

## **GOVERNANCE AND NOMINATING COMMITTEE CHARTER AND GUIDELINES**

### **1.0 Purpose**

The Committee shall be known as the Governance and Nominating Committee (the "Committee") and shall:

#### *1.01 Oversight*

Provide assistance to the Board of Directors in fulfilling its responsibility with respect to oversight of the appropriate and effective governance of the Company including:

- a) Identification and recommendation of qualified candidates for election to the Board of Directors and its Committees
- b) Recommendation of appropriate policies and procedures to ensure the effective functioning of the Board of Directors
- c) Development and recommendation of appropriate corporate governance guidelines for the Company
- d) Recommendations regarding the appointment of corporate officers and the adoption of appropriate processes to ensure management succession and development plans for the principal officers of the Company and its key subsidiaries
- e) Recommendations regarding proposals submitted by shareholders of the Company
- f) Periodic review of the Company's risk assessment and mitigation program

## **2.0 Structure and Operations**

### *2.01 Composition and Qualifications of Independent Directors*

Composition and Qualifications: The Committee's composition and qualifications shall meet the requirements of the rules of the NASDAQ Stock Market, as well as any laws and regulations applicable to corporate governance and nominating committees. The Committee shall be comprised of not less than three members of the Board of Directors, each of whom is determined by the Board of Directors to be "independent" under the rules of the NASDAQ Stock Market applicable to corporate governance and nominating committee members.

### *2.02 Appointment and Removal*

Board Appointment. The members of the Committee shall serve one-year terms, and shall be appointed by the Board of Directors annually on the day of the Annual Meeting of Stockholders or such other date as the Board shall determine, taking into consideration the recommendation of the Governance and Nominating Committee, and shall serve until such member's successor is duly elected and qualified or until such member's earlier resignation or removal.

Board Removal. The members of the Committee may be removed, with or without cause, by action of the full Board of Directors.

### *2.03 Committee Chairman*

The Board of Directors shall designate a Chairman of the Committee from among the members of the Committee. The Committee Chairman will chair all regular sessions of the Committee and set the agendas for Committee meetings.

### *2.04 Subcommittees*

In accordance with the Company's Bylaws, the Board or the Committee may appoint such subcommittees of the Committee from among the members of the Committee as they shall deem necessary or appropriate to carry out specific duties and responsibilities.

### *2.05 Investigations, Access, Outside Advisors and Delegation*

Investigations and Committee Access. In discharging its duties and responsibilities, the Committee is empowered to investigate any matter relating to its purpose, duties or responsibilities that it deems appropriate and shall have full access to all books, records, facilities and personnel of the Company.

Outside Advisors. The Committee shall have full authority (without the need for any other Board approval) to retain outside legal, accounting or other advisors in carrying out its duties and responsibilities, and sole authority to retain and terminate any search firm to be used to identify Director candidates. As part of this authority, the Committee shall be authorized to approve the fees payable to such advisors and firms and any other terms of retention, and the Company shall provide the funding determined appropriate by the Committee for any such advisors and firms. Such advisors shall have such access to the books, records, facilities and personnel of the Company as the Committee shall consider appropriate.

Delegation. Except to the extent prohibited by NASDAQ rules or other applicable law or regulation, the Committee shall have the authority to authorize and delegate matters within its power and responsibility directly to Company employees or other persons.

### **3.0 Meetings**

#### *3.01 Frequency*

The Committee shall meet as often and at such times as the Committee shall consider appropriate to fulfill its duties and responsibilities, and in any case, no less than two times a year.

#### *3.02 Separate Meetings*

If it so determines, the Committee may meet separately with members of management, or with outside advisors or firms to discuss any matters that the Committee believes would be appropriate.

#### *3.03 Call of Meetings*

The Chairman of the Board of Directors or any member of the Committee may call meetings of the Committee in accordance with the Bylaws. A majority of members serving on the Committee shall constitute a quorum.

#### *3.04 Meeting Attendees*

All independent directors who are not members of the Committee may attend meetings of the Committee but may not vote. The Committee may invite to its meetings any director, member of management or any other person it deems appropriate in order to carry out its responsibilities. The Committee may also exclude from its meetings or any part of a meeting any persons it deems appropriate in order to carry out its responsibilities.

### *3.05 Action without a Meeting*

In addition to telephonic meetings authorized by the Bylaws, any action required or permitted to be taken at a meeting of the Committee may be taken without a meeting provided that a consent in writing is signed by all Committee members or if all Committee members consent via electronic transmission. Any such consent must be filed with the Secretary of the Company and maintained in the record of the proceedings of the Committee.

### *3.06 Minutes*

Written or electronic minutes of each meeting shall be prepared and filed with the records of the Company and shall be available to any and all Directors of the Company.

## **4.0 Responsibilities and Duties**

### *4.01 Board of Director Nominees*

The Committee shall recommend director nominees to the Board of Directors for election at each annual meeting of stockholders. The Committee shall determine the criteria for qualification and selection of directors for election to the Board of Directors, identify and evaluate possible candidates against such criteria, evaluate matters relating to the recruitment of directors, and assist the Board of Directors as requested in attracting and retaining qualified members for the Board of Directors. The Committee shall also determine the appropriate criteria and processes for whether and how nominees for director who are recommended by stockholders will be considered.

Prior to nominating an existing director for re-election to the Board, the Committee shall consider and review the existing director's:

- (a) Board and committee meeting attendance and performance;
- (b) Length of Board service;
- (c) Experience, skills and contributions that the existing director brings to the Board;  
and
- (d) Independence.

In the event that a director vacancy arises, the Committee shall seek and identify a qualified director nominee to be recommended to the Board for either appointment by the Board to serve the remainder of the term of the director position that is vacant or election at the stockholders' annual meeting.

A director nominee shall meet the director qualifications as determined by the Board from time to time, including that the director nominee possess personal and professional integrity, has good business judgment, relevant experience and skills and will be an effective director in conjunction with the full Board in collectively serving the long-term interests of the Company's stockholders. The Committee uses a *Director Nomination Form* and *Corporate Director Questionnaire* to assess the background and qualification of prospective candidates.

#### *4.02 Board Structure*

The Committee shall review the Board's committee structure and recommend to the Board for its approval directors to be appointed as members on each Board committee. Prior to recommending the re-appointment of a director to a Board committee, the Committee shall review the existing director's independence, if required, his or her skills, Board committee meeting attendance, performance and contribution, and his or her fulfillment of committee responsibilities. If a vacancy on a Board committee occurs, the Committee shall recommend a director with relevant experience and skills, and who is independent to be appointed to fill the vacancy.

#### *4.03 Board Self-evaluation Process*

The Committee shall develop and recommend to the Board for its approval an annual self-evaluation process for the full Board that will be conducted and overseen by the Committee. The Committee shall report to the full Board, following the end of each fiscal year, the results of the annual self-evaluation, including any comments from the self-evaluations. However, any comments from the self-evaluations regarding individual directors shall be reported to the Chairman and CEO and, if necessary, to the relevant committee chairman.

The Committee shall annually review its own performance by distributing to its members a written self-assessment.

#### *4.04 Appointment of Officers*

Chairman of the Board and CEO. The Committee shall recommend to the Board of Directors the election of the Chairman of the Board (and, if such office is not also held by the Chairman of the Board, the CEO) and such process for periodic evaluation of the Chairman and CEO by the Board of Directors as the Committee shall deem appropriate.

Lead Director. In the event the Company decides to have a non-independent Board Chair, the Company shall then institute the position of Lead Director, which is to be held by a Board member who does not also serve as an executive officer of the Company. The position of Lead Director, appointed by the independent members of the Board, will be rotated periodically between the available independent directors of the Company who have served on the Board for not less than one year.

The Lead Director's primary function would be to serve as a liaison between the independent directors and the Chairman, as well as other executive officers. In addition, the Lead Director's duties also would include: (1) presides at all meetings of the Board at which the Chairman is not present, including executive sessions of the independent directors; (2) assists in the preparation and approval of agendas, discussion points, and action items for Board meetings; (3) approves meeting schedules to assure that there is sufficient time for discussion of all agenda items; (4) has the authority to call meetings of the independent directors; (5) and, if requested by major shareholders, be available for consultation and direct communication.

#### *4.05 CEO Succession Planning*

The Committee shall make an annual report to the Board on emergency as well as expected CEO succession planning. The full Board will work with the Committee to recommend and evaluate potential successors to the CEO. The CEO should at all times make available his or her recommendations and evaluations of potential CEO successors, along with a review of any development plans recommended for such individuals.

#### *4.06 Management Succession and Development*

The Committee shall periodically review and develop with the CEO, management evaluation succession and development plans for the principal officers of the Company and its key subsidiaries.

#### *4.07 Other Principal Officers*

The Committee shall review the CEO's recommendations regarding the election of principal officers of the Company and make recommendations to the Board of Directors regarding such election.

#### *4.08 Shareholder Proposals*

The Committee shall review and make recommendations on shareholder proposals to the Board of Directors or refer them to the CEO, as appropriate.

The Committee shall oversee disclosure by the Company of matters within the Committee's responsibilities that are required to be disclosed publicly under NASDAQ or SEC rules.

#### *4.09 Annual Review of Charter*

The Committee shall review and reassess the adequacy of this Charter annually and recommend any proposed changes to the Board for approval.

The responsibilities and duties enumerated in this Section 4.0 shall be the common recurring activities of the Committee in carrying out its purposes. The Committee may assume additional duties or responsibilities, carry out additional functions or adopt additional policies and procedures as may be appropriate to carry out its purposes or in light of changing business, legislative, regulatory, legal or other conditions. The Committee shall also carry out any other responsibilities and duties delegated to it by the Board of Directors from time to time.

## **5.0 Board Policies and Corporate Governance Principles**

### *5.01 Board Policies*

Board Size: The Committee believes five to seven members is an appropriate size for the full Board of Directors based on the Company's present circumstances. They shall periodically evaluate whether a larger or smaller slate of directors would be preferable.

Board Participation: Each member of the Board of Directors of the Company shall be allowed to sit on the board of not more than two, public for-profit companies, without the prior approval of the Board of Directors. It is the position of the Board that approval of a director to sit on more than two boards simultaneously will be limited to special circumstances, provided that the arrangement will not interfere with the director carrying out the duties to the Board of the Company.

Communications with Directors. The Committee shall develop and recommend to the Board of Directors for its approval, policies regarding the means by which interested parties may communicate with directors, including satisfaction of all NASDAQ Stock Market requirements regarding such communications.

Director Attendance at Annual Shareholders Meetings. Director attendance at the annual shareholders' meeting is required and considered in the annual director evaluation performance. The Committee shall develop and recommend to the Board of Directors for its approval, policies regarding director attendance at annual meetings of shareholders.

Board and Committee Evaluations. The Committee shall oversee an annual assessment of the performance of the Board, its committees and individual directors. In conducting its assessment, the Committee shall obtain self-assessments from all directors and Board committee members and review, on an annual basis, the requisite skill and qualifications of Board members as well as the Board as a whole. Each evaluation shall be made available to all members of the Board of Directors.

Effective Functioning of the Board. Based on the results of the annual Board evaluation, as well as on any other matters the Committee shall deem relevant, the Committee shall make such recommendations to the Board of Directors regarding Board processes including term limits or age limits, and other items deemed appropriate to improve or ensure the effective functioning of the Board of Directors as the Committee shall from time to time deem advisable or appropriate.

#### *5.02 Corporate Governance Principles*

Initial Development. The Committee shall from time to time make recommendations to the Board of Directors for approval of written corporate governance principles, including all subjects required to be addressed by the NASDAQ rules, any applicable law or regulation and any other matters deemed appropriate by the Committee.

Periodic Review. The Committee shall periodically review the adequacy and appropriateness of these corporate governance principles and make recommendations to the Board of Directors concerning any amendments to those principles.