

**ATLANTIC POWER CORPORATION**  
***CHARTER OF THE AUDIT COMMITTEE***

The Audit Committee (the “**Committee**”) of Atlantic Power Corporation (the “**Company**”) is a standing committee of the board of directors (the “**Board**”) of the Company, established in order to assist the Board in its oversight activities. The purpose of the Committee is to assist the Board in its oversight and supervision of:

- the integrity of the Company’s accounting and financial reporting practices and procedures;
- the implementation and adequacy of the Company’s internal accounting controls and procedures;
- the compliance by the Company with legal and regulatory requirements in respect of financial disclosure;
- the assessment and monitoring of the strategic, operational, reporting and compliance risks of the company’s business (collectively, “**Risks**”);
- the quality and integrity of the Company’s consolidated financial statements;
- the implementation and effectiveness of the Company’s disclosure controls and procedures;
- the annual independent audit of the Company’s financial statements, the engagement of the independent auditor and the qualification, independence and performance of the Company’s independent auditor; and
- the fulfillment of the other responsibilities set out herein.

In addition, the Committee shall prepare all reports required by the Committee under applicable law and the report required by the rules of the Securities and Exchange Commission (the “**SEC**”) to be included in the Company’s annual proxy statement. The Committee also provides an avenue for communication between the independent auditor, the Company’s Chief Financial Officer and other financial senior management, other employees and the Board concerning accounting, auditing and risk assessment and monitoring matters.

The Committee is directly responsible for the appointment, retention (and termination) and for the compensation and the oversight of the work of the independent auditor (including oversight of the resolution of any disagreements between senior management and the independent auditor regarding financial reporting) engaged for the purpose of preparing or issuing audit reports or performing other audit, review or attest services for the Company or its wholly owned subsidiaries.

Each member of the Committee shall be entitled to rely in “good faith” upon:

- financial statements of the Company represented to him or her by senior management of the Company or in a written report of the independent auditor to present fairly the financial position of the Company in accordance with generally accepted accounting principles; and
- any report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by any such person.

### **Composition:**

- The Board shall elect annually from among its members at least three directors who shall be the members of the Committee. Each member of the Committee: (i) shall satisfy the independence requirements established by applicable securities laws (including Section 10A of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) and related rules and regulations) and the New York Stock Exchange (“**NYSE**”) Listed Company Manual for listing on the exchange; and (ii) is “financially literate” (or will become so within a reasonable period of time following his or her appointment to the Audit Committee) within the meaning of the NYSE Listed Company Manual. Under these requirements, each member of the Committee shall be free from any relationship that would interfere with the exercise of independent judgment as a Committee member.
- One or more members of the Committee will qualify as an “audit committee financial expert” under the rules promulgated by the SEC.
- A member of the Committee who sits on the board of directors/managers of an affiliated entity is exempt from the requirement that he or she be independent if that person, except for being a director/manager (or member of a board committee) of the Company and the affiliated entity, is otherwise independent of the Company and the affiliated entity, provided that the Board has determined that appointing such member to the Committee will not materially adversely affect the ability of the Committee to act independently.
- If a member of the Committee ceases to be independent for reasons outside that member’s reasonable control, provided that notice has been sent to NYSE, that member is exempt from the requirement to be independent for a period ending on the later of:
  - (i) the next annual meeting of the Company; and
  - (ii) the date that is one year from the occurrence of the event which caused the member to not be independent.
- No member of the Committee may simultaneously serve on the audit committee of more than three (3) issuers having securities registered under Section 12 of the Exchange Act, unless the Board determines that such simultaneous service would not impair the ability of such member to effectively serve on the Committee.
- Resignation or removal of a director from the Board, for whatever reason, shall automatically and without any further action constitute resignation or removal, as applicable, from the Committee.

### **Compensation:**

A member of the Committee may not, other than in his or her capacity as a member of the Committee, the Board or any other committee established by the Board, receive directly or indirectly any consulting, advisory or other compensatory fee from the Company. A member of the Committee may receive additional directors’ fees to compensate such member for the significant time and effort expended by such member to fulfill his or her duties as a Committee member.

### **Reports:**

The Committee shall report to the Board on a regular basis and, in any event, before the public disclosure by the Company of its quarterly and annual financial results. The reports of the Committee shall include any issues of which the Committee is aware with respect to the quality or integrity of the Company’s consolidated financial statements, its compliance with legal or regulatory requirements, and the independence and performance of the Company’s independent auditor.

## **Responsibilities:**

Subject to the powers and duties of the Board, the Board hereby delegates to the Committee the following powers and duties to be performed by the Committee on behalf of and for the Board:

### A. Financial Statements and Other Financial Information

The Committee shall:

- (i) review and discuss the Company's consolidated annual audited financial statements and related documents and reports prior to any public disclosure of such information;
- (ii) review and discuss the Company's consolidated interim unaudited financial statements and related documents and reports prior to any public disclosure of such information;
- (iii) following a review with management and the independent auditor of such annual and interim consolidated financial statements and related documents and reports, recommend to the Board the approval of such financial statements and related documents and reports and the inclusion of the annual audited financial statements in the Company's Form 10-K;
- (iv) review and discuss with management and/or the independent auditor:
  - (a) all critical policies and practices used as well as significant management estimates and judgments made in the preparation of the financial statements;
  - (b) any off balance sheet structures that could impact the Company's consolidated financial statements;
  - (c) the effects of alternative applications of generally accepted accounting principles on the Company's consolidated financial statements; and
  - (d) any changes in accounting policies or financial reporting requirements, regulations or legislation that may affect the Company's consolidated financial statements;
- (v) review and discuss with management and/or the independent auditor the treatment in the financial statements of any significant transactions and other potentially difficult matters;
- (vi) review and discuss the results of the annual audit and any other matters required to be communicated to the Committee by the independent auditor under the applicable standards of the Public Company Accounting Oversight Board (the "PCAOB");
- (vii) review and discuss the results of the independent auditor's review of the Company's quarterly financial information conducted in accordance with applicable standards of the PCAOB;
- (viii) conduct an annual and semi-annual review of the expenses of the Company;
- (ix) discuss the Company's earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies with management and the independent auditor prior to the release of earnings as appropriate. The Committee's discussion of earnings releases as well as financial information and earnings guidance may be general (i.e., discussion of the types of information to be disclosed and the type of

presentation to be made). The Committee need not discuss in advance each earnings release or each instance in which the Company may provide earnings guidance;

- (x) review a summary provided by the Company's legal counsel of the status of any material pending or threatened litigation, claims and assessments respecting the Company and its subsidiaries and any legal matters that could impact the Company's consolidated financial statements;
- (xi) review correspondence with regulatory and government agencies that could have an impact on the Company's consolidated financial statements or accounting policies;
- (xii) prepare all reports required by the Committee under applicable law and the report required by the rules of the SEC to be included in the Company's annual proxy statement; and
- (xiii) review the other annual financial reporting documents as well as management's discussion and analysis and earnings press releases of the Company prior to any disclosure to the public.

#### B. Financial Reporting Control Systems

The Committee shall:

- (i) require management to implement and maintain appropriate internal controls, and use reasonable efforts to satisfy itself as to the adequacy of the Company's policies for the management of risk and the preservation of assets and the fulfillment of legislative and regulatory requirements;
- (ii) annually, in consultation with management, the independent auditor and, if applicable, the officer or employee responsible for the internal audit function, review, evaluate and assess the adequacy and integrity of the Company's consolidated financial reporting processes and internal controls, and discuss significant financial risk, exposures and the steps management has taken to monitor, control and report such exposures;
- (iii) if applicable, meet separately with the officer or employee responsible for the internal audit function to discuss any matters that the Committee or independent auditor believe should be discussed in private;
- (iv) submit to the Board and the boards of directors/managers of its subsidiaries any recommendations the Committee may have from time to time with respect to financial reporting, accounting procedures and policies and internal controls;
- (v) review reports from senior officers of the Company and its subsidiaries outlining any significant changes in financial risks facing the Company;
- (vi) review the management letter of the independent auditor and the responses to suggestions made as well as any difficulties the independent auditor may have encountered in connection with the annual audit or otherwise. Such review shall address (i) any restrictions on the scope of activities or access to required information, (ii) any disagreement with management regarding generally accepted accounting principles and other matters, and (iii) any material adjustments to the financial statements recommended by the independent auditors and adjustments that were proposed but "passed", regardless of materiality;

- (vii) review annually with the independent auditor the attestation to, and report on, the assessment of the effectiveness of internal controls made by management. Consider whether any changes to the internal controls or disclosure control processes or procedures are appropriate in light of management's assessment or the independent auditor's report;
- (viii) review any new appointments to senior positions of the Company and its subsidiaries with financial reporting responsibilities (such review may be carried out by the Chairman of the Committee);
- (ix) satisfy itself that adequate procedures are in place for the review of the Company's disclosure of the Company's financial information extracted or derived from the Company's consolidated financial statements (other than the financial statements, management's discussion and analysis and earnings press releases) and periodically assess the adequacy of those procedures;
- (x) establish procedures for:
  - (a) the receipt, retention and treatment of complaints received by the Company or its subsidiaries regarding accounting, internal accounting controls or auditing matters; and
  - (b) the confidential, anonymous submission by employees of the Company or its subsidiaries of concerns regarding questionable accounting or auditing matters;
- (xi) review and approve the Company's (and its respective subsidiaries') hiring policies regarding partners, employees and former partners and employees of the present and former independent auditor of the Company;
- (xii) obtain assurance from the independent auditor regarding the overall control environment and the adequacy of accounting system controls;
- (xiii) review employee expense reports of the officers of the Company on a semi-annual basis (performed by Chairman); and
- (xiv) review activities of the Company's internal audit function, audit plans, procedures and results, in coordination with the independent auditor. Annually review the experience and qualification of the senior members of the internal audit function (or the internal audit service providers), including the responsibilities, staffing, budget and quality control procedures of the internal audit function and any recommendations with respect to improving the performance or strengthening of that function. Regularly review the continued overall effectiveness of the internal audit function as required under relevant New York Stock Exchange listing rules and law. Review performance and approve compensation of the chief internal audit officer.

#### C. Independent Auditor

The Committee shall:

- (i) review the audit plan with the independent auditor;
- (ii) periodically meet and discuss (outside of the presence of management) with the independent auditor matters affecting the conduct of its audit and other corporate matters;
- (iii) review the annual audit results with respect to (a) the Company's financial statements, including appropriately addressing risks related to litigation, contingent liabilities, and

similar matters, and (b) the Company's internal controls, including electronic data processing controls, and the extent to which such controls are evaluated by the independent auditor for adequacy and protection;

- (iv) review and discuss with the independent auditor (outside of the presence of management) how the independent auditor plans to handle its responsibilities under the Private Securities Litigation Reform Act of 1995, and request assurance from the independent auditor that Section 10A(b) of the Exchange Act has not been implicated;
- (v) instruct the independent auditor that the independent auditor shall report directly to the Committee;
- (vi) discuss with the independent auditor those matters brought to the attention of the Committee by the independent auditor pursuant to the Statement on Auditing Standards No. 61, as amended;
- (vii) review and discuss with the independent auditor the report required to be delivered by the independent auditor pursuant to Section 10A(k) of the Exchange Act;
- (viii) evaluate the independent auditor's qualifications, performance and independence, and present its conclusions with respect to the independent auditor to the full Board. As part of such evaluation, at least annually, the Committee shall:
  - obtain and review a report or reports from the independent auditor describing: (a) the independent auditor's internal quality-control procedures; (b) any material issues raised by the most recent internal quality-control review, peer review or PCAOB review or inspection of the independent auditor or by any inquiry or investigation by government or professional authorities, within the preceding five years, regarding one or more independent audits carried out by the independent auditor, and any steps taken to address any such issues; and (c) in order to assess the independent auditor's independence, all relationships between the independent auditor and the Company;
  - annually review and evaluate the performance of the independent auditor and the lead partner (and the Committee may review and evaluate the performance of other members of the independent auditor's audit staff); and
  - assure the regular rotation of the audit partners (including, without limitation, the lead and concurring partners) as required under the Exchange Act and Regulation S-X.

In this regard, the Committee shall also: (a) seek the opinion of management of the independent auditor's performance; and (b) consider whether, in order to assure continuing auditor independence, there should be regular rotation of the audit firm;

- (ix) review the performance and the remuneration of the Company's independent auditor;
- (x) be directly responsible for the retention or replacement of the independent auditor to be nominated for the purpose of preparing or issuing an auditor's report or performing other audit, review or attest services for the Company and the remuneration of the independent auditor (the Committee may consult with management in fulfilling these duties, but may not delegate these responsibilities to management);
- (xi) if there is a plan to change the independent auditor, review all issues related to the change and the steps planned for an orderly transition;

- (xii) annually review and recommend for approval to the shareholders the terms of engagement and the remuneration of the independent auditor;
- (xiii) oversee the work of the independent auditor engaged for the purpose of preparing or issuing an auditor's report or performing other audit, review or attest services for the Company, including the resolution of disagreements between management and the independent auditor regarding financial reporting;
- (xiv) discuss with the Company's independent auditor the quality and not just the acceptability of the Company's accounting principles;
- (xv) relay its expectations to the Company's independent auditor from time to time including its expectation that (i) any disagreements of a material nature with management be brought to the attention of the Committee, (ii) the independent auditor is accountable to the Committee and the Board, each as representatives of the shareholders and must report directly to the Committee, (iii) any irregularities in the financial information be reported to the Committee, (iv) the independent auditor explains the process undertaken by it in auditing or reviewing the Company's financial disclosure, (v) the independent auditor discloses to the Committee any significant changes to accounting policies or treatment of the Company, (vi) the independent auditor discloses to the Committee any reservations it may have about the financial statements or its access to materials and/or persons in reviewing or auditing such statements, and (vii) the independent auditor discloses any conflict of interest that may arise in its engagement;
- (xvi) (a) request that the independent auditor provides the Committee with the written disclosures and the letter required by PCAOB Rule 3526; (b) require that the independent auditor submits to the Committee at least annually a formal written statement describing all relationships between the independent auditor or any of its affiliates and the Company or persons in financial reporting oversight roles at the Company that might reasonably be thought to bear on the independence of the independent auditor; (c) discuss with the independent auditor the potential effects of any disclosed relationships or services on the objectivity and independence of the independent auditor; (d) require that the independent auditor provides to the Committee written affirmation that the independent auditor is, as of the date of the affirmation, independent in compliance with PCAOB Rule 3520; and (e) based on such disclosures, statement, discussion and affirmation, take or recommend that the Board take appropriate action in response to the independent auditor's report to satisfy itself of the independent auditor's independence. In addition, before approving the initial engagement of any independent auditor, the Committee shall receive, review and discuss with the audit firm all information required by, and otherwise take all actions necessary for compliance with the requirements of, PCAOB Rule 3526. References to rules of the PCAOB shall be deemed to refer to such rules and to any substantially equivalent rules adopted to replace such rules, in each case as subsequently amended, modified or supplemented.
- (xvii) review at least annually the non-audit services provided by the Company's independent auditor for the purposes of getting assurance that the performance of such services will not compromise the independence of the independent auditor; and
- (xviii) in accordance with applicable rules and regulations, pre-approve all auditing services, including the annual audit and its scope for the Company and its wholly-owned or majority-owned subsidiaries, and the terms thereof (which may include providing comfort letters in connection with securities underwritings), and all non-audit services (other than non-audit services prohibited under Section 10A(g) of the Exchange Act or the applicable rules of the SEC or the PCAOB) to be provided to the Company or its subsidiary entities by its independent auditor or the independent auditor of its subsidiary entities; provided, however, the pre-approval requirement is waived with respect to the

provision of non-audit services for the Company if the “de minimis” provisions of Section 10A(i)(1)(B) of the Exchange Act are satisfied.<sup>1</sup> The authority to pre-approve non-audit services may be delegated to one or more members of the Committee, who shall present all decisions to pre-approve an activity to the full Committee at its first meeting following such decision.

#### D. Risk Management

The Committee shall:

- (i) periodically meet with senior management to review and discuss senior management’s timely identification of the most significant Risks, including those Risks related to or arising from the Company’s weaknesses, threats to the Company’s business and the assumptions underlying the Company’s strategic plan (collectively, “**Principal Risks**”);
- (ii) if brought to the attention of the Committee, the Committee shall discuss with the Chief Executive Officer and Chief Financial Officer of the Company: (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company’s ability to record, process, summarize and report financial information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act, within the time periods specified in the SEC’s rules and forms; and (b) any fraud involving management or other employees who have a significant role in the Company’s internal control over financial reporting;
- (iii) recommend to the Board for approval policies (and changes thereto) setting out the framework within which each identified Principal Risks shall be managed;
- (iv) review with senior management the Company’s tolerance for financial Risk and senior management’s assessment of the significant financial Risks facing the Company;
- (v) discuss with senior management, at least annually, the guidelines and policies utilized by senior management and the relevant departments of the Company, including the internal audit department, with respect to financial Risk assessment and management, and the major financial Risk exposures and the procedures to monitor and control such exposures, in order to assist the Committee in assessing the completeness, adequacy and appropriateness of financial Risk disclosure in Management’s Discussion and Analysis and in the Company’s financial statements;
- (vi) review and discuss with management, management reports on the Company’s processes to manage and report risks related to litigation, contingent liabilities, and similar matters that may constitute significant financial risk exposures and report to the full Board as appropriate significant actual or potential liabilities, contingent or otherwise, in a timely fashion;
- (vii) review the adequacy of insurance coverage maintained by the Company; and
- (viii) review codes of conduct and management reports on employee compliance, including compliance with the Foreign Corrupt Practices Act, to guard against significant conflicts

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<sup>1</sup> The Committee may satisfy the pre-approval requirement if: (a) the aggregate amount of all the non-audit services that were not pre-approved is reasonably expected to constitute no more than five per cent of the total amount of fees paid by the Company and its subsidiary entities to the Company’s independent auditor during the fiscal year in which the non-audit services are provided; (b) the services were not recognized by the Company or the subsidiary entity of the Company at the time of the engagement to be non-audit services; and (c) the services are promptly brought to the attention of the Committee and approved, prior to the completion of the audit, by the Committee or by one or more members of the Committee to whom authority to grant such approvals has been delegated by the Committee. The pre-approval requirement applies to audit and non-audit services at subsidiary entities which are operated or otherwise controlled by the Company.

of interest and dishonest, unethical, or illegal activities. Monitor Company activities that are designed to assure compliance with such codes and review management findings involving significant lapses of ethical conduct, fraud, or criminal conduct.

**Structure:**

- The Committee shall appoint one of its members to act as Chairman of the Committee. The Chairman will appoint a secretary who will keep minutes of all meetings (the “**Secretary**”). The Secretary does not have to be a member of the Committee or a director and can be changed by simple notice from the Chairman.
- The Committee will meet as many times as is necessary to carry out its responsibilities but in no event will the Committee meet less than quarterly. The Committee may also act by unanimous written consent in lieu of a meeting. Meetings will be at the call of the Chairman. Notwithstanding the foregoing, the independent auditor of the Company or any member of the Committee may call a meeting of the Committee on not less than 48 hours’ notice. The Committee will invite members of management and others to attend meetings provide pertinent information, as necessary.
- Meeting agendas will be prepared and provided in advance to Committee members, along with appropriate briefing materials. Minutes of meetings will be prepared and the Committee will report to the Board the results of its meetings. The Committee may form one or more sub-committees, including a risk subcommittee, each of which may take such actions as may be delegated by the Committee.
- No business may be transacted by the Committee except at a meeting of its members at which a quorum of the Committee is present or by a resolution in writing signed by all the members of the Committee. A majority of the members of the Committee shall constitute a quorum provided that if the number of members of the Committee is an even number one half of the number of members plus one shall constitute a quorum. The affirmative vote of a majority of the members present shall be necessary to decide any question before the Committee.
- Any member of the Committee may be removed or replaced at any time by the Board and shall cease to be a member of the Committee as soon as such member ceases to be a director. Subject to the foregoing, each member of the Committee shall hold such office until the next annual meeting of shareholders after his or her election as a member of the Committee.
- The independent auditor of the Company shall be entitled to receive notice of every meeting of the Committee and, at the expense of the Company, to attend and be heard thereat.
- The time at which and the place where the meetings of the Committee shall be held, the calling of meetings and the procedure in all respects of such meeting shall be determined by the Committee, or otherwise determined by resolution of the Board.
- The members of the Committee shall be entitled to receive such remuneration for acting as members of the Committee as the Board may from time to time determine.

**Independent Advice:**

In discharging its mandate, the Committee shall have the authority to retain (and authorize the Company to pay for) and receive advice from special legal, accounting or other advisors.

**Funding:**

The Company shall provide such funding as the Committee determines is appropriate in connection with the compensation of the independent auditor and any independent advisor and for the payment of ordinary administrative expenses the Committee determines are necessary or appropriate in carrying out its duties.

**Annual Evaluation:**

At least annually, the Committee shall, in a manner it determines to be appropriate:

- Perform a review and evaluation of the performance of the Committee and its members, including the compliance of the Committee with this charter and performance in accordance with New York Stock Exchange listing rules and applicable law.
- Review and assess the adequacy of this charter and recommend to the Board any amendments or modifications to this charter that the Committee determines to be appropriate.

**Limitation:**

Nothing in this charter is intended to or shall have the effect of limiting or impairing the independent decision making authority or responsibility of any board of directors/managers of a subsidiary of the Company mandated by applicable law. The Committee does not have the responsibility of planning or conducting audits of the Company's financial statements or determining whether the Company's financial statements are complete, accurate and in accordance with generally accepted accounting principles. In addition, it is not the duty of the Committee to conduct investigations or to ensure compliance with laws and regulations.

## **Definitions:**

**“financially literate”** means the ability to read and understand a set of financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the Company’s consolidated financial statements.

**“Good faith reliance”** means that the Committee member has considered the relevant issues, questioned the information provided and assumptions used, and assessed whether the analysis provided by senior management or the expert is reasonable. Generally, good faith reliance does not require that the member question the honesty, competence and integrity of senior management or the expert unless there is a reason to doubt their honesty, competency and integrity.

**“independent director”** means a director who has no direct or indirect material relationship with the Company.<sup>2</sup>

**“material relationship”** means a relationship which could, in the view of the Board, be reasonably expected to interfere with the exercise of a member’s independent judgment. Without limiting the generality of the foregoing, the following individuals are considered to have a material relationship with the Company:<sup>3</sup>

- (a) an individual who is, or has been within the last three years, an employee or an executive officer<sup>4</sup> of the Company;
- (b) an individual whose immediate family member is, or has been within the last three years, an executive officer of the Company;
- (c) an individual who:
  - (i) is a current partner of a firm that is the Company’s internal or external auditor,
  - (ii) is a current employee of that firm, or
  - (iii) was within the last three years a partner or employee of that firm and personally worked on the Company’s audit within that time;
- (d) an individual whose spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone who shares a home with the individual (other than domestic employees):
  - (i) is a current partner of a firm that is the Company’s internal or external auditor,
  - (ii) is a current employee of that firm and personally works on the Company’s audit, or
  - (iii) was within the last three years a partner or employee of that firm and personally worked on the Company’s audit within that time;
- (e) an individual who, or whose immediate family member, is or has been within the last three years, an executive officer of an entity if any of the Company’s current executive officers serves or served at that same time on the entity’s compensation committee;

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<sup>2</sup> For the purpose of the definitions of “independent director” and “material relationship” in this section, “Company” includes a subsidiary entity of the Company and a parent of the Company, as applicable.

<sup>3</sup> An individual will not be considered to have a material relationship with the Company solely because the individual has previously acted as an interim Chairman or chief executive officer or other executive officer of the Company.

<sup>4</sup> An “executive officer” includes any individual who performs a policy-making function in respect of the entity, including the president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), or any vice-president of the issuer in charge of a principal business unit.

- (f) an individual who received, or whose immediate family member received, more than \$120,000 in direct compensation<sup>5</sup> from the Company during any 12-month period within the last three years; and<sup>6</sup>
- (g) an individual who is a current employee, or whose immediate family member is a current executive officer, of an entity that has made payments to, or received payments from, the Company for property or services in an amount which, in any of the last three fiscal years, exceeds the greater of \$1 million, or 2% of such entity's consolidated gross revenues.

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<sup>5</sup> Direct compensation does not include: (a) remuneration for acting as a member of the Board or of any Board committee of the Company; and (b) the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the Company if the compensation is not contingent in any way on continued service. Compensation received by a director for former service as an interim Chairman or CEO or other executive officer need not be considered in determining independence under this test. Compensation received by an immediate family member for service as an employee of the listed company (other than an executive officer) need not be considered in determining independence under this test.

<sup>6</sup> An individual who: (a) has a relationship with the Company pursuant to which the individual may accept, directly or indirectly, any consulting, advisory or other compensatory fee from the Company or any subsidiary entity of the Company, other than as remuneration for acting in his or her capacity as a member of the Board or any Board, or as a part-time chair or vice-chair of the Board or any Board committee; or (b) is an affiliated person of the Company or any of its subsidiary entities, is considered to have a material relationship with the Company. The indirect acceptance by an individual of any consulting, advisory or other compensatory fee includes acceptance of a fee by: (a) an individual's spouse, minor child or stepchild, or a child or stepchild who shares the individual's home; or (b) an entity in which such individual is a partner, member, an officer such as a managing director occupying a comparable position or executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the Company or any subsidiary entity of the Company. Compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the Company if the compensation is not contingent in any way on continued service.