



**MTOUCHE TECHNOLOGY BERHAD**  
**(Company No.: 656395-X)**

**TERMS OF REFERENCE OF THE NOMINATION COMMITTEE**

**1. Membership**

The Committee shall be appointed by the Board and shall consist of not less than two (2) members. All the Committee members must comprise exclusively of non-executive directors, with a majority of them being independent directors.

The office of a Committee member shall automatically be vacated when he ceased to be a director.

In the event of any vacancy in the Committee resulting in the non-compliance of the above, the Company must fill the vacancy within three (3) months.

The Board of Directors must review the term of office and performance of the Committee and each of its members at least once every three (3) years to determine whether such Committee and members have carried out their duties in accordance with their terms of reference.

**2. Chairman**

The Chairman shall be elected by the Committee from amongst their members who is an independent director and should be the senior independent director as identified by the Board.

The Chairman's role is to:

- (a) Independently lead the succession planning and appointment of board members, including the chairman and the Chief Executive Officer ("CEO") whilst maintaining contact with the principal shareholders; and
- (b) Lead governance issues, particularly the annual review of board effectiveness, ensuring that the performance of each individual directors is independently assessed.

If the Chairman is not present at a meeting within fifteen (15) minutes after the time appointed for holding the meeting, the members of the Committee may elect one (1) of their numbers to be the chairman of the meeting.

### **3. Secretary**

- (1) The Company Secretary or her nominee shall act as Secretary of the Committee and shall be responsible, in conjunction with the Chairman, for drawing up the agenda and circulating it prior to each meeting.

The Secretary or her nominee shall be in attendance at each Committee meeting and record the proceedings of the meeting thereat and minute the resolutions.

- (2) The Secretary shall also be responsible for keeping the minutes of meetings of the Committee and circulating them to the Committee Members. The Committee Members may inspect the minutes of the Committee at the Registered Office of the Company.

### **4. Meetings**

- (1) The Committee shall meet at least once a year and hold additional meetings as and when necessary depending on the level of responsibility and complexity of the Group.
- (2) The Members may participate in a meeting by means of conference telephone, conference videophone or any similar or other communications equipment by means of which all persons participating in the meeting can hear each other. Such participation in a meeting shall constitute presence in person at such meeting.
- (3) The quorum for a meeting shall be two (2) members with a majority of the independent directors present at the meeting. The Committee at which a quorum is present is considered to be competent for the exercise of its authorities, powers and discretions vested upon it.
- (4) All decisions at such meeting shall be decided on a show of hands on a majority of votes. The Chairman shall have a casting vote.
- (5) Meetings of the Committee shall be called by the Secretary of the Committee at the request of the Chairman of the Committee based on planned calendar dates. Notice of each meeting confirming the venue, time and date, together with an agenda of items and its supporting papers to be discussed, shall be forwarded to each member of the Committee, no later than five (5) working days before the date of the meeting.

The Committee shall have the right to invite other Directors, Management and consultants as applicable to participate in the Committee meetings, as and when necessary, to carry out its responsibilities.

- (6) The Secretary or his/her nominee shall minute the proceedings and resolutions, including the names of all attendees. Draft minutes of meetings of the Committee shall be circulated promptly to all members of the Committee. Once approved, minutes should be circulated to all other directors, unless a conflict of interest exists.
- (7) The Committee may establish procedures from time to time to govern its meetings, keeping of minutes and its administration.

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- (8) The Chairman shall report to the Board on its proceedings after each meeting on matters within its duties and responsibilities. The NC shall make whatever recommendations to the Board it deems appropriate on any area within its remit where action or improvement is needed.
- (9) In the event the NC require matters to be approved by way of a written resolution, a resolution in writing signed or approved by letter or telefax or other electronic means by all members of the NC, shall be as valid and effectual as if it had been passed at a meeting of the NC duly called and constituted. Any such resolution may be executed in any number of counterparts, each signed by one or more members of the NC all of which taken together and when delivered to the Secretary shall constitute one and the same resolution.

**5. Duties and Functions**

The main functions and duties of the Committee shall include, but are not limited to the following:-

New Appointments

- (a) Consider and recommend to the Board candidates for directorships, proposed by Management, Director, shareholder or outsourced service providers, taking into consideration the candidates' skills, knowledge, expertise and experience, time commitment, character, competence, professionalism and integrity. For the position of independent non-executive directors, the Committee should also evaluate the candidates' ability to discharge such responsibilities as expected from independent non-executive directors;
- (b) Before any appointment by the Board, evaluate the balance of skills, knowledge, experience and diversity on the Board, and the current and future needs and size of the Company in identifying suitable candidates. Accordingly, the Committee may:-
  - Use the services of external advisors to facilitate the search from diverse pools;
  - Consider candidates from a wide range of backgrounds;
  - Consider candidates on merit and against objective criteria with due regard for diversity including gender, ethnicity and age, and appointees time commitment, skill and experience; and
  - Request to consider the disclosure of any business interests that may result in a conflict of interest.
- (c) Recommend to the Board, candidates to fill the seats on board committees, in consultation with the Chairman of those committees. In the event that the Chairman's position (regardless of board/committee) is to be filled, to consult the Board;
- (d) Consider and recommend to the Board the candidates for CEO and Chief Financial Officer ("CFO"), taking into consideration the candidates' skills, knowledge, expertise and experience, time, commitment, character, professionalism, integrity and diversity on senior Management.

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Re-election, Re-appointment and Resignation/ Termination

- (a) Recommend to the Board, candidates for re-election of directors by shareholders under the annual re-election provisions or retirement, with due consideration to the extent to which the interplay of the directors' expertise, skills, knowledge and experience with those of other Board Members, as well as their roles as Committee Members. Attention should be paid to independent directors who are retained beyond nine (9) years as the Board has to provide strong justification in exceptional circumstances and seek shareholders' approval. If the Board continues to retain the Independent Director after the twelfth (12) year, the Board should seek annual shareholders' approval through a two-tier voting process.

Under the two-tier voting process, shareholders' votes will be cast in the following manner at the same shareholders' meeting:-

- Tier 1: Only the Large Shareholder(s) of the Company votes; and
- Tier 2: Shareholders other than Large Shareholder(s) votes.

Large Shareholder means a person who:

- is entitled to exercise, or control the exercise of, not less than 33% of the voting shares in the Company; or
- is the largest shareholder of voting shares in the Company; or
- has the power to appoint or cause to be appointed a majority of the Directors of the Company; or
- has the power to make or cause to be made, decisions in respect of the business or administration of the Company, and to give effect to such decisions or cause them to be given effect to.

The decision for the resolution is determined based on the vote of Tier 1 and a simple majority of Tier 2. If there is more than one Large Shareholder, a simple majority of votes determine the outcome of the Tier 1 vote.

The resolution is deemed successful if both Tier 1 and Tier 2 votes support the resolution.

However, the resolution is deemed to be defeated where the vote between the two tiers differs or where Tier 1 voter(s) abstained from voting.

In obtaining the shareholders' approval, the Committee should conduct an assessment of the independent directors(s) and recommend to the Board whether the independent director(s) should remain independent or be re-designated;

- (b) Deal with the 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 their service contract;
- (c) Review the re-appointment of any non-executive director at the conclusion of his term of office having given due regard to his performance and ability to continue to contribute to the Board in terms of knowledge, skills and experience required;

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Specific Nominations and Succession Planning

- (a) Understand the current performance, competencies and potential of those in key positions in senior Management in order to identify and develop plans for those key talents.
- (b) Recommend to the Board, the succession plans for board chairman, directors and key Management personnel, particularly for both executive and non-executive directors and the re-appointment of any non-executive director at the conclusion of his or her specified term of office.
- (c) Recommend suitable candidates for the role of senior independent director, as applicable;
- (d) Establish a clear succession plan for board chairman, directors and senior Management, giving full consideration to succession planning in the course of its work, taking into account the challenges and opportunities facing the Company, and the skills and expertise needed on the Board and by the Company in future.

In terms of senior Management, the Committee may request from time to time detailed views (either in the form of a report or otherwise) and work together with the CEO and/or senior Management of the Company to:-

- identify expected critical position vacancies and determine any future critical positions; and
- identify gaps in current employees and develop individual development plans, coaching and monitoring programmes.

The Board should work with the Committee to evaluate potential successors, taking into account the challenges and opportunities facing by the Company, and the skills and expertise, including diversity, needed on the Board of Directors in the future;

Annual Performance Assessment of Board, Committees and Individual Directors

- (a) Annually review the required mix of skills, experience, diversity and other qualities, including core competencies and effectiveness of the Board, as a whole, the Board Committees and the contribution of each individual directors. All evaluations carried out by the Committee in the discharge of its functions should be properly documents. This process should be coordinated by the Committee, with the assistance of the Secretary, and thus, reporting to the Board at the end of each financial year with an assessment of the Board's performance and areas in which the Board, Board Committees or individual Director could improve;
- (b) Annually review the time required of non-executive and independent directors. Performance assessments should be undertaken to assess whether the directors are spending enough time to fulfill their duties;
- (c) Evaluate and appraise the performance of the Board Chairman. This role may be led by the senior independent director who is a member of the Committee;

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- (d) Annually review the independence of the independent director and recommend to the Board whether the independent director(s) who has (have) exceeding the cumulative term of nine (9) years should remain independent or be re-designated;
- (e) Annually review the performance of the CEO and the CFO; and
- (f) Annually review the term of office of the Audit Committee (“AC”) and each of its members to determine whether the AC has carried out their duties in accordance with their terms of reference.

Size of Board of Directors and Independent Directors

- (a) Assess the desirable balance in Board membership by reviewing the size, structure and composition of the Board, taking into consideration the number of directorships;
- (b) Assess desirable number of independent directors; and
- (c) Consider the representation of interest groups as part of boardroom diversity. Factors to consider may include gender, race, religion, nationality, professional background and culture.

In developing its procedures and making recommendations to the Board, the Committee will take into account of:-

- The provisions of the Company’s Constitution, the Companies Act 2016, ACE Market Listing Requirements of Bursa Malaysia Securities Berhad (“Bursa Securities”) and other laws and regulations, if any, in respect of the appointment, removal, etc of directors;
- The need for the Board to operate an open and transparent appointment process. This may include public advertisement or direct approaches being made to individuals who may be suitable or organisations that may be able to advise;
- The overall composition and balance of the Board.

Continuous Education / Development

- (a) Identify suitable orientation, educational and training programmes for continuous development of Directors and ensure all Directors receive appropriate continuous trainings programme in order to keep abreast with developments in the industry and with changes in the relevant statutory and regulatory requirements.
- (b) Assess the AC members’ knowledge on financial literacy.

Shareholders’ Meeting

The Chairman of the Committee should attend the Shareholders’ Meeting to answer any shareholder’s questions on the Committee’s activities, in particular on areas pertaining to proposed resolutions for shareholders to consider on the appointment of re-appointment of directors or the retention of an independent director who has served the Company for more than a cumulative term of nine (9) years.

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Reporting Responsibilities

The Chairman of the Committee shall report to the Board of Directors on its proceedings after each meeting of the Committee. The Committee shall make recommendations to the Board of Directors as appropriate on any area within its responsibility or as delegated by the Board of Directors, where action or improvement is needed. The Committee shall produce a report to be included in the Company's annual report about its activities and the process used to identify and make appointments.

Access to Advice

In furtherance to their duties as the Committee's members of the Company, there should be an agreed procedure for the Members, whether as a full Committee or in their individual capacity, access to resources and information as deemed appropriate for the discharge of its responsibilities to the Company, including obtaining independent professional advice at the Company's expense and period review of its terms of reference against its performance.

The Committee should be entitled to the services of a secretary who must ensure that all appointments are properly made, that all necessary information is obtained from Board of Directors, both the Company's own records and for the purposes of meeting statutory requirements, as well as obligations arising from the Listing Requirements of Bursa Securities and/or other regulatory authorities.

**6. Rights and Authority**

The Committee shall:-

- i) have the resources which are required to perform its duties;
- ii) have full and unrestricted access to all information and documents as deemed appropriate for the discharge of its responsibilities to the Company;
- iii) have the right to obtain independent professional or other advice at the Company's expense;
- iv) be entitled to the services of the Company Secretary to ensure that all appointments are properly made, that all necessary information is obtained from Board, both the Company's own records and for the purposes of meeting statutory requirements, as well as obligations arising from the Listing Requirements of Bursa Malaysia Securities Berhad and/or other regulatory authorities.
- v) have the right to invite any employees of the Group to attend NC meetings and to brief the NC Members on matters being deliberated;
- vi) meet as and when required on a reasonable notice and have the right to regulate its own procedure on the calling of meeting; and
- vii) have the right to provide recommendations to the Board for consideration and approval.

**7. Terms of Reference**

The terms of reference should be assessed, reviewed and updated at least once every three (3) years by the Committee or as and when there are changes to the Malaysian Code on Corporate Governance 2017 and the ACE Market Listing Requirements of Bursa Securities that may have an effect on the Committee's responsibilities.

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The Committee should recommend any change to the terms of reference to the Board of Directors for approval.

Reviewed and adopted on [22/10/2018].

**Supersedes and replaces all prior versions as from the effective date.**