricted Person;
- (b) other persons specified from time to time by the Managing Director (or Chief Executive Officer); or
- (c) any Related Person or Related Entity (or an Associate of a Related Person or Related Entity) of a person referred in paragraphs (a)(1) and (b) above.

**Related Entity of a Restricted Party** means an entity which:

- (a) the Restricted Person is a director or secretary of; or
- (b) the Restricted Person otherwise controls or has a position of influence.

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**Related Person of a Restricted Party** means a parent, spouse or child of the Restricted Party.

**Securities** means:

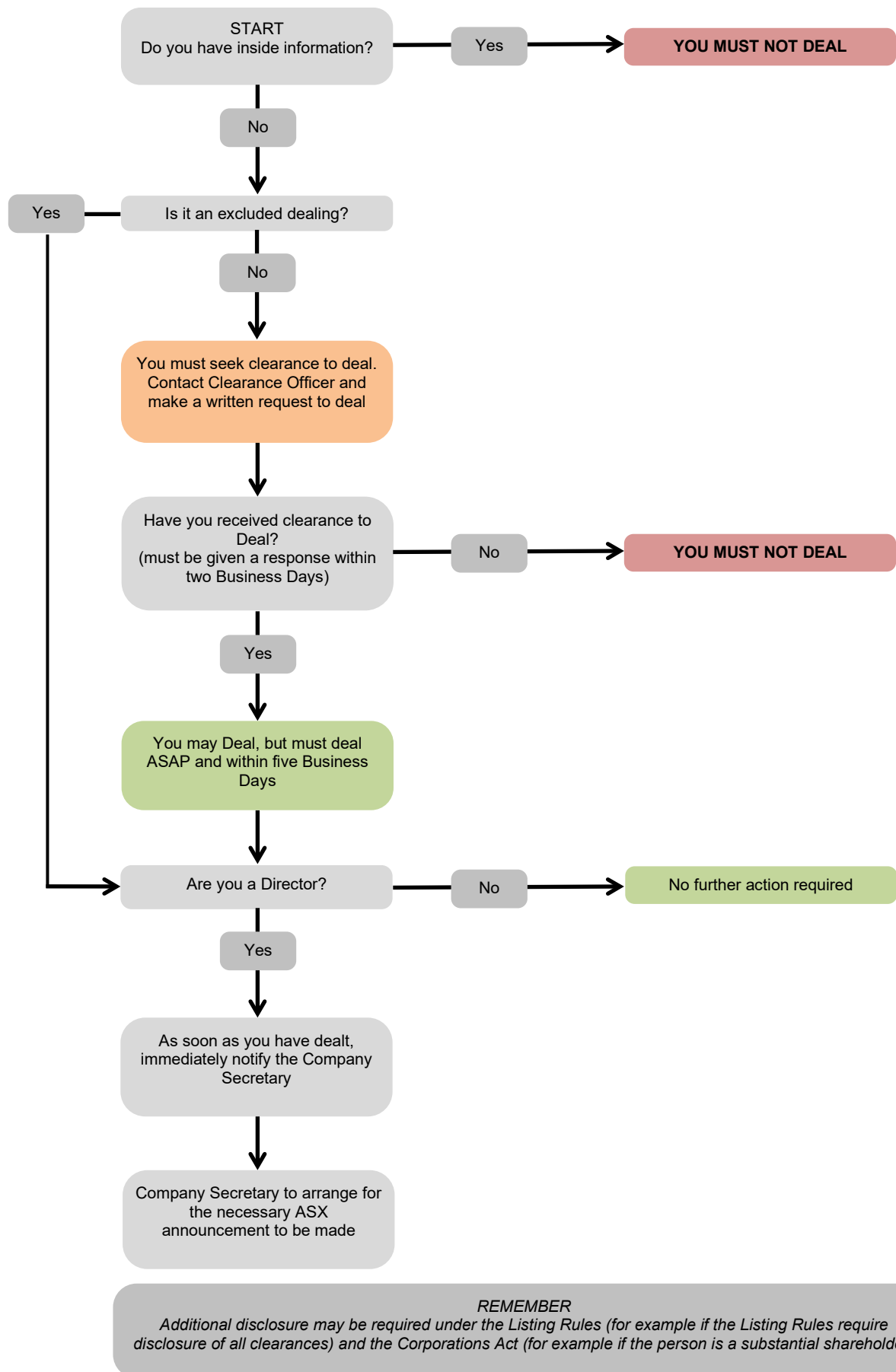
- (a) shares;
- (b) debentures;
- (c) legal or equitable interests in a security covered by paragraph (a) or paragraph (b) above;
- (d) options to acquire, by way of issue, a security covered by paragraph (a) or paragraph (b) above; and
- (e) rights (whether existing or future and whether contingent or not) to acquire, by way of issue, the following under a rights issue:
  - (1) a security covered by paragraph (a) or paragraph (b) above; or
  - (2) an interest or right covered by section 764A(1)(b) or section 764A(1)(ba) of the Corporations Act.

**Substantial Holding** has the meaning given in section 9 of the Corporations Act (which, at the date of adoption of this Policy, includes where a person or entity (and their associates) has total votes attached to voting shares in the Company representing 5% or more of the total number of votes attaching to voting shares in the Company).

**Third Party Listed Entity** means any company, other than the Company, which is listed on the ASX or other recognised exchange or otherwise has Securities which are traded in an open market.

# Corporate Governance Charter

## 9.22 Clearance to Deal flowchart



# Corporate Governance Charter

## Section 10 Related Party Policy

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### 10.1 Purpose of this Policy

- (a) The purpose of this policy (in this Section 10, **Policy**) is to:
  - (1) record the Company's commitment to complying with all related party transaction requirements under the Corporations Act and the ASX Listing Rules;
  - (2) set out a framework for obtaining approval for all related party transactions; and
  - (3) establish a clear process to comply with the Company's related party transaction obligations.
- (b) Defined terms are set out in clause 10.8 of this Policy.

### 10.2 Policy

- (a) The Policy applies to all related parties of the Company and its subsidiaries.
- (b) In summary, all related party transactions must be:
  - (1) notified to the company secretary of the Company (Company Secretary) prior to their execution;
  - (2) on arm's length terms; and
  - (3) approved by the Board.
- (c) Related party transactions not on arm's length terms must be approved by the Company's shareholders.

### 10.3 Related party transactions

#### (a) Giving financial benefits

The Company and members of the Group are prohibited from giving a financial benefit to a related party unless:

- (1) the Company's shareholders have approved the giving of the financial benefit; or
- (2) an exception applies.

As a Listed entity, the Company is also prohibited from entering into certain transactions with related parties without shareholder approval.

#### (b) Who is a related party?

For the purposes of this Policy, the Company has adopted the following definition of a related party:

- (1) any person or entity that controls the Company, or their spouse;
- (2) a director of the Company, or of a member of the Group, or of an entity that controls the Company;
- (3) the parents or children of the persons referred to in 10.3(b)(2) above;

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- (4) any entity controlled by a person referred to in 10.3(b)(1), 10.3(b)(2) or 10.3(b)(3) above; or
- (5) any other person or entity whose relationship with the Company or a member of the Group is, in the opinion of the Board, such that this Policy should apply to that person or entity.

The rules regarding related party transactions also apply to:

- (1) any person who has been a related party (as defined above) at any time in the last six months (even if they are not a related party, as defined above, at the time of the relevant transaction); and
- (2) any person who the Board believes, or has reasonable grounds to believe, is likely to become a related party (as defined above) at any time in the future.

If there is any doubt as to whether a particular person or entity is a related party of the Company for the purposes of this Policy, the matter should be referred to the Company Secretary and a decision will be made by the Board.

## (c) **What is a financial benefit?**

The term **financial benefit** is to be interpreted broadly.

When applying this Policy, the Board will have regard to the commercial nature of the transaction, and any consideration given for the benefit will be disregarded (even if the consideration is considered to be adequate).

Some examples of financial benefits include:

- (1) giving or providing finance or property (including buying, selling or leasing an asset);
- (2) supplying or receiving services; and
- (3) issuing securities or granting options.

## **10.4 The exceptions**

There are a number of exceptions to the requirement to obtain shareholder approval for the giving of a financial benefit to a related party. However, unless one of these exceptions applies, shareholder approval must be obtained in accordance with this Policy prior to the giving of a financial benefit to a related party.

### (a) **The 'arm's length' exception**

The Company is not required to obtain shareholder approval for the giving of a financial benefit to a related party if the proposed transaction is on arm's length terms, or on terms that are less favourable to the related party.

In determining whether the arm's length exception applies to a transaction, the Board will have regard to the following factors:

- (1) the terms of the transaction;
- (2) any protocols adopted by the Company to ensure that conflicts of interest were appropriately managed;
- (3) the impact of the proposed transaction on the Company and its shareholders;

# Corporate Governance Charter

- (4) any other options that may be available; and
- (5) any expert advice received in relation to the proposed transaction.

The Company will only rely on the arm's length exception in circumstances where the Board is confident that the exception applies.

## (b) **Other exceptions**

Other exceptions to the requirement to obtain shareholder approval for the giving of a financial benefit to a related party include:

- (1) where the financial benefit represents reasonable remuneration payable to the related party as an officer or employee, or the reimbursement of expenses;
- (2) the giving of an indemnity, exemption or insurance policy in respect of a liability incurred as an officer or employee;
- (3) where the value of the financial benefit (together with all other financial benefits given to the related party in the relevant financial year without shareholder approval) is less than \$5,000;
- (4) benefits given to a shareholder of the Company that do not discriminate unfairly against other shareholders of the Company; and
- (5) benefits given by the Company to a wholly-owned subsidiary (or vice versa).

Where the Board is satisfied that one of the above exceptions applies, shareholder approval will not be required for the giving of the financial benefit.

## **10.5 Dealing with related party transactions**

### (a) **Protocols for negotiations with related parties**

In respect of negotiations with related parties, the Board should consider putting in place protocols to ensure that the related party does not influence the Company's decisions. For example, it may be appropriate to:

- (1) put in place 'Chinese Walls' in relation to the proposed transaction;
- (2) form a Board sub-committee to consider the proposed transaction; and
- (3) seek independent advice.

### (b) **All related party transactions to be referred to the Board**

Where a member of the Company proposes to enter into a transaction with a related party the following procedure must be followed:

- (1) Full and appropriate disclosure about the proposed transaction is to be made to the Company Secretary prior to any transactions being entered into. Such disclosure should include the following information:
  - (A) full details of the proposed transaction, including the parties and the nature of their relationship (that is, why they are or might be considered to be related parties);
  - (B) whether an exception to the requirement to obtain shareholder approval applies or may apply;

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- (C) why the exception (if any) applies to the proposed transaction; and
  - (D) any other information appropriate or necessary in the circumstances for the Board to determine whether the arm's length or any other exception applies.
- (2) The Company Secretary will compile the information provided and include an item in the agenda for the Board to consider the proposed transaction at the next Director's meeting.
  - (3) Where appropriate, the Board may refer to any internal or external advice or recommendations on the proposed transaction.
  - (4) Where the Board determines that the proposed transaction is on arm's length terms or subject to any other exception such that shareholder approval is not required, it may resolve to proceed with the proposed transaction on terms it considers appropriate.
  - (5) Where the Board determines, based on the information available to it, that the proposed transaction is:
    - (A) not on arm's length terms;
    - (B) not subject to any other exception; or
    - (C) such that shareholder approval should nevertheless be obtained,and resolves that the proposed transaction should nevertheless proceed (subject to the required shareholder approval), the Board must call a meeting of shareholders to be held to consider and, if thought fit, approve the proposed transaction.

The procedures set out in this Policy must be complied with in relation to all related party transactions.

However, any routine transactions entered into by a member of the Company in the ordinary course of business and on arm's length terms are not required to be referred to the Board in accordance with this Policy.

## (c) **Persons with material interest not to participate**

Any person who has a material personal interest in the outcome of a proposed related party transaction must disclose that interest to the Company Secretary, who will notify the Board. The interested person must not participate or be anyway involved in the decision-making process of the Company or the Board in relation to the proposed related party transaction.

Where the interested person is a director of the Company, he or she must not:

- (1) be present while the proposed transaction is being considered by the Board; or
- (2) vote on the proposed transaction.

All related party transactions (including those that are determined by the Board to be on arm's length terms or otherwise subject to an exception) must be appropriately recorded and documented.

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(d) **Disclosure of related party transactions**

Details of all related party transactions are to be fully disclosed in each annual report issued by the Company in accordance with Australian Accounting Standard AASB 124.

**10.6 Listing Rule 10.11**

- (a) Listing Rule 10.11 provides that a Listed company shall not without shareholder approval issue securities to a related party.
- (b) A number of exceptions to this rule are contained in Listing Rule 10.12.
- (c) However, unless one of these exceptions applies, shareholder approval must be obtained for the issue of securities to a related party.

**10.7 Miscellaneous**

(a) **Register**

The Company Secretary will keep and maintain a register of all related party transactions involving members of the Company, including details of the transaction, the parties and whether shareholder approval was obtained or one of the exceptions applied.

(b) **Review of Policy**

This Policy will be reviewed by the Board as necessary to ensure that it remains relevant and appropriate to the Company, to determine the effectiveness of the Policy, and to make any changes necessary.

**10.8 Definitions**

In this Section 10

- (a) **Group** means the Company and its subsidiaries.
- (b) Terms not otherwise defined in this Policy which are given a meaning in the Corporations Act have the same meaning as in the Corporations Act.



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## Section 11 Anti-bribery and Corruption Policy

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### 11.1 Purpose of this Policy

The purpose of this policy (in this Section 11, **Policy**) is to establish controls to ensure compliance with all applicable anti-Corruption laws and regulations, and to ensure that the Company conducts business in a socially responsible manner.

The Company and the Board take a zero-tolerance approach to Corruption and are committed to acting professionally, ethically and with integrity in all of the Company's business dealings and relationships. This extends to implementing and enforcing effective systems to counter Corruption.

### 11.2 Company Personnel and Associated Persons' responsibility under this Policy

Company Personnel and Associated Persons must:

- (a) ensure that they read, understand and comply with this Policy;
- (b) detect, report and prevent Corruption and avoid any activity that might lead to, or suggest a breach of this Policy;
- (c) notify the Board or their manager as soon as they become aware of any potential breach or breaches of this Policy, whether they have occurred or may occur in the future;
- (d) with respect to Gifts and Hospitality, which include the receipt or offer of gifts, meals or tokens of appreciation and gratitude, or invitations to events, functions, or other social gatherings in connection with matters related to the Company's business, understand that these activities are acceptable provided they:
  - (1) fall with reasonable bounds of value and occurrence;
  - (2) do not influence, or are not perceived to influence, objective business judgement; and
  - (3) are not prohibited or limited by applicable laws or applicable industry codes;

Company Personnel must not accept Gifts or entertainment where to do so might influence objective business judgement;

- (e) understand that this Policy does not prohibit giving normal and appropriate Hospitality to, or receiving it from, third parties;
- (f) when making a payment on behalf of the Company, be mindful of what the payment is for and whether the amount requested is proportionate to the services provided. A receipt must always be requested which details the reasons for the payment. Any suspicions or concerns regarding a payment should be raised with the Board or their manager; and
- (g) use the Decision Flowchart when in doubt as to whether to give or receive Gifts and Hospitality.

### 11.3 The Board's responsibility under this Policy

The Board must:

- (a) ensure that the Policy complies with the Company's legal and ethical obligations and Company Personnel and Associated Persons comply with the Policy;

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- (b) consider, and if it is deemed to be appropriate, approve Contributions. The Board must follow the guidelines set out in this Policy when deciding whether to approve Contributions;
- (c) oversee any allegations of Corruption against the Company, Associated Persons or Company Personnel and take appropriate action if the allegations are proven true;
- (d) regularly monitor and evaluate training programs; and
- (e) regularly monitor the effectiveness and review the implementation of the Policy, considering its suitability, adequacy and effectiveness. Any improvements identified by the Board are to be implemented as soon as possible.

## 11.4 Company's responsibility under this Policy

The Company must:

- (a) keep financial records and ensure adequate and appropriate internal controls exist to ensure all payments to third parties evidence a business reason for the payment;
- (b) undertake the appropriate due diligence on Associated Persons and merger, acquisition, significant investment or joint venture targets;
- (c) provide secure, confidential and accessible means for both Company Personnel and Associated Persons to raise concerns about Corruption on the part of other Associated Persons and Company Personnel; and
- (d) ensure that the systems implemented to deter, detect and investigate Corruption are subject to regular audit.

## 11.5 Matters prohibited under this Policy

### (a) **Bribery**

Neither Associated Persons nor Company Personnel are permitted to engage in Bribery.

### (b) **Gifts and Hospitality**

The giving or receiving of Gifts or Hospitality is permitted under this Policy only if it is proportionate and reasonable in the circumstances.

The giving or receiving of Gifts or Hospitality will be considered proportionate and reasonable in the circumstances if all of the following conditions are met:

- (1) it is not made with the intention of influencing a person to obtain or retain business or a business advantage, or to reward the provision or retention of a business or business advantage, or in explicit or implicit exchange for favours or benefits;
- (2) it complies with local law;
- (3) in respect of the giving of Gifts or Hospitality, it is given in the Company's name;
- (4) it does not include cash or a cash equivalent (such as gift certificates or vouchers);
- (5) it is appropriate in the circumstances;

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- (6) it is given openly, not secretly; and
- (7) it otherwise complies with this Policy.

Company Personnel and Associated Persons must refer to the Decision Flowchart when deciding whether to give or receive a Gift or Hospitality.

If you are unsure about whether to give or receive a Gift or Hospitality, you must refer the matter to your immediate manager who must escalate the issue for Board approval.

## (c) **Facilitation Payments**

Bribes in the form of payments made for the purpose of expediting or facilitating the performance of a government official or Public Official for a governmental or public action (**Facilitation Payments**) are not permitted and Associated Persons and Company Personnel must not make or receive Facilitation Payments.

In making a payment on behalf of the Company, all Associated Persons and Company Personnel should be mindful of what the payment is for and whether the amount requested is proportionate to the services provided. A receipt must always be requested which details the reasons for the payment. Any suspicions or concerns regarding a payment should be raised directly with the Board.

## (d) **Charitable and political Contributions**

- (1) Without prior approval from the Board, Associated Persons and Company Personnel must not make Contributions:
  - (A) on behalf of the Company under any circumstances; or
  - (B) whilst acting in their capacity as an Associated Person or Company Personnel.
- (2) When deciding whether to approve a Contribution, the Board should consider:
  - (A) whether the Contribution was requested by a government official;
  - (B) whether there is a nexus between the recipient and any government entity from which the Company is seeking a decision, service or outcome;
  - (C) whether the Contribution is consistent with the Company's overall pattern of Contributions; and
  - (D) whether there will be a tax deduction for the Contribution.
- (3) The Board must not approve a Contribution if the Board reasonably holds the view that the Contribution:
  - (A) is being used as a scheme to conceal Corruption; or
  - (B) is not legal or ethical under local laws and practices.
- (4) All Contributions approved by the Board should be publicly disclosed by the Company.
- (5) This Policy does not prohibit Company Personnel and Associated Persons from making Contributions in their individual capacity

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## 11.6 Failure to comply with this Policy

Failure to comply with this Policy and any involvement with Corruption may be regarded by the Company as serious misconduct and may result in Disciplinary Action.

## 11.7 Due diligence - Associated Persons

- (a) Prior to engaging any Associated Person, the Company must undertake properly documented, reasonable and proportionate anti-Corruption due diligence.
- (b) Reasonable and proportionate anti-Corruption due diligence is determined in relation to the role of the Associated Person (eg, a high value contractor requires more due diligence than a volunteer).
- (c) At a minimum, the Company must consider, as determined in an interview, meeting or tender process:
  - (1) how the Associated Person was referred or introduced;
  - (2) what is the Associated Person's skill set;
  - (3) who are the Associated Person's owners or superiors; and
  - (4) whether the Associated Person is a Foreign Public Official.
- (d) The Company must issue Associated Persons with written arrangements that clearly outline their role, responsibilities and boundaries whilst engaged by the Company.
- (e) Associated Persons with known legal, payment or performance issues should not be engaged.

## 11.8 Conflict of Interest

Company Personnel and Associated Persons must disclose to the Board on an annual basis all Conflicts of Interest that may give rise to a risk of Corruption.

## 11.9 Record-keeping

- (a) The Company is required to keep financial records and ensure adequate and appropriate controls exist to ensure all payments made by or on behalf of the Company evidence a business reason for the payment.
- (b) Company Personnel must ensure that all expense claims relating to Gifts, Hospitality or expenses incurred accurately record the reason for expenditure.

## 11.10 How to raise a concern

- (a) The Company is committed to providing secure, confidential and accessible means for both Company Personnel and Associated Persons to raise concerns about Corruption on the part of Associated Persons and Company Personnel.
- (b) All Company Personnel and Associated Persons are encouraged to raise concerns about possible breaches of this Policy, as soon as possible.
- (c) Company Personnel and Associated Persons are advised that:
  - (1) they can make reports anonymously;

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- (2) they should not conduct their own investigations nor contact the target of the complaint;
  - (3) there will be no reprisal for reporting wrongdoing; and
  - (4) their identity and contact details will not be made available to any accused.
- (d) Concerns can be raised confidentially with the Board directly or the Company Secretary (as applicable).

## 11.11 How will the Company deal with allegations of Corruption?

Concerns raised by Company Personnel or Associated Persons about Corruption will be fully and independently investigated. If the concerns are proven true, appropriate action will be taken by the Board.

## 11.12 What to do if you are the victim of Corruption

- (a) Company Personnel and Associated Persons should immediately inform the Board if they are offered a Bribe by a person, are asked to make a Bribe, suspect that this may happen in the future or are requested to become involved in any form of Corruption whether in their individual capacity or on behalf of the Company.
- (b) The Company's strict policy is that Company Personnel or Associated Persons must not be involved in any form of Corruption. We recognise, however, that Associated Persons or Company Personnel may be faced with situations where there is a risk to their personal security or the security of their family, and if involvement in Corruption is unavoidable, the following steps must be taken to the extent that they are reasonable in the circumstances:
  - (1) keep any amount to the minimum;
  - (2) create a record concerning the payment; and
  - (3) report it to your manager (who must report it to the Board) or the Board as soon as is reasonably practicable having regard to your personal security and that of your family or others.

## 11.13 Protection

- (a) The Board encourages openness in business and will support anyone who raises a genuine concern in good faith under this Policy.
- (b) The Board will not subject Company Personnel or Associated Persons to detrimental treatment as a result of them:
  - (1) refusing to take part in Corruption; or
  - (2) reporting actual or suspected Corruption in good faith under this Policy.

## 11.14 Training and communication

- (a) All existing and prospective Associated Persons are to be informed of the Company's Corruption prevention procedures and controls, including this Policy.

## 11.15 Monitoring and review

- (a) The Board will monitor the effectiveness and review the implementation of the Policy regularly, considering its suitability, adequacy and effectiveness. Any improvements identified are to be implemented as soon as possible.

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- (b) To ensure the effectiveness of the Policy's procedures, the systems that have been set up to deter, detect and investigate Corruption will be subject to regular audit.
- (c) All Company Personnel and Associated Persons are responsible for the success and effectiveness of this Policy and should therefore ensure that they use it to disclose any suspected breach of the Policy.
- (d) Any suggested improvements to this Policy are welcome and should be directed to the Board or Company Secretary (as applicable).

## 11.16 Policy amendment

This Policy cannot be amended without approval from the Board.

## 11.17 Definitions

In this Section 11:

- (a) **Associated Persons** means all persons other than Company Personnel who perform services for or on behalf of the Company. This includes, but is not limited to joint venture partners, consultants, contractors, trainees, seconded staff, casual workers, agency staff, volunteers, interns, agents, sponsors and any other persons associated with the Company, wherever located.
- (b) **Bribe** means a financial advantage or other advantage offered, promised or provided:
  - (1) which is intended to influence the recipient to improperly perform a function or activity; or
  - (2) with the knowledge or belief that the acceptance of the financial advantage or other advantage would itself constitute the improper performance of a relevant function or activity,in order to gain any commercial, contractual, regulatory or personal advantage.
- (c) **Bribery** (or to **Bribe** or **Bribing**) means to provide a person with a Bribe, or to receive a Bribe from a person (either from the private or public sector, including Public Officials and Foreign Public Officials).
- (d) **Company Personnel** means senior managers, officers, directors or employees (whether permanent, fixed-term or temporary) of the Company.
- (e) **Conflict of Interest** means an actual, potential or perceived conflict between:
  - (1) the private interests of Company Personnel, Associated Persons, or their close relatives, friends and associates; and
  - (2) the interests of the Company.
- (f) **Contributions** means any support of:
  - (1) a charity or not-for-profit organisation, provided by way of, but not limited to, services, knowledge, time or financial contributions with a value in excess of \$250 (**Charitable Contributions**); or
  - (2) a political party (or political candidate in Australia or otherwise), provided by way of, but not limited to, services, knowledge, time or financial contributions (**Political Contributions**).

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- (g) **Corruption** means, for the purpose of this Policy:
- (1) to engage in Bribery;
  - (2) to provide or receive a Gift or Hospitality otherwise than in accordance with this Policy;
  - (3) to make or receive a Facilitation Payment otherwise than in accordance with this Policy;
  - (4) to make a Contribution otherwise than in accordance with this Policy; or
  - (5) to engage in any dishonest, fraudulent, illegal or otherwise corrupt conduct for the purpose of private gain or for the benefit of the Company.
- (h) **Criminal Code** means the *Criminal Code Act 1995* (Cth).
- (i) **Decision Flowchart** means the decision flowchart set out in section 11.18 of this Policy.
- (j) **Disciplinary Action** means:
- (1) reprimands;
  - (2) formal warnings;
  - (3) demotions;
  - (4) immediate termination of contracts of employment;
  - (5) immediate termination of contracts of engagement; or
  - (6) immediate termination of a joint venture agreement.
- (k) **Facilitation Payment** has the meaning given to that term in section 11.5(c) of this Policy.
- (l) **Foreign Public Official** has the meaning given to that term in the Criminal Code and includes a Public Official who serves a foreign country, performs work for a foreign government or performs the duties of an office under a law of a foreign country.
- (m) **Gift** means:
- (1) the transfer of property or other benefit:
    - (A) without recompense; or
    - (B) for consideration substantially less than full; or
  - (2) a loan of property made on a permanent, or an indefinite basis.
- (n) **Hospitality** means any measures that involve, but are not limited to, an expenditure of financial resources or time, used to entertain, receive or otherwise accommodate a person.
- (o) **Policy** means this anti-bribery and corruption policy.
- (p) **Public Official** has the meaning given to that term in the Criminal Code.

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## 11.18 Decision Flowchart

