

# CORPORATE GOVERNANCE AND NOMINATING COMMITTEE CHARTER

*(Adopted by the Board of Directors March 16, 2010)*

## **XINERGY LTD. (the “Corporation”)**

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### **Purpose**

The Corporate Governance and Nominating Committee (the “**Committee**”) is a standing committee appointed by the board of directors of the Corporation (the “**Board**”). The Committee is responsible for overseeing and assessing the functioning of the Board and the committees of the Board and for the development, recommendation to the Board, implementation and assessment of effective corporate governance principles. The Committee’s responsibilities also include identifying candidates for nomination as a director and recommending that the Board select qualified director candidates for election at the next annual meeting of shareholders (“**Annual Meeting**”).

### **Procedures, Powers and Duties**

The Committee shall have the following procedures, powers and duties:

#### 1. General

- a) **Composition:** The Committee shall be comprised of at least three directors. A majority of the members of the Committee shall be “independent” directors.<sup>1</sup> The members of the Committee shall be selected by the Board taking into account prior experience in matters to be considered by the Committee, probable availability at times required for consideration of these matters, and their individual independence and objectivity. All members shall have the skills and/or experience which are relevant to the mandate of the Committee, as determined by the Board. The members of the Committee are to be elected by the Board at the annual meeting of the Board and shall serve until their successors shall be duly elected and qualified or until their earlier resignation or removal by the Board.
- b) **Separate Executive Meetings:** The Committee shall meet at least once every year, and more often as warranted, with the Chief Executive Officer and the Corporate Secretary to discuss any matters that the Committee or either of these individuals believes should be discussed privately. However, the Committee shall also meet periodically without management and non-independent directors present.
- c) **Professional Assistance:** The Committee may retain special legal, accounting, financial or other consultants to advise the Committee at the Corporation’s expense including sole authority to retain and terminate any such firm to be used to identify director candidates and to approve any of such person or firm’s fees and other retention terms.
- d) **Reporting to the Board:** Following meetings of the Committee, the Committee, through its chair, will report to the Board on matters considered by the Committee.

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<sup>1</sup> “Independent” means a person who has no direct or indirect material relationship with the Company. A “material relationship” means a relationship which could, in the view of the Board, be reasonably expected to interfere with the exercise of that person’s independent judgement.

### **Board Composition and Director Nominations**

2. The Committee shall identify and recommend to the Board qualified director nominees for election at the Annual Meeting.
3. The Committee shall:
  - a) review from time to time the size, composition, operation, practice and tenure policies of the Board;
  - b) develop and review periodically the standards to be applied in making determinations as to the presence or absence of material relationships between a director and the Corporation;
  - c) review annually the competencies, skills and personal qualities required of directors in order to add value to the Corporation, in light of:
    - i) the opportunities and risks facing the Corporation and the Corporation's proposed strategy;
    - ii) the need to ensure that a majority of the Board is comprised of "independent" directors; and
    - iii) the Corporation's corporate governance guidelines and Board policies with respect to director tenure, retirement and succession and the number of boards on which directors may sit;
  - d) review periodically the competencies, skills and personal qualities of each existing director, and the contributions made by the director to the effective operation of the Board and review any significant change in the primary occupation of the director; and
  - e) in light of (a), (b), (c) and (d) above, make recommendations for changes to the composition of the Board.
4. The Committee shall recruit and consider candidates for nomination as a director, including any candidates recommended by shareholders, having regard to the background, employment and qualifications of possible candidates. The Committee shall:
  - a) consider whether the candidate's competencies, skills and personal qualities are aligned with the Corporation's needs and any criteria for selecting new directors established by the Board;
  - b) consider the commitment of time and resources that the candidate is able to devote to the Corporation as a member of the Board in light of what the Corporation expects from the candidate; and
  - c) ensure the candidate understands the demands and expectations of a director of the Corporation.

### **Director Compensation and Protection**

5. The Committee shall recommend to the Compensation Committee the terms upon which directors shall be compensated.

6. The Committee shall receive a report from management with respect to the directors and officers insurance policy of the Corporation and make recommendations for its renewal or amendment or the replacement of the insurer.

### **Corporate Governance**

7. The Committee is responsible for reviewing at least annually the Corporation's approach to governance issues and shall make recommendations to the Board respecting revisions to the Corporation's corporate governance guidelines. The Committee shall make recommendations to the Board respecting the number of boards on which directors may sit and Board policies with respect to director tenure, retirement and succession.
8. The Committee shall approve, in appropriate circumstances, the engagement of an outside advisor by an individual director at the expense of the Corporation.

### **Insider Trading**

9. The Committee shall review any changes recommended by management regarding the Corporation's public disclosure policy, and revise as necessary the policy with respect to insider trading in the Corporation's securities.
10. The Committee shall periodically review management's systems and practices for ensuring that all directors and all officers of the Corporation who are required to do so file insider reports in connection with any trade of securities of the Corporation or any derivative transaction which results in the effective disposition of the individual's economic interest in a security of the Corporation within the time period in which such reports are required to be filed.

### **Director Orientation and Continuing Education**

11. The Committee shall provide such information to new members of the Board so as to ensure that such directors are familiar with the Corporation's business and procedures of the Board. Information may include the Corporation's corporate and organizational structure, recent filings and financial information, governance documents and important policies and procedures. The Committee shall ensure that every director possesses the capabilities, expertise, availability and knowledge required to fill his or her position adequately. From time to time, the Committee shall arrange on-site tours of the Corporation's operations.
12. The Committee shall ensure that all new directors receive comprehensive orientation so that they fully understand the role of the Board and its committees, as well as the contribution individual directors are expected to have.
13. The Committee shall provide continuing opportunities for all directors, so that individuals may maintain or enhance their skills and abilities as directors, as well as to ensure their knowledge and understanding of the Corporation's business remains current.

### **Board Evaluations**

14. The Committee shall annually review and make recommendations to the Board for changes to the mandate for the Board and the position description for the chair of the Board.
15. The Committee shall conduct annual surveys of directors with respect to their views of the effectiveness of the Board, the chair of the Board, each committee of the Board and its chair and the contribution of individual directors.

16. The Committee shall evaluate the performance of the chair of the Board, having regard for the position description for the chair of the Board and chair of the Board's attendance at Board and Board committee meetings and overall contribution.
17. The Committee shall also annually assess the effectiveness of the Board as a whole and each committee of the Board, including the Committee, and make recommendations to the Board.

### **Operations of the Board**

18. The Committee shall assess the needs of the Board and make recommendations with respect to rules and guidelines governing and regulating the affairs of the Board, including:
  - a) the frequency and location of Board and Committee meetings;
  - b) procedures for establishing meeting agendas and the conduct of meetings;
  - c) the adequacy and quality of the information provided to the Board prior to and during its meetings; and
  - d) the availability, relevance and timeliness of discussion papers, reports and other information required by the Board.

### **Board Committees**

19. At the first meeting of the Board following each Annual Meeting, the chair of the Committee shall recommend to the Board the allocation of directors to each of the Board committees. Thereafter, when a vacancy occurs at any time in the membership of any Board committee, the Committee shall recommend a particular director to the Board to fill such vacancy.

### **Board Independence**

20. The Committee shall monitor and assess the relationship between the Board and management, defining the limits to management's responsibilities and making such recommendations as it may deem necessary with a view to ensuring that the Board is able to function independently of management.

### **Reporting and Disclosure Requirements**

21. The Committee shall annually prepare, review and approve the corporate governance report to be made in either the annual report to shareholders or the proxy circular prepared in connection with the Annual Meeting. The corporate governance report shall describe the corporate governance practices of the Corporation with reference to the reporting requirements of any stock exchange on which the common shares of the Corporation are listed, National Instrument 58-101 – "Disclosure of Corporate Governance Practices" and any other applicable securities laws.

### **General**

22. The Committee shall undertake on behalf of the Board such other corporate governance initiatives as may be necessary or desirable to enable the Board to provide effective corporate governance for the Corporation and contribute to the success of the Corporation and enhance shareholder value.

**This Charter**

The Committee shall review and reassess the adequacy of this Charter at least annually and otherwise as it deems appropriate and recommend changes to the Board. Each year the Committee shall review its performance with reference to this Charter.

The Committee shall ensure that this Charter or a summary of it which has been approved by the Committee is disclosed in accordance with all applicable securities laws or regulatory requirements in the proxy circular prepared in connection with the Annual Meeting or annual report of the Corporation.