

**FIFTH AMENDED AND RESTATED CHARTER OF THE
AUDIT AND CORPORATE GOVERNANCE COMMITTEE
OF THE BOARD OF DIRECTORS
OF LIFEWAY FOODS, INC.**

I. Purpose and Power

The Audit and Corporate Governance Committee (the “Committee”) has been established by the board of directors (the “Board”) of Lifeway Foods, Inc. (the “Company”) to assist the Board in discharging and performing the duties and responsibilities of the Board with respect to the financial and corporate governance affairs of the Company and its subsidiaries, affiliates and related parties (collectively, the “Group”), including:

Audit and Corporate Governance Functions

- The identification, assessment and management of financial risks and uncertainties.
- The continuous improvement in financial systems.
- The integrity of financial statements and financial disclosures.
- The compliance with legal and regulatory requirements.
- The qualifications, independence and performance of the independent registered public accounting firm.
- The capabilities, resources and performance of the internal audit department.
- The full and open communication with and among the independent registered public accounting firm, management, internal auditors, counsel, employees, the Committee and the Board.

Nominating Functions

- Annually presenting to the Board a list of individuals recommended for nomination for election to the Board at the annual meeting of stockholders.
- Assisting the Board in identifying, interviewing and recruiting candidates for the Board.

The Committee has the right to exercise any and all power and authority of the Board with respect to matters within the scope of this charter (the “Charter”), subject to the ultimate power and authority of the Board. The Board shall continue to have the ultimate duty and responsibility to manage or direct the management of the business and affairs of the Company.

Unless and until the Board amends this Charter, the Committee also has the right to exercise such other powers and authority as were previously set forth in the Company's charter of its Nominating Committee (attached as Exhibit A).

The Committee has the authority to conduct any and all investigations it deems necessary or appropriate, to contact directly the independent registered public accounting firm, the internal audit department and other employees and advisors and require them to provide any and all information, advice and assistance it deems necessary or appropriate, and to retain legal, accounting or other advisors it deems necessary or appropriate.

The Committee has the authority to set aside for payment, pay and direct the payment of the independent registered public accounting firm for its reviews and audits of financial statements and all other services as well as such expenses of the Committee, including for legal, accounting and other advisors.

The independent registered public accounting firm shall report directly to the Committee, and shall be accountable to the Committee and the Board, for its reviews and audits of financial statements and all other services.

II. Composition

The Committee shall be comprised of that number of directors (but not less than three) as may be determined from time to time by the Board. Each member of the Committee shall be (i) an independent director within the meaning of the rules of the NASDAQ Capital Market ("NASDAQ"), Rule 10A-3(b)(1) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the Sarbanes-Oxley Act of 2002 (the "Sarbanes Oxley Act") (ii) shall be able to read and understand fundamental financial statements, including a Company's balance sheet, income statement, and cash flow statement, and (iii) shall be free from any relationship that may interfere with the exercise of his or her judgment independent from management.

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 of the Board, (i) accept any consulting, advisory or other compensatory fee from the Group or (ii) be affiliated with the Group. All members of the Committee shall be financially literate (or must become financially literate within a reasonable period of time after becoming a member of the Committee). At least one member of the Committee shall have accounting or financial management expertise and must constitute an "audit committee financial expert."¹ A member of the Committee who satisfies the definition of an "audit committee financial expert" for Securities and Exchange Commission ("SEC") disclosure purposes will be deemed to have accounting or financial management expertise for NASDAQ purposes. Members of the Committee may enhance their familiarity with finance and

¹ A person with:

- past employment experience in finance or accounting;
- requisite professional certification in accounting;
- or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

accounting matters by participating in educational programs conducted by NASDAQ, the Company, an advisor or others. Additionally, no member of the Committee shall have participated in the preparation of the Company's or any subsidiary's financial statements during the past three years.

The Committee shall recommend directors to be elected or terminated as members of the Committee. The members of the Committee shall be elected by the Board at the annual organizational meeting of the Board or at such other times as the Board may determine. Each member of the Committee shall serve until the next annual organizational meeting of the Board or the earlier of his or her termination as a member of the Committee by the Board, the election of his or her successor as a member of the Committee or his or her death, resignation or removal. Unless a chair of the Committee (the "Chair") is elected by the Board, the members of the Committee may designate a Chair by a majority vote.

III. Meetings

The Committee shall meet in regular sessions at least four times annually and in special sessions as circumstances warrant. Committee members are expected to attend meetings and to spend the time needed to properly discharge their responsibilities.

The Committee shall meet at least once annually with management and the independent registered public accounting firm in separate executive sessions to discuss any matters that the Committee or any of them believe should be discussed privately.

A majority of the members of the Committee shall constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which there is a quorum shall be the act of the Committee.

The Committee shall keep minutes of its meetings and other proceedings.

IV. Procedures

The Committee shall determine its meeting schedule, the agenda for each meeting, the information to be provided to it before or at each meeting and all other matters relating to the conduct of its meetings and other activities.

The Chair of the Committee shall establish and distribute, or cause to be distributed, to each Committee member prior to each meeting an agenda for the meeting. Each Committee member is free to raise at any meeting subjects that are not on the agenda for that meeting.

Information that is important to understanding the business to be conducted at a meeting should generally be distributed to the Committee members at least one week (or, if that is not feasible, as soon as practicable) before the meeting, and Committee members should review these materials before the meeting.

It is the sense of the Board that, subject to Section V below, the activities and procedures of the Committee should remain flexible so that it may appropriately respond to changing circumstances.

V. Required Activities

Without limiting the scope of the preceding provisions of this Charter, the Committee shall:

Corporate Governance

1. Report on its meetings, proceedings and other activities at each meeting of the Board.
2. Review and assess the adequacy of this Charter at least annually. Submit changes to this Charter to the Board for approval.
3. Conduct an annual self-assessment to determine whether the Committee is functioning effectively, including evaluating the Committee's contributions to the Company, with a specific emphasis on areas in which such contributions could be improved.
4. Review, evaluate and, as appropriate, approve all transactions with affiliates, related parties, directors and executive officers, including but not limited to any business between the Company and any entity affiliated with a director, executive officer or affiliate of the Company, regardless of the dollar value of any such transactions.²
5. Direct the establishment of procedures for the receipt and retention of, and the response to, complaints received regarding accounting, internal control or auditing matters.
6. Direct the establishment of procedures for the confidential and anonymous submission by employees of concerns regarding questionable accounting or auditing matters.
7. Discharge the Committee's responsibilities with respect to the adoption, improvement and implementation of the Company's Code of Conduct and the Company's Code of Ethics as set forth in such Code.
8. Engage independent counsel and other advisers, as necessary, to carry out its duties.

Public Reporting

9. Prepare annually the report to stockholders to be included in the annual proxy statement as required by the rules of the SEC.³

² This shall not apply to transactions with majority-owned subsidiaries or compensation of directors or executive officers.

³ The report must state whether the Committee has (i) reviewed and discussed the audited financial statements with management, (ii) discussed certain matters related to the conduct of the audit as set forth in SAS 61, (iii)

10. Review, prior to filing, all annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K to be filed with the SEC that contain financial disclosures of similar scope and magnitude as annual reports on Form 10-K and quarterly reports on Form 10-Q⁴. Meet to review and discuss with management and the independent registered public accounting firm, prior to filing, the financial statements (including the notes thereto), including a review of the specific disclosures under the related “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”⁵

11. Review and discuss earnings press releases as well as financial information and earnings guidance provided to analysts and rating agencies (and, to the extent that information is disclosed on an current report on Form 8-K in lieu of an earnings press release, current reports on Form 8K to be filed with the SEC), which may be limited to a general discussion of the types of information to be disclosed and the type of presentation to be made (paying particular attention to any use of “pro forma,” or “adjusted” non- GAAP, information). Nothing herein shall require the Committee to discuss in advance each earnings release or each instance in which the Company may provide earnings guidance.

12. Obtain from the chief executive officer and chief financial officer assurances that the chief executive officer and chief financial officer are meeting their obligations to the Committee, the independent registered public accounting firm and the public under certification requirements established by the SEC, NASDAQ and the Sarbanes-Oxley Act.

13. Review with management and the independent registered public accounting firm’s financial reporting risk assessment and management policies and practices, including related corporate approval requirements and internal auditing systems and initiatives to minimize such risks.

Independent Registered Public Accounting Firm

14. Select, retain, evaluate and, as appropriate, terminate and replace the independent registered public accounting firm (and the Committee shall have the sole authority to take any such action).

15. Obtain and review, at least once annually, a report by the independent registered public accounting firm describing (i) its internal quality control procedures, (ii) any material issues raised by the most recent internal quality control review or peer review or by any inquiry or investigation by any governmental or professional authority within the preceding five years, in

received written independence disclosures required by the PCAOB’s or other applicable requirements and discussed with the independent registered public accounting firm their independence and (iv) recommended to the Board that the audited financial statements be included in the annual report on Form 10-K to be filed with the SEC.

⁴ This shall not require prior review where such review is or may be impracticable, such as certain filings under Regulation FD or filings with respect to certain items in current reports on Form 8-K.

⁵ The Chair may represent the entire Committee for purposes of this review with respect to quarterly and current reports.

each case with respect to one or more independent audits carried out by it, (iii) any steps taken to deal with any such issues and (iv) all relationships between it and the Group.

16. Review annually the independence of the independent registered public accounting firm by (i) receiving written independence disclosures required by the Public Company Accounting Oversight Board (“PCAOB”) or other applicable requirements, (ii) discussing with the independent registered public accounting firm all disclosed relationships between the independent registered public accounting firm and the Group and all other disclosed relationships that may impact the objectivity and independence of the independent registered public accounting firm and (iii) discussing with management its evaluation of the independence of the independent registered public accounting firm.

17. Review and, as appropriate, approve, prior to commencement, all audit services (including comfort letters in connection with securities underwritings and tax services) and all non-audit services to be provided by the independent registered public accounting firm.⁶

18. Review with the independent registered public accounting firm annually all compensation to the independent registered public accounting firm for all audit and non-audit services.⁷

Audits and Accounting

19. Review with the independent registered public accounting firm annually the plan, scope, staffing and timing of its audit.

⁶ The Committee may designate one member to approve such non-audit services, but that member must inform the Committee of the approval at the next meeting of the Committee. All such approvals must be disclosed in periodic reports filed with the SEC. See footnote 13 for a list of prohibited non-audit services.

⁷ On April 19, 2006, the SEC approved amended Rules 3502, 2522, 2523 and 3524 adopted by the PCAOB on tax services (other than tax services that were completed by June 19, 2006) that treat an auditor as not independent of an audit client if the auditor: (1) opines, markets or plans in favor of, the tax treatment of certain types of aggressive tax position transactions; (2) pro-vides tax services to an audit client for a direct or indirect contingent fee (other than contingent fee arrangements that were paid in their entirety, converted to fixed fee arrangements, or otherwise unwound by June 19, 2006); or (3) provides tax services to individuals who perform a “financial reporting oversight role” (as defined by SEC rules) at an audit client or certain affiliates thereof (other than directors) and to family members of individuals in a financial reporting oversight role (other than tax services provided pursuant to an engagement that was in process as of April 19, 2006, and completed on or before October 31, 2006). As part of its rules on tax services, the PCAOB has adopted a rule designed to supplement the SEC’s pre-approval requirements. This rule expands the responsibilities of the outside auditor in connection with the process of obtaining audit committee pre-approval of permitted tax services (other than tax services that start on or prior to April 29, 2007, and pre-approvals occurring before June 19, 2006). Specifically, the PCAOB rule requires that the auditor: (1) describe in writing to the audit committee the nature and scope of each proposed tax service, including the fee structure for the engagement; (2) discuss with the audit committee the potential effects of the proposed tax service on the auditor’s independence; and (3) document the substance of the auditor’s discussion with the audit committee. In addition, the auditor must disclose to the audit committee any amendments, written or unwritten, to tax services engagements. The SEC approved the PCAOB rules as adopted but indicated that it expects that the PCAOB will issue additional implementation guidance. SEC Adopting Release No. 34-53677, PCAOB-2006-01 (April 19, 2006).

20. After completion of the audit of the financial statements and, if required, internal control over financial reporting, review with management, the director of internal audits and the independent registered public accounting firm the audit report, the management letter relating to the audit report, if applicable, all problems or questions (resolved or unresolved) that arose and any difficulties that were encountered during the audit, the disposition of all audit adjustments identified by the independent registered public accounting firm, all significant financial reporting issues encountered and judgments made during the course of the audit (including the effect of different assumptions and estimates on the financial statements) and the response provided, cooperation afforded or limitations (including restrictions on scope or access), if any, imposed by management on the conduct of the audit.

21. Review with management and the independent registered public accounting firm all reports delivered by the independent registered public accounting firm in accordance with Section 10A(k)⁸ of the Exchange Act with respect to critical accounting policies and practices used, alternative treatments of financial information available under GAAP and other written communications (including letters under SAS No. 50) between the independent registered public accounting firm and management, together with their ramifications and the preferred treatment by the independent registered public accounting firm.

22. Review all items required to be communicated to the independent registered public accounting firm in accordance with SAS No. 61, (Communications with Audit Committees), as amended, as adopted by the PCAOB in Rule 3200T, and PCAOB Auditing Standard No. 5 (An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements) as such standards may be amended or superseded in the future.

23. Review with management and the independent registered public accounting firm at least once annually all correspondence with regulatory authorities and all employee complaints or published reports that raise material issues regarding the financial statements or accounting policies.

24. Review regularly with the independent registered public accounting firm significant disagreements between the independent registered public accounting firm and management and resolve or direct the resolution of all material disagreements between management and the independent registered public accounting firm regarding accounting and financial reporting.

25. Review major issues regarding auditing, internal control and financial reporting principles, policies and practices, and presentation of financial statements, including any significant changes in the selection or application of accounting principles, and major issues as to

⁸ Section 10A(k) requires independent registered public accounting firm to report timely to the Committee: (a) critical accounting policies and practices to be used; (b) alternative treatments of financial information within GAAP that have been discussed with management, ramifications of the use of such alternative disclosures and treatments, and treatment preferred by the independent registered public accounting firm; and (c) other material written communications between the independent registered public accounting firm and management, such as management letters or schedules of unadjusted differences.

the adequacy of the internal controls and any special audit steps adopted in light of material control deficiencies. Review with management, the director of internal audits and the independent registered public accountants adopted or proposed changes in those principles, policies and practices and the impact on the financial statements. Review the effect on those policies and practices of pronouncements and initiatives of the SEC, the PCAOB, other regulatory authorities and the accounting profession.

26. Review with management, the director of internal audits and the independent registered public accountants, at least annually, (i) all significant accounting estimates, (ii) the effective of regulatory and accounting initiatives (as well as off balance sheet structures) on the financial statements, (iii) all significant valuation allowances and liability, restructuring and other reserves and (iv) analyses prepared by management and/or the independent registered public accountants setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GAAP methods on the financial statements.

Internal Audits and Internal Controls

27. Review the resources, plans, activities, staffing and organizational structure of the internal audit department.

28. Review the appointment, performance and replacement of the director of internal audits.

29. Review all audits and reports prepared by the internal audit department together with management's response.

30. Review with management, the director of internal audits and the independent registered public accountants the adequacy of financial reporting and internal control systems, the scope and results of the internal audit program and the cooperation afforded or limitations, if any, imposed by management on the conduct of the internal audit program.

31. Obtain and review with the independent registered public accountants a report on the assessment made by management as to the effectiveness of the internal control structure and procedures when required pursuant to Section 404⁹ of the Sarbanes-Oxley Act and the rules promulgated thereunder.

⁹ Section 404 (together with the rules promulgated thereunder) require each Annual Report on Form 10-K of an accelerated filer to contain an internal control report stating management's responsibility for establishing and maintaining adequate internal control structures and financial reporting procedures, and containing an assessment of the effectiveness of such structures and procedures as of the end of the most recent fiscal year, and also requires the independent registered public accountants to attest to the effectiveness of internal controls over financial reporting. Such attestation may not be the subject of a separate engagement, and must be made in accordance with standards adopted or to be adopted by the PCAOB.

Other

32. Discuss guidelines and policies to govern the process by which risk assessment and management is undertaken.

33. Set policies for hiring of employees or former employees of the independent registered public accounting firm.

VI. Discretionary Activities

It is the sense of the Board that the Committee should periodically evaluate whether and the extent to which to undertake one or more of the following activities:

Independent Registered Public Accounting Firm

1. Review whether to adopt a policy of rotating the independent registered public accounting firm on a regular basis or otherwise.

2. Obtain and review all written reports issued with respect to the results of inspections of the independent registered public accounting firm conducted by the PCAOB.

3. Obtain from the independent registered public accounting firm assurances that: a) no person associated with the independent registered public accounting firm and engaged in providing any service to the Group is under suspension from being associated with a registered public accounting firm pursuant to Section 105¹⁰ of the Sarbanes-Oxley Act¹¹; b) the independent registered public accounting firm has not performed and will not perform any non-audit services prohibited by Section 10A(g)¹² of the Exchange Act; c) the lead audit partner has

¹⁰ Section 105 requires the PCAOB to establish fair procedures for investigating and disciplining registered public accounting firms and their associated persons. That Board may sanction such firms or their associated persons for refusing to testify, produce documents or otherwise cooperate with it in an investigation or for failing to supervise. Rules to be adopted by that Board may require testimony to be given or audit work papers to be produced, and allows it to share information with other government agencies. That Board may investigate such firms' acts or practices that may violate the Sarbanes-Oxley Act or securities laws relating to audit reports, and establish procedures as to sanctions to be applied.

¹¹ The Committee should consider whether to include these items in the engagement letter with the independent registered public accounting firm.

¹² Section 10A(g) makes it unlawful for the independent registered public accounting firm to provide, contemporaneously with the audit, any non-audit service, including tax services, unless the Committee approves the activity in advance. Certain non-audit services are prohibited regardless of approval by the Committee. These prohibited services are: (1) unless it is reasonable to conclude that the results of the services will not be subject to audit procedures during an audit of the audit client's financial statements, (a) bookkeeping or other services related to the Company's accounting records or financial statements; (b) financial information systems design and implementation; (c) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (d) actuarial services; and (e) internal audit outsourcing services; (2) management functions or human resources; (3) broker or dealer, investment adviser, or investment banking services; and (4) legal services and expert services unrelated to the audit.

been and will be rotated at least once every five years in accordance with Section 10A(j)¹³ of the Exchange Act; d) the independent registered public accounting firm complies with all auditing, quality control and independence standards to be established by the PCAOB; e) the independent registered public accounting firm has not and will not violate the conflict of interest provisions set forth in Section 10A(l)¹⁴ of the Exchange Act; and f) it will inform management concerning any information coming to its attention indicating that an illegal act has or may have occurred.

4. Review the experience and qualifications of the senior members of the audit team of the independent registered public accounting firm.

5. Review the extent to which accountants other than the independent registered public accounting firm are used and the reasons for such use.

Controls and Systems

6. Review the adequacy of auditing, accounting, financial reporting and internal control resources.

Public Reporting

7. Review with management policies and practices relating to disclosure of material information to the public, analysts, rating agencies, lenders, stockholders and others, including compliance with Regulation FD and other applicable laws.

Compliance

8. Review with management and the director of internal audits the procedures for monitoring compliance with laws and policies on business integrity, ethics and conflicts of interest, including foreign corrupt practice, antitrust and insider trading matters.

9. Review with counsel compliance with applicable laws, including all material regulatory inquiries.

Risk Assessment

10. Review with management compliance with covenants under debt issues and credit facilities.

11. Review contingencies that could reasonably be expected to have significant impact on financial performance or condition.

¹³ Section 10A(j) makes it unlawful for the independent registered public accounting firm to provide audit services if either the lead or reviewing audit partner has performed audit services for the Company in each of the Company's five previous fiscal years.

¹⁴ Section 10A(l) makes it unlawful for the independent registered public accounting firm to perform any audit service if the Company's CEO, controller, CFO, chief accounting officer or equivalent officer was employed by the independent registered public accounting firm and participated in any capacity in the audit during the one-year period before the beginning date of the audit.

12. Review with counsel all legal matters that may have a significant impact on financial condition or performance.

Finance

13. Review with management and the independent registered public accounting firm the financial condition, liquidity and funding requirements, including short-term and long-term capital expenditure plans and working capital needs of the Company.

14. Review and, as appropriate, approve the amounts, timing, types and terms of public and private stock and debt issues and credit facilities.

15. Review with management financial planning policies and practices and financial objectives.

Other

16. Review reports on expenses of executive officers and directors.

VII. Limitations

Nothing contained herein shall operate to expand the duties, liabilities or responsibilities that a director would otherwise have under applicable laws, rules and regulations in the absence of this Charter. In addition, notwithstanding anything contained herein to the contrary, the duties and responsibilities of the Committee and each of its members is one of oversight and neither the Committee nor any of its members shall have any duty or responsibility to:

- plan, conduct or provide resources for audits;
- determine that financial statements have been properly prepared or financial disclosures are full and complete;
- guarantee or provide other assurance that there are no financial risks or uncertainties or that such risks or uncertainties have been reduced or eliminated; or
- act as an expert or provide guarantees, representations, warranties, professional or other certifications or assurance with respect to, or verify, any matter within the scope of this Charter.

VIII. Qualified Legal Compliance Committee

The Committee is hereby designated and shall constitute a Qualified Legal Compliance Committee within the meaning of the rules of the SEC. As such, the Committee shall adopt written procedures for the confidential receipt, retention and consideration of any report of evidence of a material violation within the meaning of the Standards of Professional Conduct for Attorneys adopted by the SEC. In addition, as such, the Committee shall:

- inform the Chief Executive Officer of any report of evidence of such a material violation (unless the Committee reasonably believes that it would be futile to report evidence of such a material violation to the Chief Executive Officer, in which case the Committee may report the evidence directly to the Board);
- determine whether an investigation thereof is necessary or appropriate and, if so: notify the Board thereof; initiate an investigation, which may be conducted either by counsel; and retain such additional expert personnel as the Committee deems necessary or appropriate; and
- at the conclusion of any such investigation: recommend that the Company implement an appropriate response thereto; and inform counsel, the Chief Executive Officer and the Board of the results of such investigation and the appropriate remedial measures to be adopted.

The Committee shall take all other appropriate action, including notifying the SEC, if the Company fails in any material respect to implement an appropriate response that the Committee has recommended.

IX. Web Site

This Charter shall be placed on the Company's web site and will be made available upon request sent to the Company's Corporate Secretary. The Company's annual report to shareholders will state that this Charter is available on the Company's website and will be available upon request sent to the Company's Corporate Secretary.

Adopted Date: March 24, 2023

EXHIBIT A
(FORMER) AMENDED CHARTER OF THE NOMINATING COMMITTEE
OF THE BOARD OF DIRECTORS
OF LIFEWAY FOODS, INC.

Purpose

Acting pursuant to the Illinois Business Corporation Act of 1983 (805 ILCS § 5/1.01, et seq.), as amended, and Section 2.7 of the By-laws of Lifeway Foods, Inc. (the “Company”), the Board of Directors of the Company (the “Board”) has established a Nominating Committee (the “Committee”) for the purpose of selecting, evaluating and recommending to the Board qualified candidates for election or appointment to the Board.

Membership

The Committee will consist of a minimum of two members of the Board, all of whom shall be “independent directors” under the standards set forth in the rules and regulations of the Nasdaq Global Market (or such other securities exchange or market where the Company’s securities are primarily listed), as well as under any additional or supplemental independence standards applicable to nominating committees established under any applicable law, rule or regulation. The members of the Committee will be appointed by and serve at the discretion of the Board. Unless a Chairman of the Committee is elected by the Board, the members of the Committee may designate a Chairman.

Responsibilities

The following shall be the principal recurring duties of the Committee in carrying out its responsibilities. These duties are set forth as a guide with the understanding that the Committee may supplement them as appropriate and may establish policies and procedures from time to time that it deems necessary or advisable in fulfilling its responsibilities under this Charter, the Company’s By-laws and governing law. The responsibilities of the Committee shall include (1) annually presenting to the Board a list of individuals recommended for nomination for election to the Board at the annual meeting of stockholders and (2) assisting the Board in identifying, interviewing and recruiting candidates for the Board.

The Committee may establish (i) a policy for the consideration of any director candidates recommended by stockholders, including a statement that the Committee will consider director nominations recommended by stockholders, (ii) procedures to be followed by stockholders in submitting recommendations for director nominees and (iii) a process for identifying and evaluating nominees.

In carrying out such responsibilities, the Committee shall have the power and authority to retain such consultants, outside counsel and other advisors as the Committee may deem appropriate and shall have the sole authority to approve the fees and other terms of such engagements.

Director Qualification Guidelines

The Committee believes that it is in the best interest of the Company and its stockholders to identify and select highly-qualified candidates to serve as directors. The Committee will seek candidates for election and appointment who possess the skills and characteristics listed on Annex A hereto and who are committed to staunchly representing the interests of the stockholders. The Committee will employ the process described on Annex B hereto to identify such candidates. The Committee also believes that the Board should be comprised of a group of individuals who have been associated with institutions noted for excellence and who have broad experience and the ability to exercise sound business judgment.

Once the Committee identifies a candidate and determines to approach such candidate, it shall provide such candidate with background information regarding the Company, consisting of the Company's most recent 10-K and 10-Q filings, any readily available marketing information and any other materials which the Committee deems appropriate.

Directors are expected to attend the annual meeting of shareholders and all or substantially all of the Board meetings and meetings of committees on which they serve in person, and to spend the time needed and meet as frequently as necessary to properly discharge their responsibilities. If a director consistently fails to attend Board meetings in person, the Chairman of the Board will promptly contact the director to discuss the problem. The director's response will promptly be shared by the Chairman with the entire Board at the next Board meeting. In that meeting, the Board will decide what actions to take regarding the director's future membership on the Board.

Meetings and Reports

The Committee will hold a regular meeting at least once each year generally in conjunction with regularly scheduled meetings of the Board, and such special meetings as the Chairman of the Committee or the Chairman of the Board may direct. The Committee will maintain written minutes of its meetings, which minutes will be filed with the minutes of the meetings of the Board. The Committee will make regular reports to the Board.

ANNEX A TO NOMINATING COMMITTEE CHARTER
SKILLS AND CHARACTERISTICS FOR DIRECTORS

Board Composition

The Board as a whole should possess the following core competencies:

1. Accounting, Finance and Disclosure: ability to protect and inform stockholders and debtholders through liquidity and capital resource management and internal financial and disclosure controls;
2. Business Judgment: ability to assess business risk and stockholder valuation creation strategies;
3. Management: ability to apply general management best practices in a complex, rapidly evolving business environment;
4. Crisis Response: ability and time to perform during periods of both short-term and prolonged crisis;
5. Industry Knowledge: ability to assess opportunities and threats unique to the Company's industry;
6. Leadership: ability to attract, motivate and energize a high-performance leadership team; and
7. Strategy/Vision: ability to provide strategic insight and direction by encouraging innovation, conceptualizing key trends, evaluating strategic decisions and continuously challenging the Company to sharpen its vision.

Specific Qualifications

Directors should have the following skills and characteristics:

1. Have high personal standards of:
 - a. Integrity;
 - b. Honesty; and
 - c. Desire to make full disclosure of all present and future conflicts of interest.
2. Have the ability to make informed business judgments;
3. Have literacy in financial and business matters;

4. Have the ability to be an effective team member;
5. Have a commitment to active involvement and an ability to give priority to the Company;
6. Have no material affiliations with direct competitors;
7. Have achieved high levels of accountability and success in his or her given fields;
8. Have no geographic travel restrictions;
9. Have an ability and willingness to learn the Company's business;
10. Preferably have experience in the Company's business or in professional fields (i.e. finance, accounting, law or banking) or in other industries or as a manager of international businesses so as to have the ability to bring new insight, experience or contacts and resources to the Company;
11. Preferably have no direct affiliations with major suppliers or vendors; and
12. Preferably have previous public company board experience together with good references.

ANNEX B TO NOMINATING COMMITTEE CHARTER

PROCESS FOR IDENTIFYING DIRECTOR CANDIDATES

The Committee will utilize the following procedure when identifying candidates for Director:

1. The Committee will solicit recommendations for nominees from persons that the Committee believes are likely to be familiar with qualified candidates. These persons may include members of the Board, including members of the Committee, and management of the Company.
2. The Committee may also determine to engage a professional search firm to assist in identifying qualified candidates. Where such a search firm is engaged, the Committee shall set its fees and scope of engagement. The Committee will provide the search firm with the following:
 - a. the Company's standards for director independence;
 - b. the Company's attendance and retirement policies;
 - c. the specific qualities and skills that under the Committee's policies must be possessed by one or more members of the Board, as provided on Annex A;
 - d. the director qualifications provided on Annex A; and
 - e. the Company's Directors and Officers Questionnaire.
3. As to each recommended candidate that the Committee believes merits consideration, the Committee will:
 - a. cause to be assembled information concerning the background and qualifications of the candidate, including information concerning the candidate required to be disclosed in the Company's proxy statement under the rules of the SEC and any relationship between the candidate and the person or persons recommending the candidate;
 - b. determine if the candidate possesses any of the specific qualities or skills that under the Committee's policies must be possessed by one or more members of the Board, as provided on Annex A;
 - c. determine if the candidate satisfies the director qualifications listed on Annex A;
 - d. consider the contribution that the candidate can be expected to make to the overall functioning of the Board; and
 - e. consider the extent to which the membership of the candidate on the Board will promote diversity among the directors.

4. It is appropriate for the Committee, in its discretion, to solicit the views of the Chief Executive Officer, other members of the Company's senior management and other members of the Board regarding the qualifications and suitability of candidates to be nominated as directors.
5. In its discretion, the Committee may designate one or more of its members (or the entire Committee) to interview any proposed candidate.
6. The Committee may engage a third-party to perform a personal and professional background check on the candidate.
7. The Committee shall maintain appropriate records regarding its process of identifying and evaluating candidates for election to the Board.
8. Upon completion of the foregoing steps 1 through 7, and based on all available information and relevant considerations, the Committee will select a candidate and recommend such candidate to the Board.