

# CONTRAFECT CORPORATION

## CORPORATE GOVERNANCE GUIDELINES

The Board of Directors (the “Board”) of ContraFect Corporation (the “Company”) has adopted the following Corporate Governance Guidelines (the “Guidelines”) to assist the Board in the exercise of its duties and responsibilities and to serve the best interests of the Company and its stockholders. The Guidelines should be applied in a manner consistent with all applicable laws and stock exchange rules and the Company’s charter and bylaws, each as amended and in effect from time to time. The Guidelines are intended to serve as a flexible framework for the conduct of the Board’s business and not as a set of legally binding obligations. The Board may modify or make exceptions to the Guidelines from time to time in its discretion and consistent with its duties and responsibilities to the Company and its stockholders.

### A. Director Responsibilities

1. Role of the Board of Directors. The principal responsibility of the directors is to oversee the management of the Company and, in so doing, serve the best interests of the Company and its stockholders. In discharging their fiduciary duties, directors are expected to exercise their business judgment to act in what they reasonably believe to be the best interests of the Company and its stockholders. Service on the Board requires significant time and attention on the part of directors. Directors have an obligation to become and remain informed about the Company and its business. Directors are responsible for determining that effective systems are in place for the periodic and timely reporting to the Board on important matters concerning the Company. Directors should also periodically review the integrity of the Company’s internal control and management information systems. More specifically, the Board has responsibilities to review, approve and monitor fundamental financial and business strategies and major corporate actions, assess major risks facing the Company and consider ways to address those risks, select and oversee management and determine its composition and oversee the establishment and maintenance of processes and conditions to maintain the integrity of the Company.
2. Board, Stockholder and Committee Meetings. Directors are responsible for attending Board meetings, meetings of committees on which they serve and the annual meeting of stockholders, and devoting the time needed, and meeting as frequently as necessary, to discharge their responsibilities properly. Directors must notify the Secretary of circumstances preventing attendance at a meeting.
3. Reliance on Management and Advisors. The directors are entitled to rely on the Company’s senior executives and its outside advisors, auditors and legal counsel, except to the extent that any such person’s integrity, honesty or competence is in doubt.

4. Indemnification. The directors are entitled to Company-provided indemnification, statutory exculpation and directors' and officers' liability insurance.

## **B. Director Qualification Standards**

1. Independence. Except as may otherwise be permitted by the Nasdaq listing rules and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), a majority of the members of the Board shall be independent directors. In determining independence, the Board will consider the definition of independence set forth in the Nasdaq listing rules.
2. Size of the Board. The Board shall establish the number of directors in accordance with the Company's bylaws. The Board will periodically consider whether the size of the Board is appropriate given the Company's present circumstances and any changes in the Company's business.
3. Other Directorships. A director shall limit the number of other public company boards on which he or she serves so that he or she is able to devote adequate time to his or her duties to the Company, including preparing for and attending meetings. Directors should advise the Chairman of the Board and the Chairman of the Nominating and Corporate Governance Committee in advance of accepting an invitation to serve on another company's board. Service on boards and/or committees of other organizations shall comply with the Company's conflict of interest policies.
4. Directors Who Change Their Job Responsibility. A director who retires from his or her present employment or who materially changes his or her position should notify the Board and the Nominating and Corporate Governance Committee. The Board does not believe any director who retires from his or her present employment, or who materially changes his or her position, should necessarily leave the Board; however, there should be an opportunity for the Board, through the Nominating and Corporate Governance Committee, to review the continued appropriateness of Board membership under these circumstances. The Nominating and Corporate Governance Committee will consider the circumstances, and may in certain cases recommend that the Board request that the director submit his or her resignation of the Board.
5. Term Limits. The Board does not believe it should establish term limits. Directors who have served on the Board for an extended period of time are able to provide continuity and valuable insight into the Company, its operations and prospects based on their experience with, and understanding of, the Company's history, policies and objectives. The Board believes that, as an alternative to term limits, it can ensure that the Board continues to evolve and adopt new ideas and viewpoints through the director nomination process described in these guidelines.

6. Retirement. The Board does not believe that a fixed retirement age for directors is appropriate.
7. Board Leadership Structure. The Nominating and Corporate Governance Committee shall periodically assess the Board's leadership structure, including whether the offices of Chairman of the Board and Chief Executive Officer should be separate and why the Board's leadership structure is appropriate given the specific characteristics or circumstances of the Company. In the event that the Chairman of the Board is not an independent director, the Nominating and Corporate Governance Committee shall designate an independent director to serve as "Lead Director," who shall be approved by a majority of the independent directors.
8. Management Directors. The Board anticipates that the Company's Chief Executive Officer will serve on the Board. The Board also anticipates that other members of the Company's senior executives, who can assist the Board in fulfilling its responsibilities based on their experience and role at the Company, may serve on the Board as appropriate.
9. Selection of New Director Candidates. Except where the Company is legally required by contract, bylaw or otherwise to provide third parties with the right to nominate directors, the Nominating and Corporate Governance Committee shall be responsible for (i) identifying individuals qualified to become Board members, consistent with criteria approved by the Board, and (ii) recommending to the Board (a) the nominees for election as directors at any meeting of stockholders and (b) the persons to be elected by the Board to fill any vacancies on the Board.  
  
Director nominees shall be considered for recommendation by the Nominating and Corporate Governance Committee in accordance with the criteria set forth in Attachment A to these Guidelines. It is expected that the Nominating and Corporate Governance Committee will have direct input from the Chairman of the Board, the Chief Executive Officer and, if one is appointed, the Lead Director.
10. Changes in Director Criteria. The Board and the Company wish to maintain a Board composed of directors who can productively contribute to the success of the Company. From time to time, the Board may change the criteria for directors to maximize the opportunity to achieve this success. When this occurs, the Board will evaluate existing directors according to the new criteria. The Board may ask a director who no longer meets the complete criteria for Board membership to adjust his or her committee assignments or resign from the Board.
11. Extending the Invitation to a New Director Candidate to Join the Board. The invitation to join the Board should be extended either by the Chairman of the Board or the Chairman of the Nominating and Corporate Governance Committee.

12. Director Orientation and Education. Management may implement an orientation process for directors that includes background material on Company policies and procedures, meetings with senior executives and visits to Company facilities. The Company may offer continuing education programs to assist the directors in maintaining the level of expertise to perform their duties as a director.

**C. Board Meetings**

1. Number of Meetings. The Board will have at least four meetings each year and such additional meetings as called by the Board or otherwise in accordance with the Company's bylaws.
2. Selection of Agenda Items. The Chairman of the Board may approve the agenda for each Board meeting and may distribute such agenda in advance to each director. Each Board member is free to suggest the inclusion of agenda items and is free to raise at any Board meeting subjects that are not on the agenda for that meeting.
3. Length of Meetings. The Chairman of the Board, in consultation with the members of the Board, shall determine the length of the Board meetings.
4. Advance Distribution of Materials. All information relevant to the Board's understanding of matters to be discussed at an upcoming Board meeting will be distributed in writing or electronically to all directors in advance, whenever feasible and appropriate. Materials distributed should be as concise as possible and give directors sufficient information to make informed decisions. The Board acknowledges that certain items to be discussed at a Board or committee meeting may be of an extremely confidential or time-sensitive nature and that the distribution of materials on these matters prior to meetings may not be appropriate or practicable.
5. Executive Sessions. The independent directors shall meet in executive session at least twice a year to discuss, among other matters, the performance of the Chief Executive Officer. The independent directors will meet in executive session at other times at the request of any independent director. Absent unusual circumstances, these sessions shall be held in conjunction with regular Board meetings. The director who presides at these meetings shall be the Chairman (or the Lead Director, if there is one).
6. Attendance of Non-Directors at Board Meetings. The Board encourages the senior executives of the Company to, from time to time, bring Company personnel to any Board meeting at which their presence and expertise would help the Board have a full understanding of matters being considered.
7. Committee Reports. At each regular Board meeting, each committee that held a meeting subsequent to the last Board meeting and prior to the current Board

meeting may present a brief summary of its committee meeting to the Board, including the principal subjects discussed and the conclusions and actions of the committee. In general, the chairperson of the appropriate committee will present such report.

#### **D. Board Committees**

1. Key Committees. The Board shall have at all times an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee. Each such committee shall have a charter that has been approved by the Board. The Board may form, merge or dissolve committees as it deems appropriate from time to time.
2. Assignment of Committee Members. The Nominating and Corporate Governance Committee shall be responsible for recommending to the Board the directors to be appointed to each committee of the Board.
3. Selection of Agenda Items. The chairman of each committee, in consultation with the committee members, shall develop the committee's agenda. At the beginning of the year, each committee shall, to the extent practicable, establish a schedule of subjects to be discussed during the year. The schedule for each committee meeting shall be furnished to all directors.
4. Frequency and Length of Committee Meetings. The chairman of each committee, in consultation with the committee members, shall determine the frequency and length of the committee meetings consistent with any requirements set forth in the committee's charter. Special meetings may be called from time to time as determined by the needs of the business and the responsibilities of the committees.

#### **E. Director Access to Management and Independent Advisors**

1. Access to Officers and Employees. Directors have full and free access to officers and employees of the Company. Any meetings or contacts that a director wishes to initiate may be arranged through the Chief Executive Officer or the Secretary or directly by the director. The directors shall use their judgment to ensure that any such contact is not disruptive to the business operations of the Company and shall, to the extent appropriate, copy the Chief Executive Officer on any written communications between a director and an officer or employee of the Company.
2. Access to Independent Advisors. The Board and each committee have the power to hire and consult with independent legal, financial or other advisors for the benefit of the Board or such committee, as they may deem necessary, without consulting or obtaining the approval of any officer of the Company in advance. In the discretion of the Board or applicable committee, such independent advisors may (but need not) be the regular advisors to the Company. The Board or any

such committee is empowered, without further action by the Company, to cause the Company to pay the compensation of such advisors as established by the Board or any such committee.

#### **F. Director Compensation**

The form and amount of director compensation shall be determined by the Board in accordance with the policies and principles set forth below. The Compensation Committee shall conduct a periodic review of the compensation of the Company's directors. The Compensation Committee shall consider that questions as to directors' independence may be raised if director compensation and perquisites exceed customary levels, if the Company makes substantial charitable contributions to organizations with which a director is affiliated or if the Company enters into consulting contracts or business arrangements with (or provides other indirect forms of compensation to) a director or an organization with which the director is affiliated. The Company's executive officers shall not receive additional compensation for their service as directors.

#### **G. Board Confidentiality**

Through the course of their service as directors, directors acquire trade secrets, proprietary information, and other confidential, non-public information about the Company. Directors must maintain the confidentiality of non-public information relating to the Company, except when authorized or legally required to disclose such information. Directors will direct any questions involving material non-public information to the Company's General Counsel. Directors are expected to exercise appropriate caution and diligence to avoid the unauthorized disclosure or misuse of any information about the Company. Company management, not the Board, is the primary communicator of Company matters to third parties, including the media, stockholders and analyst communities. Directors will comply with their fiduciary duties, the provisions of these guidelines and the Company's relevant policies and procedures regarding any communications with third parties.

#### **H. Management Evaluation and Succession**

1. Selection of Chief Executive Officer. The Board selects the Company's Chief Executive Officer in the manner that it determines to be in the best interests of the Company's stockholders.
2. Evaluation of Chief Executive Officer. The Compensation Committee shall be responsible for overseeing the evaluation of the Company's Chief Executive Officer to ensure that the Chief Executive Officer is providing the best leadership for the Company over both the long- and short-term. The Compensation Committee and Board will use the evaluation in the course of their deliberations when considering the compensation of the Chief Executive Officer.
3. Succession of Senior Executives. The Compensation Committee shall be responsible for periodically reviewing the Company's succession plans for the

Chief Executive Officer and other senior executives. The Chief Executive Officer should at all times make available his or her recommendations for potential successors, along with a review of any development plans recommended for such individuals.

**I. Performance Evaluation of the Board**

The Nominating and Corporate Governance Committee shall oversee a periodic self-evaluation of the Board, including Board committees, to determine whether it and its committees are functioning effectively.

**J. Board Interaction with Stockholders, Institutional Investors, the Press, Customers, Etc.**

The Board believes that the Chief Executive Officer and his or her designees speak on behalf of the Company. Individual Board members may, from time to time, meet or otherwise communicate with various constituencies that are involved with the Company. It is, however, expected that Board members would do so with the knowledge of and, absent unusual circumstances or as contemplated by the committee charters, only at the request of the Company's senior executives.

The Board will give appropriate attention to written communications that are submitted by stockholders and other interested parties, and will respond if and as appropriate. Absent unusual circumstances, the Chairman of the Board (if an independent director), or the Lead Director (if one is appointed), or otherwise the Chairman of the Nominating and Corporate Governance Committee shall, subject to advice and assistance from the General Counsel and Corporate Secretary, or her designee, (i) be primarily responsible for monitoring communications from shareholders and other interested parties, and (ii) provide copies or summaries of such communications to the other directors as he or she considers appropriate.

**K. Periodic Review of the Corporate Governance Guidelines**

The Nominating and Corporate Governance Committee shall periodically review and reassess the adequacy of these Guidelines and recommend any proposed changes to the Board for approval.

## **ATTACHMENT A TO CORPORATE GOVERNANCE GUIDELINES**

### **CRITERIA FOR NOMINATION AS A DIRECTOR**

#### **General Criteria**

1. Nominees should have a reputation for integrity, honesty and adherence to high ethical standards.
2. Nominees should have demonstrated business acumen, experience and ability to exercise sound judgments in matters that relate to the current and long-term objectives of the Company and should be willing and able to contribute positively to the decision-making process of the Company.
3. Nominees should have a commitment to understand the Company and its industry and to regularly attend and participate in meetings of the Board and its committees.
4. Nominees should have the interest and ability to understand the sometimes conflicting interests of the various constituencies of the Company, which include stockholders, employees, customers, governmental units, creditors and the general public, and to act in the interests of all stockholders.
5. Nominees should not have, nor appear to have, a conflict of interest that would impair the nominee's ability to represent the interests of all the Company's stockholders and to fulfill the responsibilities of a director.
6. Nominees shall not be discriminated against on the basis of race, religion, national origin, sex, sexual orientation, disability or any other basis proscribed by law. The value of diversity on the Board should be considered.

#### **Application of Criteria to Existing Directors**

The re-nomination of existing directors should not be viewed as automatic, but should be based on continuing qualification under the criteria set forth above. In addition, the Nominating and Corporate Governance Committee shall consider the existing directors' performance on the Board and any committee.

#### **Criteria for Composition of the Board**

The backgrounds and qualifications of the directors considered as a group should provide a significant breadth of experience, knowledge, diversity and abilities that shall assist the Board in fulfilling its responsibilities.