

**BIOHEART, INC.**

**GOVERNANCE & NOMINATING COMMITTEE  
CHARTER**

**January 29, 2007**

Pursuant to Section 607.0825 of the Florida Business Corporation Act and Article III, Section 7 of the Amended and Restated Bylaws of Bioheart, Inc., incorporated under the laws of the State of Florida (the "Corporation"), the following shall constitute the charter of the Governance & Nominating Committee of the Board of Directors of the Corporation (the "Charter"):

**ORGANIZATION**

There shall be constituted a standing committee of the Board of Directors of the Corporation (the "Board") to be known as the Governance & Nominating Committee (the "Governance & Nominating Committee").

**COMPOSITION AND SELECTION**

The Governance & Nominating Committee shall be comprised of at least three members of the Board who shall meet the independence requirements of the applicable provisions of the Securities Exchange Act of 1934, the rules promulgated thereunder and the applicable rules of the American Stock Exchange, as may be modified or supplemented.

Notwithstanding the foregoing, one director who is not independent and is not a current officer or employee or a family member of a current officer or employee, may be appointed to the Governance & Nominating Committee if the Board, under exceptional and limited circumstances, determines that such individual's membership on the Governance & Nominating Committee is required by the best interests of the Corporation and its shareholders, and the Board discloses, in its proxy statement for the annual meeting of shareholders, the nature of the relationship and the reasons for the determination. A member appointed under this exception may serve no longer than two years.

The members of the Governance & Nominating Committee shall be appointed by a majority of the Board. Each member of the Governance & Nominating Committee shall be subject to annual reconfirmation and may be removed by the Board at any time. Unless a Chairperson is appointed by the Board, the members of the Governance & Nominating Committee shall designate a Chairperson by majority vote of the Governance & Nominating Committee.

The duties and responsibilities of Governance & Nominating Committee members contained herein shall be in addition to those duties otherwise required for members of the Board.

## STATEMENT OF PURPOSE

The Governance & Nominating Committee is appointed by the Board (1) to assist the Board by identifying individuals qualified to become Board members and to recommend to the Board the director nominees for the next annual meeting of shareholders; (2) to oversee the governance of the Corporation including recommending to the Board Corporate Governance Guidelines for the Corporation; (3) to lead the Board in its annual review of the Board's performance; and (4) to recommend to the Board director nominees for each committee.

## COMMITTEE AUTHORITY AND RESPONSIBILITIES

The Governance & Nominating Committee shall have the authority to retain and terminate any search firm to be used to identify director candidates and shall review and approve the search firm's fees and other retention terms. The Governance & Nominating Committee also shall have authority to obtain advice and assistance from internal or external legal, accounting or other advisors.

The Governance & Nominating Committee shall have the authority to form, and delegate authority to, subcommittees when appropriate.

In carrying out the purpose set forth in this Charter, the Governance & Nominating Committee shall:

1. Actively seek, identify, review and recommend candidates for nomination to the Board, including candidates recommended by the Corporation's shareholders. In evaluating director nominees, the Governance & Nominating Committee shall consider, among other things, the following factors:

- the appropriate size and the diversity of the Corporation's Board;
- the needs of the Corporation with respect to the particular talents and experience of its directors;
- the knowledge, skills and experience of nominees, including experience in technology, business, finance, administration or public service, in light of prevailing business conditions and the knowledge, skills and experience already possessed by other members of the Board;
- familiarity with national and international business matters;
- experience in political affairs;
- experience with accounting rules and practices;
- whether such person qualifies as an "audit committee financial expert" pursuant to U.S. Securities and Exchange Commission (the "SEC") rules;
- appreciation of the relationship of the Corporation's business to the changing needs of society; and
- the desire to balance the considerable benefit of continuity with the periodic injection of the fresh perspective provided by new members.

In identifying director nominees, the Governance & Nominating Committee shall first evaluate the current members of the Board willing to continue in service. Current members of the Board with skills and experience that are relevant to the Corporation's business and who are willing to continue in service shall be considered for renomination, balancing the value of continuity of service by existing members of the Board with that of obtaining a new perspective.

The Governance & Nominating Committee shall evaluate director candidates nominated by shareholders using the same guidelines and procedures used in evaluating director candidates nominated by other persons.

If any member of the Board does not wish to continue in service or if the Governance & Nominating Committee or the Board decides not to renominate a member for re-election, the Governance & Nominating Committee shall identify the desired skills and experience of a new nominee in light of the criteria above.

2. Review from time to time the appropriate skills and characteristics required of Board members in the context of the current make-up of the Board, including such factors as business experience, diversity, and personal skills in technology, finance, marketing, international business, financial reporting and other areas that are expected to contribute to an effective Board;
3. Recommend to the Board nominees for each of the Board's committees;
4. Periodically review the independence of each non-management director, as such term is interpreted under the applicable provisions of the Securities Exchange Act of 1934, the rules promulgated thereunder and the applicable rules of the American Stock Exchange, as modified and supplemented;
5. Present all nominees in a timely fashion to minimize disruption in the Corporation's business and at such a time to allow for the full consideration of the nominees by the Board and the timely submission of any filings required by the SEC;
6. Receive comments from all directors and report annually to the Board with an assessment of the Board's performance, to be discussed with the full Board following the end of each fiscal year; consider, discuss and recommend ways to improve the Board's effectiveness;
7. Review periodically the Corporation's conflict of interest policies, evaluate the adequacy of the Corporation's conflict of interest policies when business opportunities arise that potentially may give rise to the appearance of impropriety;
8. Obtain confirmation from the Corporation's management that the conflict of interest policies are understood and implemented;
9. Consider with management public policy issues that may affect the Corporation;

10. Make regular reports to the Board;
11. Review and reassess the adequacy of this Charter annually and recommend any proposed changes to the Board for approval;
12. Review and recommend to the Board policies regarding director orientation and education;
13. Annually review its own performance; and
14. Perform such other functions as the Board may request.

### **MEETINGS**

The Governance & Nominating Committee shall meet as often as may be deemed necessary or appropriate in its judgment and that of the Board. The Chairperson or a majority of the members of the Governance & Nominating Committee may call meetings of the Governance & Nominating Committee upon reasonable notice to all members of the Governance & Nominating Committee. A majority of the total number of members of the Governance & Nominating Committee shall constitute a quorum at all Governance & Nominating Committee meetings. A majority of the members of the Governance & Nominating Committee shall be empowered to act on behalf of the Governance & Nominating Committee. Minutes shall be kept of each meeting of the Governance & Nominating Committee. Following each meeting, the Governance & Nominating Committee shall report to the Board at the next regularly scheduled Board meeting, or sooner, as circumstances may dictate.

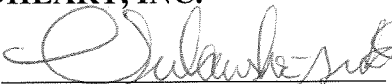
### **CONSISTENCY WITH ARTICLES OF INCORPORATION AND BYLAWS**

To the extent that any provision or section of this Charter may be inconsistent with any article, provision or section of the Articles of Incorporation or the Bylaws of the Corporation, the Articles of Incorporation or the Bylaws, as appropriate, shall fully control.

### **CERTIFICATION**

This Governance & Nominating Committee Charter was duly approved and adopted by resolution of the Board on the 29th day of January, 2007.

**BIOHEART, INC.**

By:   
Catherine Sulawske-Guck  
Corporate Secretary