

# PROPHOTONIX LIMITED

## GOVERNANCE, NOMINATIONS AND REMUNERATION COMMITTEE

### TERMS OF REFERENCE

#### 1. Introduction

1.1 On April 6, 2011, the Board resolved, in accordance with the bylaws of ProPhotonix Limited (the "**Company**"), to establish a governance, nominations and remuneration committee of the Board.

1.2 The purpose of this document is to set out:

- (a) the duties and responsibilities of the Committee; and
- (b) the constitution of the Committee and the regulations governing proceedings of the Committee.

1.3 In this document, references to:

- (a) the "**Board**" are to the board of directors of the company from time to time; and
- (b) the "**Committee**" are to the governance, nominations and remuneration committee of the Board established pursuant to the resolution referred to in paragraph 1.1.

#### 2. Membership

2.1 The members of the Committee shall be appointed by the Board from amongst the directors of the Company. All members of the Committee shall at all times be independent non-executive directors of the Company.

2.2 Appointments to the Committee shall be for a period of up to three years which may be extended for up to two further periods of three years, provided the director in question remains independent.

2.3 The Committee shall consist of at least three members.

3. **Chairman**

3.1 The Board shall appoint the chairman of the Committee who shall be an independent non-executive director.

3.2 The Chairman of the Company shall not be eligible to be appointed as chairman of the Committee.

3.3 In the absence of the chairman of the Committee at any meeting of the Committee, the members of the Committee present shall elect one of their number to chair the meeting.

4. **Secretary**

The company secretary or any member of the Committee shall act as the secretary of the Committee.

5. **Meetings**

5.1 Meetings of the Committee shall be held at such times as the chairman of the Committee shall require but not less than twice a year.

5.2 Only members of the Committee are entitled as of right to attend meetings of the Committee but others (such as the chief executive, the head of human resources and external advisers) may be invited by the Committee to attend for all or part of any meeting as and when the Committee considers appropriate.

6. **Notice**

6.1 Meetings of the Committee shall be summoned by the secretary of the Committee at the request of any member of the Committee.

6.2 Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, shall be forwarded to each member of the Committee and any other proposed attendee by electronic means (email, internet or similar method), telephone, facsimile, or telegram sent to his electronic address or business or home address at least twenty-four hours in advance of the meeting, or by written notice mailed to his business or home address at least forty-eight hours in advance of the meeting. Supporting papers shall be sent to members of the Committee and (as appropriate) any other proposed attendee at the same time.

7. **Quorum**

The quorum necessary for the transaction of business at meetings of the Committee shall be two members. A duly convened meeting of the Committee at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Committee.

**8. Voting**

8.1 Matters arising at any meeting of the Committee shall be decided by a majority of votes.

8.2 Each member of the Committee present at a meeting of the Committee shall have one vote on matters arising at the meeting.

8.3 A member of the Committee shall not vote in respect of any matter being considered by the Committee in which he has, directly or indirectly, a personal interest and shall not be counted in the quorum at a meeting in relation to any matter on which he is debarred from voting.

**9. Duties and responsibilities**

**9.1 Nominations**

The Committee shall:

- (a) regularly review the structure, size and composition (including the skills, knowledge and experience) of the Board and make recommendations to the Board with regard to any changes it considers desirable;
- (b) in the course of its work, give full consideration to succession planning with regard to both Board and senior management appointments, taking into account the challenges and opportunities facing the Company and the skills and expertise therefore needed on the Board in the future;
- (c) before an appointment is made, evaluate the balance of skills, knowledge and experience on the Board and, in the light of this evaluation, prepare a description of the role and capabilities required for a particular appointment;
- (d) be responsible for identifying, and nominating for the approval of the Board, candidates to fill vacancies on the Board as and when they arise;
- (e) in identifying suitable candidates:

- (i) use open advertising or the services of external advisers to facilitate the search;
  - (ii) consider candidates from a wide range of backgrounds; and
  - (iii) consider candidates on merit and against objective criteria, taking care that appointees have enough time available to devote to the position;
- (f) for the appointment of the chairman of the Board, prepare a job specification, including an assessment of the time commitment expected, recognising the need for availability in the event of crises;
- (g) keep under review the leadership needs of the organisation, both executive and non-executive, with a view to ensuring the continued ability of the organisation to compete effectively in the marketplace;
- (h) keep up to date and fully informed about strategic issues and commercial changes affecting the Company and the market in which it operates;
- (i) review annually the time required from non-executive directors and assess whether the non-executive directors are spending enough time to fulfil their duties;
- (j) ensure that, on appointment to the Board, non-executive directors receive a formal letter of appointment setting out clearly what is expected of them in terms of time commitment, committee service and involvement outside meetings of the Board;
- (k) ensure that non-executive directors other significant commitments are disclosed to the Board before appointment, with a broad indication of the time involved and that the Board is informed of subsequent changes to their significant commitments; and
- (l) when considering the appointment of both executive and non-executive directors to the Board, review such directors' positions and interests in other companies or firms, in order to identify any conflicts or potential conflicts of interest.

The Committee shall also consider and make recommendations to the Board concerning:

- (m) plans for succession for both executive and non-executive directors and, in particular, for the key roles of chairman and chief executive;

- (n) membership of the audit committee, in consultation with the chairmen of the audit committee;
- (o) the re-appointment of any non-executive director at the conclusion of his specified term of office, having due regard to their performance and ability to continue to contribute to the Board in the light of the knowledge, skills and experience required. The re-appointment of any non-executive director who has been a member of the Board for more than six years should be subject to particularly rigorous review and should take into account the need for progressive refreshing of the Board;
- (p) any matters relating to the continuation in office of any director at any time including the suspension or termination of service of an executive director as an employee of the Company subject to the provisions of the law and his service contract; and
- (q) the appointment of any director to executive or other office other than to the positions of chairman and chief executive, the recommendation for which would be considered at a meeting of the full Board.

## 9.2 **Remuneration**

The Committee shall:

- (a) determine and agree with the Board the framework or broad policy for the remuneration of the Company's chief executive, chairman, the executive directors, the company secretary and such other members of the executive management as it is designated to consider. The remuneration of non-executive directors shall be a matter for the chairman and the executive members of the Board. No director or manager shall be involved in any decisions as to their own remuneration;
- (b) recognise and avoid conflicts of interest where directors of the Company or its management are involved in advising the Committee;
- (c) in determining such policy, take into account all factors which it deems necessary. The objective of such policy shall be to ensure that members of the executive management of the Company are provided with appropriate incentives to encourage enhanced performance and are, in a fair and responsible manner, rewarded for their individual contributions to the success of the Company;

- (d) review the ongoing appropriateness and relevance of the remuneration policy;
- (e) approve the design of, and determine targets for, any performance related pay schemes operated by the Company and approve the total annual payments made under such schemes;
- (f) review the design of all share incentive plans for approval by the Board and shareholders. For any such plans, determine each year whether awards will be made, and if so, the overall amount of such awards, the individual awards to executive directors and other senior executives and the performance targets to be used;
- (g) determine the policy for, and scope of, pension arrangements for each executive director and other senior executives;
- (h) ensure that contractual terms on termination, and any payments made, are fair to the individual and the Company, that failure is not rewarded and that the duty to mitigate loss is fully recognised;
- (i) within the terms of the agreed policy and in consultation with the chairman and/or chief executive as appropriate, determine the total individual remuneration package of each executive director and other senior executives including bonuses, incentive payments and share options or other share awards;
- (j) in determining such packages and arrangements, give due regard to any relevant legal requirements, the provisions and recommendations in the UK Corporate Governance Code (formerly the Combined Code), the NAPF Corporate Governance Policy and Voting Guidelines for AIM Companies, the QCA Corporate Governance Guidelines for AIM Companies and the London Stock Exchange's AIM Rules for Companies and associated guidance;
- (k) review and note annually the remuneration trends across the Company or group;
- (l) consider the pension consequences and associated costs to the Company of basic salary increases and any other changes in pensionable remuneration, especially for directors close to retirement;
- (m) oversee any major changes in employee benefits structures throughout the Company or group;

- (n) agree the policy for authorising claims for expenses from the chief executive and chairman;
- (o) ensure that all relevant requirements regarding disclosure of remuneration including pensions, are fulfilled;
- (p) be exclusively responsible for establishing the selection criteria, selecting, appointing and setting the terms of reference for any remuneration consultants who advise the Committee; and
- (q) obtain reliable, up-to-date information about remuneration in other companies. The Committee shall have full authority to commission any reports or surveys which it deems necessary to help it fulfil its obligations.

### 9.3 **Governance**

The Committee shall:

- (a) review and assess, periodically, but not less than annually, the adequacy of the Company's Corporate Governance Guidelines. The Committee shall recommend any amendments to the Corporate Governance Guidelines to the Board for approval;
- (b) review periodically the Company's Policy Governing Director Nominations and Shareholder-Board Communications (the "Policy") in light of the rules and requirements promulgated by any governmental or regulatory authority to which the Company is subject. The Committee shall recommend any proposed changes to the Policy to the Board for approval;
- (c) review, periodically, but not less than annually, the Company's compliance with the corporate governance requirements of the any governmental or regulatory authority to which the Company is subject and report to the Board the results of such review, including any actions recommended by the Committee with respect to compliance with such requirements;
- (d) oversee an annual self-evaluation by the Board to determine whether the Board is functioning effectively. The Committee shall determine the nature of the evaluation, supervise the conduct of the evaluation and prepare an assessment of the Board's performance to be discussed with the Board. The Committee shall oversee a similar self-evaluation by each committee;

- (e) conduct an evaluation, periodically, but not less than annually, of the Company's senior executives. The Committee shall, except with respect to the Company's senior financial executives, in which case the Committee shall, together with the Audit Committee, determine the nature and frequency of the evaluation and the persons subject to the evaluation, conduct the evaluation and prepare assessments of the performance of the Company's senior executives, to be discussed with the Board; and
- (f) review all shareholder proposals submitted to the Company, including any proposal relating to candidates for nominations to the Board, and the timeliness of the submission thereof and recommend to the Board appropriate action on each such proposal.

#### 10. **Minutes of meetings**

- 10.1 The secretary of the Committee, or such other person as the Committee may appoint, shall minute the proceedings and resolutions of all meetings of the Committee, including the names of those present and in attendance.
- 10.2 Minutes of meetings of the Committee shall be circulated promptly to all members of the Committee and to the chairman of the Board and, when finalised and agreed, to all other members of the Board, unless a conflict of interest exists.

#### 11. **Reporting responsibilities**

- 11.1 The chairman of the Committee shall report formally to the Board on the proceedings of the Committee following each meeting on all matters within its duties and responsibilities.
- 11.2 The Committee shall make whatever recommendations to the Board it deems appropriate on any area within its remit where action or improvement is needed.
- 11.3 The Committee shall make a statement in the annual report about its activities and the process used for appointments (including an explanation if external advice or open advertising has not been used). Such statement shall also include details of the membership of the Committee, the number of meetings of the Committee held and attendance at such meetings over the course of the year.
- 11.4 The Committee shall produce an annual report of the Company's remuneration policy and practices.



11.5 The Committee shall make available these terms of reference, explaining its role and the authority delegated to it by the Board.

12. **Authority**

The Committee is authorised by the Board:

- (a) to obtain, at the Company's expense, external legal or other professional advice on any matter within its terms of reference (provided that any expenses in excess of £10,000 in aggregate per annum must be approved in advance by the Board); and
- (b) to seek any information it requires from any director or employee of the Company (or any of its subsidiaries from time to time) in order to perform its duties.

13. **General**

13.1 The chairman of the Committee shall attend each Annual General Meeting of the Company prepared to respond to any shareholder questions concerning the Committee's activities.

13.2 The Committee shall, at least once a year, review its own performance, constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the Board for approval.

13.3 The Board may review the performance and constitution of the Committee and amend its terms of reference at any time.