

## **FERMISCAN HOLDINGS LIMITED**

### **CORPORATE GOVERNANCE STATEMENT**

#### **Approach to Governance**

Fermiscan Holdings Limited is committed to high standards of corporate governance and this is reflected in its culture, policies and business practices. The Fermiscan board has in place governance structures for the formation of strategic direction and policy including an overall framework of internal control, risk management and ethical standards.

This document outlines Fermiscan's corporate governance policies which were in place as at March 2007 and Fermiscan compliance with the ASX Corporate Governance Council's Principles of Good Corporate Governance and Best Practice Recommendations (ASX Principles) released in March 2003 as described in this corporate governance statement.

### **ASX CORPORATE GOVERNANCE PRINCIPLES AND BEST PRACTICE RECOMMENDATION AS DESCRIBED IN THIS CORPORATE GOVERNANCE STATEMENT**

#### ***PRINCIPLE 1 – MANAGEMENT AND OVERSIGHT***

##### **Lay solid foundations for management and oversight.**

The role of the board is to provide strategic guidance and effective oversight of management. The directors represent the interests of shareholders and are responsible for the overall direction, long term objectives and strategy, performance, compliance and policies.

The board has adopted a formal board charter, which is available on the Fermiscan website, and details the board's role and responsibilities, membership, delegation of authority, committee composition and board performance review. The board is also governed by general law, the Corporations Act and Fermiscan's Constitution.

##### ***Board Responsibilities***

The main board responsibilities, summarised from the board charter are:

- ***Shareholder interests:*** to serve the interests of shareholders and recognise the interests of other stakeholders such as employees, potential customers, regulators, and broader Fermiscan related communities;
- ***Strategy:*** to drive the strategic direction, set goals, performance measures and policies.
- ***Leadership:*** to determine the managing director's terms of appointment, performance evaluation and replacement; provide specific delegated authority to the managing director to oversee the day to day operations of Fermiscan;

- **Performance:** to review business results and monitor performance against key performance measures, corporate strategy plans and budgets; review reporting to shareholders and regulators; approve and monitor any required actions.
- **Risk management :** to consider and approve key risk management strategies; review and monitor processes for regulatory compliance
- **Board performance:** to regularly review the performance of the board, its committees, and individual directors, with external assistance as required; and
- **Audit:** to select external auditors and to evaluate their performance and independence.

The full board meets for at least ten regular meetings each year and other meetings are called as deemed necessary. The board agendas are established by the chairman and managing director and are structured to meet board responsibilities. At each of the meetings directors' receive reports provided by executive management. The board meets throughout the year for regular scheduled discussions on the Company strategy to consider longer term issues and strategic initiatives.

Each director has the right to seek independent professional advice at Fermiscan's expense on a matter relevant to the director's role at Fermiscan and affecting the director's own position, subject to prior approval from the chairman.

### ***Delegations of Board Authority***

The board has delegated the authority of the day to day management of Fermiscan to the managing director subject to specific delegations and limits. The managing director has the ability to delegate authority to other executives. Regular consultation between the managing director and the chairman occurs on matters generally as they arise.

The managing director is responsible for:

- the development of long-term objectives, strategic plans, initiatives, performance measures and policies in consultation with the board;
- ensuring day to day operations are carried out effectively and efficiently;
- monitoring business performance against key performance measures, corporate strategy plans and the budget;
- determining the terms of appointment, performance evaluation, succession plans and replacement of his direct reports, in consultation with the Remuneration & Nomination Committee;
- development and monitoring of the risk management framework and building an appropriate internal control environment, in consultation with the Audit & Risk Committee; and
- bringing material and relevant matters to the board in a timely and factual manner.

## ***PRINCIPLE 2- EFFECTIVE BOARD COMPOSITION***

### ***Structure the board to add value***

The board considers that its directors' possess a broad range of relevant skills and experience necessary to meet its objectives, whilst encouraging engaged debate. The

current board composition, with details of individual members including skills experience and expertise, is set out in the Annual Report and the Directors Report.

A review of the board's composition takes place annually and matters such as the complexity of the business, the effectiveness and efficiency of the board, appropriate capabilities and expertise of the collective board and individual directors are taken into consideration.

The composition of the board and the election and appointment of directors are determined in accordance with Fermiscan's Constitution which is available on the Fermiscan website, and are also subject to relevant regulatory requirements. Fermiscan's board presently comprises five directors, including the managing director. With the exception of the managing director, directors retire by rotation and serve a maximum three year term, although each may stand for re-election .

The board periodically reviews the framework for director nomination, with guidance from the Remuneration & Nomination Committee, to ensure the skills sets and experience of selected candidates are complementary to those currently available on the board and consistent with the commercial and other circumstances of Fermiscan, both currently and into the foreseeable future. The Remuneration & Nomination Committee evaluates potential candidates taking into consideration factors such as professional skills, background, personal qualities, experience and whether the candidate's skills will augment the existing board.

### **Board Committees**

The board has established three standing committees to assist in the execution of its responsibilities. Each committee has terms of reference with authority delegated from the board and an independent chairman. The terms of reference for each committee may be viewed on the Fermiscan website. The board determines committee composition, membership and charters. Committee memberships are reviewed annually and are based on the capabilities and experience of individual directors. Minutes of subsidiary boards and board committee meetings are included in the board papers for the information of all directors.

The standing committees' are:-

- Audit & Risk Committee
- Remuneration & Nomination Committee
- Governance Committee

<b>Standing Committees</b>		
<b>Audit &amp; Risk</b>	<b>Remuneration and Nomination</b>	<b>Governance</b>
Gary Garton	Gary Garton (Chairman)	Gary Garton (Chairman)
David Young (ex officio)	David Young (ex officio)	David Young
Ian W Holman (Chairman)	Ian W Holman	
Dr Michael Carr	Dr Ronald Shnier	

The role of each of these committees is considered in the appropriate section of this corporate governance statement.

In addition to the standing committees, Fermiscan has:-

- a **Scientific and Medical Advisory Board** which usually meets monthly. Its purpose is to help direct product development and clinical testing programs and to provide independent advice to the board of Fermiscan.

The advisory board provides professional oversight and advice on the commercialisation of the company's services to ensure they meet the expectations of the medical and patient communities. The composition of the advisory board represents key perspectives and inputs needed in our development programs from both scientists and physicians specialising in various areas of medicine, including radiology.

- a **Fermiscan Human Research and Ethics Committee** was established to provide governance to planned trials for the company. This committee is registered with the National Health and Medical Research Council (NHMRC).

The purpose of the Ethics Committee is to protect the welfare and the rights of participants in research while following the guidelines and principles encapsulated in the "National Statement in Ethical Conduct in Research Involving Humans",.

### **Governance Committee**

The Governance Committee assists the board to discharge its responsibilities relating to corporate governance practices. The committee currently comprises the chairman, Mr Gary Garton, and Mr David Young, the managing director. The roles and responsibilities of the committee are reviewed regularly by the board.

### **The Chairman**

The chairman is responsible for:

- leading the board;
- chairing meetings of the board and shareholders;
- being the primary point of contact between the board and the managing director;
- representing the views of the board to the public;
- instituting the process for appraising board members and the board as a whole;
- communicating with shareholders on matters of corporate governance; and
- ongoing counselling of individual directors.

The roles of the chairman and the managing director are entirely separate.

### **Independence**

To qualify as an independent director, a director must be 'independent of management and free of any business or other relationship that could materially interfere with – or could be reasonably perceived to materially interfere with – the exercise of their unfettered and independent judgement' (ASX Corporate Governance Council Principle 2.1)

The board makes regular determinations on the independence of individual directors based on an independence policy and a review process undertaken by the board. Independence will be taken to be met when a non-executive director:

- is not an officer of a substantial shareholder, or otherwise associated directly or indirectly with, a substantial shareholder of the company;
- has not, within the last three years been employed in an executive capacity by the company;
- has not, within the last three years been a principal or employee of the external auditor, material professional adviser or a material consultant to the company
- is not a material supplier or customer of the company, or an officer of or otherwise associated directly or indirectly with a material supplier or customer;
- has no material contractual relationship with the company, other than as a director of the company; and
- is free from any interest and any business or other relationship which could, or could reasonably be perceived to, materially interfere with the director's ability to act in the best interests of the company.

In determining whether a director's interest or relationship interferes with their independence, the board has regard to the materiality of the interest or relationship. If directors' circumstances change, they are expected to volunteer information relevant to a continuing independence assessment.

### ***Avoidance of Conflict of Interest***

In addition to the issue of independence, directors have a continuing responsibility to avoid conflicts of interest (both real and apparent) between their duty to Fermiscan and their own interests. Directors are required to disclose any actual or potential conflict of interest on appointment and are required to keep this disclosure up to date.

A director who has an actual or potential conflict must immediately inform the board and remove themselves from any discussions or decision making in relation to the actual or potential conflict.

### ***Appointment of Directors***

The Fermiscan Constitution governs the election and appointment of directors, rotation of elected directors, casual vacancies and eligibility for election. There are a number of elements relating to formalising the appointment for either elected or appointed independent directors, including:

- a letter detailing the formal terms and conditions of the appointment, expected time commitment, procedure regarding conflicts of interest, performance appraisal, remuneration, superannuation and insurance arrangements;
- written consent to act as a director;
- agreement to the directors Code of Conduct; and
- deed of Access to Documents and provision of Indemnity Insurance.

## **Board Renewal**

The board has a policy on renewal to ensure the board remains open to new ideas and independent thinking. As part of the policy, the board has set, as a general rule, that director's tenure will be reviewed if the director is approaching a service period of three concurrent terms of office. Matters to be considered by the board when a director is approaching a service period of three concurrent terms of office will include board competencies, board committee membership, and the average tenure and experience of the board overall.

## ***PRINCIPLE 3 - PROMOTE ETHICAL & RESPONSIBLE DECISION MAKING***

### ***Promote Ethical and Responsible Decision Making***

Fermiscan is committed to establishing and maintaining high ethical standards within the company, in its dealings with shareholders, stakeholders and regulatory bodies. Fermiscan's has established committees in addition to those required under ASX Corporate Governance requirements to better address the ethical issues surrounding the company's medical diagnostic activities – the Fermiscan Scientific and Medical Advisory Board and the Fermiscan Human Research and Ethics Committee

The company has codes of conduct which govern ethical business behaviour in addition to policies covering whistleblower protection, shareholder communications policy, continuous disclosure and dealing in securities. Directors and staff are encouraged to own shares in Fermiscan in accordance with policy. The policy prohibits dealing in securities outside certain designated periods and at any time which the individual is in possession of inside information. Directors and executives were granted share options during the year and this is disclosed in the Remuneration Report.

The Fermiscan board takes ethical and responsible decision-making seriously and it expects employees to have the same approach. All directors, managers and staff are expected to act with the utmost integrity in the best interest of the organisation, while striving at all times to enhance the reputation and performance of Fermiscan.

The board and the staff acknowledge that they are responsible for promoting high ethical and integrity standards and that the language, attitudes and actions of directors and the staff affect the integrity, ethics, values and other aspects of Fermiscan's culture.

## ***PRINCIPLE 4 - SAFEGUARD INTEGRITY IN FINANCIAL REPORTING***

### ***Safeguard Integrity in Financial Reporting***

The board are committed to integrity in financial reporting particularly as it applies to the company's financial position and prospects. The board has a structured process, through the Audit & Risk Committee, for the quarterly, six monthly and annual reports including the sign off and release of information to the market.

The Audit & Risk Committee assists the board to discharge its responsibilities relating to the integrity of the financial reporting, the effectiveness and independence of the audit, evaluation of the management processes relating to compliance, internal control systems, and the risk management framework.

The committee currently comprises an independent chairman and two independent non-executive directors. The managing director also attends committee meetings as an ex officio participant. All members have a sound understanding of the industry within which Fermiscan operates and are financially literate. The roles and responsibilities of the committee are reviewed annually.

The Audit & Risk Committee meets with the external auditor throughout the year and the auditor has a standing invitation to all Audit & Risk Committee meetings. The auditor reports directly to the Audit & Risk Committee and has unrestricted access to the board. The auditor's main role is to provide independent assurance to shareholders that the financial statements are free from any material misstatement.

#### ***PRINCIPLE 5 - TIMELY DISCLOSURE OF MATERIAL MATTERS***

##### ***Make timely and balanced disclosure.***

Fermiscan recognises the importance of timely and accurate disclosure to its shareholders and the broader investment market and to meet its continuous disclosure obligations. The company is committed to ensuring that all investors have equal and timely access to material information regarding the company's financial position, performance, ownership and governance.

The board has developed a continuous disclosure policy designed to facilitate compliance with its obligations under the ASX Listing Rules.

#### ***PRINCIPLE 6 - RESPECT THE RIGHTS OF SHAREHOLDERS***

##### ***Respect the rights of shareholders***

Fermiscan is aware of the importance of effective communication with its shareholders and has in place a shareholder communications policy which encourages and promotes effective communication with shareholders and participation at general meetings.

The Fermiscan website provides general information and reports on Fermiscan - ASX announcements, investor presentation, scientific information and a link to the stock market which displays the share price movement and Fermiscan market information. A corporate directory including contact details is also made available for shareholders to make enquiries of the company.

The external auditor is present at all General Meetings and is available to answer shareholder queries about how the audit is conducted and the preparation and content of the auditor's report.

#### ***PRINCIPLE 7 - RISK MANAGEMENT***

##### ***Recognise and manage risk***

The board oversees the management of the group's risks through board and management committees. Fermiscan executives are responsible for risk and internal control and the risk management systems.

The Fermiscan board review and approve the risk management framework and sets key risk parameters for the major risk areas. The board evaluates the effectiveness of risk management strategies and internal control processes with guidance from the Audit & Risk Committee

Risks are managed through an oversight structure and an internal control framework that includes:

- continual risk identification, assessment and control processes,
- policies and procedures on risk and compliance;
- appropriate risk and compliance committee structures at board and management levels;
- assigning appropriate delegations of authority;
- recruiting skilled, professional staff;
- maintaining information systems which provide relevant, timely and accurate information on risks and controls; and
- independent assurance on risk framework and internal controls through audit.

The Fermiscan Audit & Risk Committee reviews reports and agreed action and ensures that planned audit activities are aligned to business risks.

The managing director and chief financial officer provide a statement to the board in writing that:-

- the statement given in accordance with best practice recommendation 4.1 (the integrity of financial statements) is founded on a sound system of risk management and internal compliance and control which implements the policies adopted by the board.
- the company's risk management and internal compliance and control system is operating efficiently and effectively in all material respects.

## ***PRINCIPLE 8 - ENHANCED PERFORMANCE***

### ***Encourage enhanced performance***

The Board will periodically review the process for evaluating its own performance against its major functional responsibilities and will measure and monitor directors' performance. The performance evaluation will be based on a collective board performance assessment, individual self-assessment and peer review. Overall outcomes will be discussed at the board. The chairman will discuss individual outcomes and development plans with the director concerned.

## ***PRINCIPLE 9 - FAIR AND RESPONSIBLE REMUNERATION***

### ***Remunerate fairly and responsibly***

The company has a Remuneration & Nomination Committee which supports and advises the board in discharging its responsibilities to shareholders in the area of fair and responsible remuneration. The committee charter is available from the company website. In summary the committee monitors and reviews the company's remuneration



policies and practices, ensuring they are fair, formalised and transparent. The Committee acts for the board in the processes relating to director nomination.

The committee currently comprises an independent chair and two independent non-executive directors. The managing director also attends committee meetings as an ex officio participant. The roles and responsibilities of the committee are reviewed annually.

Executive performance criteria are clearly defined; time constrained and based on the achievement of a balance of short and long-term corporate goals. The executive remuneration approach is to reward performance and provide an appropriately competitive salary to attract and retain quality executives.

The board reviews the performance and sets the remuneration for the managing director after receiving recommendations from the Remuneration & Nomination Committee. The managing director's review involves assessing performance against established criteria.

Employment arrangements for the direct reports to the managing director (including appointment, termination, performance reviews, and incentive arrangements) are subject to consultation with the Remuneration & Nomination Committee as required.

Board remuneration will be set by the board after taking advice from an independent, external consultant, or organisation specialising in remuneration matters. Directors fees are disclosed in the Remuneration Report included in the Annual Report.

## ***PRINCIPLE 10 - STAKEHOLDER INTEREST***

### ***Recognise the legitimate interests of stakeholders***

Fermiscan provides a forum to address individual shareholder questions at general meetings of the company. The board and executive team are committed to enhancing shareholder value through delivery of corporate strategies. In addition to the shareholder responsibilities the company recognises where appropriate its obligations to non-shareholder stakeholders such as employees, customers and the broader community. The company has codes of conduct which govern ethical business behaviour in addition to policies covering whistleblower protection, shareholder communications policy, continuous disclosure and dealing in securities. The company has a formal code of conduct.

Below is a list of the ASX 10 Principles and recommendations relating to corporate governance and a comment on Fermiscan's position.

## **ASX CORPORATE GOVERNANCE AND BEST PRACTICE RECOMMENDATIONS**

### ***Principle 1 - Lay solid foundations for management and oversight***

Recommendation 1.1 Formalise and disclose the functions reserved to the board and those delegated to management	<i>The functions reserved to the board and those delegated to management are in the governance statement and in the board charter available from the Fermiscan website.</i>
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### ***Principle 2 - Structure the board to add value***

Recommendation 2.1 A majority of the board should be independent directors	<i>Other than the managing directors all other directors are independent non-executive directors.</i>
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Recommendation 2.2 The chairperson should be an independent director	<i>The chairperson, Mr Gary Garton is an independent director.</i>
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Recommendation 2.3 The roles of chairperson and chief executive should not be exercised by the same individual.	<i>Mr Gary Garton is the chairman and Mr David Young is the managing director.</i>
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Recommendation 2.4 The board should establish a nomination committee.	<i>The board has established a remuneration and nomination committee which has a formal charter and can be viewed on the Fermiscan website.</i>
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Recommendation 2.5 Provide the information indicated in the Guide to reporting on Principle 2	<i>This information is provided in this corporate governance statement.</i>
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### ***Principle 3 - Promote ethical and responsible decision making***

Recommendation 3.1 Establish a code of conduct	<i>Fermiscan has established a code of conduct</i>
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Recommendation 3.2 Disclose the policy concerning trading in company securities by directors, officers and employees.	<i>An overview of the Dealing in Securities policy is available on the company website</i>
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Recommendation 3.3 Provide the information indicated in the Guide to reporting on Principle 3.	<i>This information is provided in this corporate governance statement</i>
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#### **Principle 4 - Safeguard integrity in financial reporting**

*Fermiscan has in place a structure of review and authorisation to ensure that reporting of its financial position is factual, accurate and transparent.*

Recommendation 4.1 Require the managing director and chief financial officer to state in writing to the board that the company's financial reports present a true and fair view, in all material aspects, of the company's financial condition and operational results and are in accordance with relevant accounting standards.

*The managing director and chief financial officer have complied with this recommendation.*

Recommendation 4.2 The Board should establish an Audit Committee

*An Audit & Risk Committee has been established.*

Recommendation 4.3 Structure the Audit Committee so that it consists of :

*Membership of the audit & risk committee complies with this recommendation.*

- only non-executive directors
- a majority of independent directors
- an independent chairperson, who is not chairperson of the board
- at least 3 members

Recommendation 4.4 The audit committee should have a formal charter.

*The audit committee charter is available on the Fermiscan website.*

Recommendation 4.5 Provide the information indicated in Guide to reporting on Principle 4.

*This information is provided in this corporate governance statement*

#### **Principle 5 - Make timely and balanced disclosures**

Recommendation 5.1 Establish written policies and procedures designed to ensure compliance with the ASX Listing Rule disclosure requirements and to ensure accountability at a senior management level for that compliance.

*The Company has policies on information disclosure and on continuous disclosure to ensure compliance with the ASX Listing Rules and to ensure accountability at a senior management level*

Recommendation 5.2 Provide the information indicated in the Guide to reporting on Principle 5.

*This information is provided in this corporate governance statement*

#### **Principle 6 - Respect the rights of shareholders**

Recommendation 6.1 Design and disclose a communications strategy to promote effective communication with shareholders and encourage effective participation at

*Fermiscan has a shareholder communications policy and a continuous disclosure policy.*

general meetings.

Recommendation 6.2 Request the external auditor to attend the annual general meeting.

*The external auditors, Pitcher Partners are invited to attend all members meetings including the annual general meeting.*

### **Principle 7 - Recognise and manage risk**

Recommendation 7.1 The board or appropriate committee should establish policies on risk oversight and management.

*The board has established risk management policies which are monitored and reviewed by the Audit & Risk Committee.*

Recommendation 7.2 The managing director and chief financial officer should state to the board in writing that:-

*A statement has been provided by the managing director and chief financial officer to the board.*

7.2.1 the statement given in accordance with best practice recommendation 4.1 (the integrity of financial statements) is founded on a sound system of risk management and internal compliance and control which implements the policies adopted by the board.

7.2.2 the company's risk management and internal compliance and control system is operating efficiently and effectively in all material respects.

### **Principle 8 - Encourage enhanced performance**

Recommendation 8.1 Disclose the process for performance evaluation of the board, its committees and individual directors, and key executives.

*The present board was appointed in October and November 2006 and to date a board performance review has not been completed. The board will undertake a self assessment of its collective performance, the performance of the Chairman and of its committees.*

*The Chairman will undertake an assessment of the performance of individual directors and will meet privately with each director to discuss this assessment.*

### **Principle 9 - Remunerate fairly and responsibly**

Recommendation 9.1 Provide disclosure in relation to the company's remuneration policies to enable investors to understand (i) the costs and benefits of those policies and (ii) the link between remuneration paid to directors and key executives and

*The required information is provided in the Remuneration Report which is part of the Directors Report*

corporate performance.

Recommendation 9.2 The Board should establish a remuneration committee.

Recommendation 9.3. Clearly distinguish the structure of non-executive directors' remuneration from that of executives.

Recommendation 9.4 Ensure the payment of equity-based executive remuneration is made in accordance with thresholds set in plans approved by shareholders.

Recommendation 9.5 Provide the information indicated in the Guide to reporting on Principle 9.

*The Board has established a remuneration and nomination committee.*

*Executive and non-executive directors' fees are clearly distinguished in the Remuneration Report.*

*A resolution at the Annual General Meeting in May 2007 is 'to adopt the Remuneration Report for the year ended 31 December 2006, by way of non binding vote'.*

*This information is provided in this corporate governance statement.*

**Principle 10 - Recognise legitimate interests of stakeholders**

Recommendation 10.1 Establish and disclose a code of conduct to guide compliance with legal and other obligations to legitimate stakeholders.

*Details of the code of conduct are available on the company website.*