

## **BIOLASE TECHNOLOGY, INC.**

### **NOMINATING AND CORPORATE GOVERNANCE COMMITTEE CHARTER**

This Nominating and Corporate Governance Committee Charter was adopted by the Board of Directors (the “Board”) of Biolase Technology, Inc. (the “Company”) on May 14, 2008.

#### **I. Purpose**

The purpose of the Nominating and Corporate Governance Committee (the “Committee”) of the Board is to assist the Board in discharging the Board’s responsibilities regarding:

- (a) the identification of qualified candidates to become Board members;
- (b) the selection of nominees for election as directors at the next annual meeting of stockholders (or special meeting of stockholders at which directors are to be elected);
- (c) the selection of candidates to fill any vacancies on the Board;
- (d) the development and oversight of corporate governance principles and policies applicable to the Company; and
- (e) oversight of the evaluation of the board.

In addition to the powers and responsibilities expressly delegated to the Committee in this Charter, the Committee may exercise any other powers and carry out any other responsibilities delegated to it by the Board from time to time consistent with the Company’s bylaws. The powers and responsibilities delegated by the Board to the Committee in this Charter or otherwise shall be exercised and carried out by the Committee as it deems appropriate without requirement of Board approval, and any decision made by the Committee (including any decision to exercise or refrain from exercising any of the powers delegated to the Committee hereunder) shall be at the Committee’s sole discretion. While acting within the scope of the powers and responsibilities delegated to it, the Committee shall have and may exercise all the powers and authority of the Board. To the fullest extent permitted by law, the Committee shall have the power to determine which matters are within the scope of the powers and responsibilities delegated to it.

#### **II. Membership**

The Committee shall be composed of three more directors, as determined by the Board, each of whom (a) satisfies the independence requirements of the NASDAQ, and (b) has experience, in the business judgment of the Board, that would be helpful in addressing the matters delegated to the Committee.

The members of the Committee, including the Chair of the Committee, shall be appointed by the Board. Committee members may be removed from the Committee, with or without cause, by the Board. Any action duly taken by the Committee shall be valid and effective, whether or not the members of the Committee at the time of such action are later determined not to have satisfied the requirements for membership provided herein.

### **III. Meetings and Procedures**

The Chair (or in his or her absence, a member designated by the Chair) shall preside at each meeting of the Committee and set the agendas for Committee meetings. The Committee shall have the authority to establish its own rules and procedures for notice and conduct of its meetings so long as they are not inconsistent with the provisions of the Company's bylaws that are applicable to the Committee. A majority of the members of the Committee shall constitute a quorum for the conduct of business.

The Committee shall meet on a regularly scheduled basis at least two times per year and more frequently as the Committee deems necessary or desirable.

The Committee may appoint a Secretary whose duties and responsibilities shall be to keep full and complete records of the proceedings of the Committee for the purposes of reporting Committee activities to the Board and to perform all other duties as may from time to time be assigned to him or her by the Committee, or otherwise at the direction of a Committee member. If no Secretary is appointed, any member of the Committee may serve as Secretary of a meeting. The Secretary need not be a member of the Board.

All non-management directors who are not members of the Committee may attend and observe meetings of the Committee, but shall not participate in any discussion or deliberation unless invited to do so by the Committee, and in any event shall not be entitled to vote. The Committee may, at its discretion, include in its meetings members of the Company's management, or any other person whose presence the Committee believes to be desirable and appropriate. Notwithstanding the foregoing, the Committee may exclude from its meetings any person it deems appropriate, including but not limited to, any non-management director who is not a member of the Committee.

The Committee may retain any independent counsel, experts or advisors that the Committee believes to be desirable and appropriate. The Committee may also use the services of the Company's regular legal counsel or other advisors to the Company. The Company shall provide for appropriate funding, as determined by the Committee, for payment of compensation to any such persons employed by the Committee and for ordinary administrative expenses of the Committee that are necessary or appropriate in carrying out its duties. The Committee shall have sole authority to retain and terminate any search firm to be used to identify director candidates, including sole authority to approve such search firm's fees and other retention terms.

The Chair shall report to the Board regarding the activities of the Committee at appropriate times and as otherwise requested by the Chairman of the Board.

#### **IV. Duties and Responsibilities**

1. (a) At an appropriate time prior to each annual meeting of stockholders at which directors are to be elected or reelected, the Committee shall recommend to the Board for nomination by the Board such candidates as the Committee, in the exercise of its judgment, has found to be well qualified and willing and available to serve.

(b) At an appropriate time after a vacancy arises on the Board or a director advises the Board of his or her intention to resign, the Committee shall recommend to the Board for appointment by the Board to fill such vacancy, such prospective member of the Board as the Committee, in the exercise of its judgment, has found to be well qualified and willing and available to serve.

(c) For purposes of (a) and (b) above, the Committee may consider the following criteria, among others the Committee shall deem appropriate, in recommending candidates for election to the Board:

- (i) personal and professional integrity, ethics and values;
- (ii) experience in corporate management, such as serving as an officer or former officer of a publicly held company;
- (iii) experience in the Company's industry and with relevant social policy concerns;
- (iv) experience as a board member of another publicly held company;
- (v) academic expertise in an area of the Company's operations; and
- (vi) practical and mature business judgment.

2. The Committee shall develop and recommend to the Board a policy regarding the consideration of director candidates recommended by the Company's security holders and procedures for submission by security holders of director nominee recommendations.

3. The Committee shall develop and recommend to the Board procedures for the selection and review of the Chairman of the Board.

4. The Committee shall, at least annually, review the performance of each current director and shall consider the results of such evaluation when determining whether or not to recommend the nomination of such director for an additional term.

5. The Committee shall oversee the Board in the Board's annual review of its performance (including its composition and organization), and will make appropriate recommendations to improve performance.

6. The Committee shall recommend to the Board, as appropriate, the number, type, functions, structure and independence of committees, including director membership on committees.

7. The Committee shall evaluate its own performance on an annual basis, including its compliance with this Charter, and provide the Board with any recommendations for changes in procedures or policies governing the Committee. The Committee shall conduct such evaluation and review in such manner as it deems appropriate.

8. The Committee shall periodically review and recommend to the Board changes in director retirement policies, as deemed appropriate by the Committee.

9. The Committee shall review and recommend to the Board proposed changes to the Company's certificate of incorporation and bylaws that affect corporate governance matters.

10. The Committee shall develop and monitor compliance with a code of conduct applicable to the Company's directors, officers and employees pursuant to and to the extent required by regulations applicable to the Company from time to time.

11. The Committee shall develop and monitor compliance with a code of ethics for senior financial officers pursuant to and to the extent required by regulations applicable to the Company from time to time.

12. The Committee shall develop, review and recommend to the Board other principles and policies relating to corporate governance and shall monitor compliance with, and the effectiveness of, such principles and policies, as appropriate.

13. The Committee shall review corporate governance developments, including changes to laws and regulations, as well as best practices reviewed by RiskMetrics and similar institutions, and where appropriate, make recommendations to the Board regarding corporate governance matters.

14. The Committee shall monitor the process and the scope of director access to Company management and employees.

15. The Committee shall periodically review with the Chairman of the Board or the Chief Executive Officer his or her assessment of corporate officers and succession plans relating to their positions, and make recommendations to the Board with respect to the selection of individuals to occupy these positions.

16. The Committee shall determine the procedures for selecting the Chief Executive Officer and periodically review with the Chairman of the Board his or her succession plans relating to the Chief Executive Officer.

17. The Committee shall periodically report to the Board on its findings and actions.

18. The Committee shall review and reassess this Charter at least annually and submit any recommended changes to the Board for its consideration.

## **V. Director Candidates**

The Committee shall recommend for election or re-election as a director only candidates who as a condition to being nominated have tendered an advance irrevocable resignation that will be effective upon (i) the failure to receive the required vote at the next meeting at which the director is nominated for re-election and (ii) acceptance of such resignations in accordance with the Company's bylaws. In addition, the Committee shall recommend that the Board fill director vacancies and new directorships only with candidates who agree to tender, as a condition to their appointment to the Board, a resignation of the type described in the preceding sentence.

## **VI. Reliance on Information Provided**

In adopting this Nominating and Corporate Governance Committee Charter, the Board acknowledges that the Committee members are not necessarily legal experts and are not providing any expert or special assurance as to the Company's legal compliance. Each member of the Committee shall be entitled rely on the integrity of those persons and organizations within and outside the Company that provide information to the Committee and the accuracy and completeness of the corporate governance and other information provided to the Committee by such persons or organizations absent actual knowledge to the contrary.

## **VII. Delegation of Duties**

In fulfilling its responsibilities, the Committee shall be entitled to delegate any or all of its responsibilities to a subcommittee of the Committee, to the extent consistent with the Company's certificate of incorporation, bylaws, and applicable law and rules of markets in which the Company's securities then trade.