

# STATEMENT OF DIRECTORS' DUTIES AND RESPONSIBILITIES

## PART I - INTRODUCTION

The directors of theScore, Inc. ("theScore") are charged by law with the responsibility for managing or supervising the management of the business and affairs of theScore. Subject to certain limitations, the board may delegate some of its responsibilities to theScore's management team and limit its own role to supervising theScore's management.

How the board should go about discharging its supervisory function is not laid down in any one statute, judicial decision or other source. At the most general level, "supervising the management of the business and affairs" means that the board monitors management's activities and performance and reserves to itself the ability to intervene in management's decisions and to exercise final judgment on any matter which is material to theScore. It must be satisfied that the authority it has delegated to management is being exercised with a view to theScore's best interests and that management has the ability, resources and judgment to discharge the authority delegated to it in the best interests of the corporation.

Among the specific functions the directors must perform in order to discharge their responsibility to supervise the management of theScore's business and affairs are: selecting management; reviewing and approving the corporate objectives developed by management; monitoring the implementation of theScore's objectives; and satisfying themselves that the appropriate corporate policies and internal controls (including with respect to the identification and management of risks) are in place. The directors must also be satisfied that theScore has procedures which provide the directors with sufficient information on a timely basis to make knowledgeable decisions relating to the affairs of the corporation.

To the extent theScore Board plays a role in supervising the management of its subsidiaries, that responsibility should be discharged in accordance with the principles discussed above. Without seeking to limit or restrict in any way the right of the Board to receive information pertaining to the affairs of theScore, this Statement of Duties and Responsibilities is intended to identify those material matters which must be brought to the Board either for information purposes or for decision, whether in relation to theScore or any of its operating divisions or subsidiaries.

The subject matters enumerated under Part II of this Statement, "The Role of the Board", attempt to cover broadly the affairs of theScore. While the Chief Executive Officer and his management team organization are by this Statement given the authority required to exercise their delegated responsibilities, the Board must be fully informed on all material matters and take whatever additional action it considers to be in theScore's best interests.

This Statement concludes in Part III with a summary of the legal framework of certain specific statutory duties and responsibilities to which the directors of theScore are subject.

## **PART II – THE ROLE OF THE BOARD**

The role of the Board is to supervise the management of the Corporation's business. The following are the regular functions which the Board performs in order to discharge this mandate. The Board has the prerogative to take whatever additional action it considers to be in the Corporation's best interests.

<b><u>SUBJECT MATTER</u></b>	<b><u>ACTION REQUIRED</u></b>	<b><u>BY WHOM</u></b>
<b>STRATEGIC PLANS</b>	Approve a strategic planning process for the Corporation, approve the Corporation's strategic plan each year and monitor the Corporation's performance against the strategic plan on an ongoing basis.	Board
	Review and approve the Annual Business Plans of the Corporation and its major operating entities each year, as well as their respective longer term corporate goals.	Board
<b>PERSONNEL ADMINISTRATION</b>	Appoint senior officers of the Corporation (including Chief Executive Officer, Chief Financial Officer).	Board on recommendation of the Human Resources and Compensation Committee ("HR&C Committee") for all officers except for the CEO, which is on recommendation of the Nomination and Corporate Governance ("N&CG Committee")
	Establish objectives for the Chief Executive Officer and monitor Chief Executive Officer's performance against those objectives.	Board on recommendation of the N&CG Committee
	Review management recruitment and development programs and approve plans for the succession of senior management.	Board on recommendation of the HR&C Committee

<b><u>SUBJECT MATTER</u></b>	<b><u>ACTION REQUIRED</u></b>	<b><u>BY WHOM</u></b>
	Approve recommendations of the Chief Executive Officer for major organizational changes affecting the Corporation.	Board on recommendation of the HR&C Committee
<b>ASSET ADMINISTRATION</b>	Approve the annual consolidated capital budget for the Corporation recommended by management each year.	Board
	Approve non-budgeted capital expenditures of amounts greater than \$1,000,000 and receive periodic reports of performance against objectives of major capital expenditures made.	Board
	Approve the acquisition and disposition of assets having a book Board value in excess of \$1,000,000.	Board
<b>RISK MANAGEMENT</b>	Review the information gathering and reporting system that provides the Board and management with information respecting material acts, events and conditions within the Corporation (on a consolidated basis).	Board
	Review the principal risks of the Corporation's business identified by management, the systems recommended by management to manage the risks identified and receive regular reports on the results of these systems.	Board
<b>FINANCIAL ADMINISTRATION</b>	Approve banking resolutions respecting the Corporation and designate, in accordance with the bylaws, those officers or employees authorized to conduct the banking business of the Corporation.	Board
	Review and approve the annual consolidated operating budget of the Corporation and receive periodic reports as to actual results as compared to the budget.	Board
	Authorize the limits and terms of: <ul style="list-style-type: none"> <li>a) long-term borrowing</li> <li>b) new short-term lines of credit for \$1,000,000 or more, and</li> <li>c) increases of \$1,000,000 or more in existing short-term lines of credit.</li> </ul>	Board

<b><u>SUBJECT MATTER</u></b>	<b><u>ACTION REQUIRED</u></b>	<b><u>BY WHOM</u></b>
	Approve the issuance by the Corporation of any guarantees where the amount guaranteed is not fixed, or if fixed exceeds \$1,000,000.	Board
	Authorize the issuance of securities of the Corporation.	Board
	Approve policies governing short-term investments, foreign exchange transactions, use of derivatives, etc., by the Corporation, including a list of qualified institutions with which the Corporation's funds may be deposited or invested.	Board
	Approve all interim financial statements and the annual consolidated financial statements.	Board on recommendation of Audit Committee
	Approve Annual Information Form and Management Discussion & Analysis.	Board on recommendation of Audit Committee
	Approve the recommendation to shareholders regarding the appointment of the external auditors of the Corporation.	Board on recommendation of Audit Committee
	Approve all material transactions, outside the normal scope of business, involving the assets of the Corporation, its operating divisions and subsidiaries not otherwise authorized by this Statement.	Board
<b>CORPORATE DEVELOPMENT ACTIVITIES</b>	Authorize the commencement or discontinuance of a material business activity.	Board
	Authorize the establishment of material new subsidiaries and changes in their business or corporate structure which could materially affect the Corporation.	Board
<b>POST AUDITING</b>	Receive post audit reports from management on (but not necessarily limited to) major capital expenditures, acquisitions, short and long range objectives and strategies, and performance criteria against longer range targets and budgets.	Board

<b><u>SUBJECT MATTER</u></b>	<b><u>ACTION REQUIRED</u></b>	<b><u>BY WHOM</u></b>
<b>LEGAL MATTERS</b>	Receive advice of litigation by or against the Corporation where the amount at issue is material or a matter of significance.	Board
	Approve amendments to Articles of Incorporation and By-Laws.	Board / Shareholders
	Authorize listing applications and agreements with any Stock Exchange.	Board
	Approve appointment of transfer agents, registrars and disbursing agents respecting securities issued by the Corporation.	Board
	Review reports by management with respect to corporate policies and programs to ensure compliance with statutory and regulatory requirements affecting the operations of the Corporation.	Board and applicable committees
<b>SHAREHOLDER RELATIONS</b>	Approve a communications policy for the Corporation.	Board
	Fix dates for Annual and Special Meetings of Shareholders.	Board
	Determine appropriateness of a dividend policy for the Corporation. Approve the declaration of any dividends.	Board
	Approve proxy materials prepared in connection with shareholder meetings.	Board
	Advise shareholders on a timely basis of major new developments. (Board approval is required with respect to major financial issues or developments.)	CFO or CEO or Board
<b>BOARD OF DIRECTORS MATTERS</b>	Nominate candidates for election as Directors at the annual meeting and appoint Directors to fill interim vacancies on the Board, taking into consideration the recommendations in stock exchange policies on Board composition relating to unrelated Directors and outside Directors.	Board on recommendation of N&CG Committee
	Review orientation and education program for new Directors.	Board

<b><u>SUBJECT MATTER</u></b>	<b><u>ACTION REQUIRED</u></b>	<b><u>BY WHOM</u></b>
	Determine the title, composition and mandates of committees of the Board, taking into consideration the recommendations in stock exchange policies in committee composition relating to unrelated Directors and outside Directors.	Board
	Review annually the Statement of Director's Duties and Responsibilities.	Board
	Monitor the activities and effectiveness of committees of the Board, including receiving regular reports from those committees.	Board
	Review and approve Director's compensation arrangements.	Board on recommendation of N&CG Committee
	Receive reports from management on any development in the affairs of the Corporation which may have a material adverse effect on it.	Board
	Develop guidelines to permit an individual Director in appropriate circumstances to engage an outside advisor at the expense of the Corporation.	Board
<b>OCCUPATIONAL SAFETY &amp; HEALTH</b>	Monitor the Corporation's compliance with Occupational Health & Safety legislation by implementing an appropriate information gathering and reporting system.	Audit Committee
<b>ENVIRONMENTAL ISSUES</b>	Take all reasonable care to prevent the Corporation from causing or permitting unlawful pollution.	Audit Committee

### **PART III – LEGAL DUTIES AND RESPONSIBILITIES OF DIRECTORS**

The following is a summary of certain statutory duties and responsibilities under Ontario law of directors of a publicly-traded corporation governed by the *Business Corporations Act* (Ontario) (the "OBCA") such as theScore. It is intended to provide an overview rather than an exhaustive treatment of all duties and responsibilities applicable to theScore directors.

#### **1. BASIC DUTIES**

**(a) Basic duty of directors:** In exercising his or her powers and discharging his or her duties, a director must act honestly, in good faith with a view to the best

interests of the corporation and exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

**(b) Acting in conflict of interest:** A director may not enter into commitments in which the director has or can have a personal interest conflicting with the interest of the corporation unless both the director and theScore satisfy the requirements in the OBCA dealing with director conflict.

The procedures for dealing with a contract or transaction in which one of theScore's directors or officers is interested can be quite technical. Generally, directors must disclose any direct or indirect interest in any contract or transaction to which the corporation is a party and (with some exceptions) must not attend the board meeting thereof and must not vote thereon. In most cases, such disclosure must be made at the time the board considers the contract or transaction or, if the director is not yet interested at that point, at the next board meeting following after the director becomes interested. Directors should speak with theScore's Chief Financial Officer to ensure that they are disclosing their interests appropriately.

**(c) Diverting a corporate opportunity:** A director may not usurp or divert to another person or corporation a maturing business opportunity which the corporation is actively pursuing.

**(d) Cross directorships:** A director of two corporations that deal with or compete with each other must simultaneously discharge all the duties and responsibilities of a director to both corporations.

## 2. ISSUANCE OF SHARES

**(a) The issuance of shares is the responsibility of the Board:** Shares must not be issued until the consideration for the issuance of the shares is fully paid in cash, or in property or past service at least equal in value to the money that the corporation would have received if the shares had been issued for cash. Where shares are issued for consideration other than cash, the directors are required to:

(i) determine the amount of money the corporation would have received if the shares had been issued for money, and

(ii) satisfy themselves that the fair value of the consideration to be received is equal to or is not less than such amount of money.

Directors of a corporation who vote for or consent to a resolution authorizing the issue of a share for a consideration other than money are jointly and severally liable to the corporation to make good any amount by which the consideration received is less than the amount the corporation would have received had the share been issued for cash. A director who is present at a meeting is deemed to have consented to any resolution passed or action taken at that meeting, unless the director dissents in accordance with the CBCA.

## 3. FINANCIAL ADMINISTRATION

**(a) Approval of financial statements:** Directors must approve the financial statements of the corporation after they have been reviewed by the audit committee. The approval of the board of directors must be evidenced by the signature of two of the directors duly authorized to sign at the foot of the balance sheet.

**(b) Declaring a dividend where the corporation is insolvent:** Directors who vote for or consent to a resolution authorizing the declaration of a dividend where the corporation is insolvent or where such dividend would render the corporation insolvent are jointly and severally liable to restore to the corporation the amounts so distributed or paid and not otherwise recovered by the corporation. A director who is present at a meeting is deemed to have consented to any resolution passed or action taken at that meeting, unless the director dissents in accordance with the OBCA.

**(c) Purchase or redemption of shares:** Directors who vote for or consent to resolutions authorizing the redemption, purchase or acceptance for surrender of shares where the corporation is insolvent or where such would render the corporation insolvent are jointly and severally liable to restore to the corporation the amount paid to acquire such shares and not otherwise recovered by the corporation. A director who is present at a meeting is deemed to have consented to any resolution passed or action taken at that meeting, unless the director dissents in accordance with the OBCA.

#### **4. SECURITIES ACT MATTERS**

**(a) Filing insider trading reports:** As an insider, a director is obliged to file electronic insider reports respecting purchases and sales of securities of the corporation within 5 days after the date on which such purchase or sale take place.

**(b) Liability for "tipping" or trading on inside information:** A director, being a person in a special relationship with the corporation who purchases or sells securities with knowledge of a material fact or material change which has not been generally disclosed or who directly or indirectly informs the purchaser or vendor of securities of such material fact or material change may be liable to the purchaser, accountable to the corporation and subject to a fine under the OSA.

**(c) Misrepresentations in material filed under the Ontario Securities Act ("OSA"): breach of any section of or order made under the OSA:** Every person or company who:

(i) makes a statement in any material filed under the OSA or in any investigation commenced under the OSA which is materially misleading or untrue (or does not state a fact that is required to be stated or that is necessary to make the statement not misleading),

(ii) makes a statement in certain documents (such as prospectuses, financial statements, information circulars and take-over bid circulars) which is materially misleading or untrue (or does not state a fact that is required to be stated or that is necessary to make the statement not misleading), or

(iii) contravenes Ontario securities law.

is guilty of an offence and liable to be fined and/or imprisoned unless, in the case of a person or company charged under (i) or (ii) above, such person or company did not, on the exercise of reasonable diligence, know that such statement was a misrepresentation. Directors or officers of a company or person who authorized, permitted or acquiesced in the commission of an offence by that company or person are also liable and subject to the same penalties.

**(d) Prospectus:** Any prospectus of a corporation filed under the OSA must contain a certificate signed by two directors to the effect that the prospectus

constitutes full, true and plain disclosure of all material facts relating to the securities offered thereby. Every director of the issuer at the time the prospectus is filed is liable to the purchaser for a misrepresentation by the issuer. A due diligence defence is available to directors under this provision.

## 5. SPECIFIC DUTIES TO SHAREHOLDERS

**(a) Duty to call annual meeting:** The OBCA requires directors to call an annual meeting of shareholders 15 months after the last annual meeting and not later than six months after their company's year end.

**(b) Duty to call a shareholders' meeting:** Upon deposit in accordance with the OBCA of a requisition in writing of persons holding at least 5% of voting rights attaching to all shares of the corporation then outstanding, the directors must forthwith call a meeting of shareholders for the transaction of the business stated in the requisition.

## 6. OTHER MATTERS

**(a) Liability for employee wages:** Subject to the limitations noted below, directors are jointly and severally liable to employees for up to 6 months' wages earned for services performed while directors and for up to 12 months' accrued vacation pay under the *Employment Standards Act* or any collective bargaining agreement. A director is only liable under this section if he or she is sued while he or she is a director or within two years of ceasing to be a director, and if the action is commenced within 6 months after the debts become payable and the corporation is sued in the same action but the execution against the corporation is returned unsatisfied in whole or in part or if the corporation goes into bankruptcy and the action for the debts is prevented.

Employment standards legislation in the jurisdictions in which theScore carries on business will also subject directors to certain liabilities for amounts owing to employees. There is no due diligence defence available to directors under the OBCA or employment standards legislation for these amounts.

**(b) General liability for breach of the OBCA:** Where a corporation (or any other person), without reasonable cause, commits an act contrary to the OBCA or the regulations or fails or neglects to comply with any provisions of the OBCA or the regulations, every director who authorized, permitted or acquiesced in such offence is also guilty of an offence or liable on conviction could be liable for a fine of not more than \$2,000 or to imprisonment for a term of not more than one year (or both).

**(c) Income Tax Act (Canada) - General Liability:** A director who directs, authorizes, assents to or acquiesces in any offence under the *Income Tax Act* may be liable to the penalties provided for the offence whether or not the corporation has been prosecuted or convicted.

**Liability for Unpaid Source Deductions:** Under the *Income Tax Act*, corporations must deduct or withhold certain amounts from payments it makes and to remit such amounts to the Receiver General. If the corporation fails to do so, those individuals who were directors of the corporation at the time the obligation arose are jointly and severally liable, together with the corporation, to pay that amount and any related interest and penalties. These obligations arise in respect of a number of different payments, including: salary or wages; pension benefits; and fees, commissions or other amounts for services;

There are similarly framed liabilities (and due diligence defences) of directors for amounts not withheld or remitted under the *Canada Pension Plan Act* and the *Unemployment Insurance Act* and the *Excise Tax Act* (dealing with the GST).

**(d) Competition Act - Non-disclosure of information:** A director may be liable to penalties where he assents to or acquiesces in the failure of the corporation to permit representatives of the Director of Investigation and Research to inspect the corporation's premises or the failure of the corporation to supply requested information.

**(e) General Crime Liability:** There are many acts and omissions that may constitute offences of "complicity" under the Criminal Code and provincial offences statutes. Offences of complicity include criminal conspiracy, aiding and abetting the commission of an offence and counseling the commission of an offence. There are also numerous federal and provincial statutes which provide that, where a corporation commits an offence under the statute, each director who authorized, permitted or acquiesced in the commission of the offence is also guilty of an offence.

**(f) Environmental Matters:** The *Environmental Protection Act* (Ontario) imposes on each director of a corporation that engages in an activity that may result in the discharge of a contaminant into the natural environment contrary to the Act a duty to take all reasonable care to prevent the corporation from causing or permitting the unlawful discharge.