

**CHARTER OF NOMINATING AND CORPORATE GOVERNANCE  
COMMITTEE OF THE BOARD OF DIRECTORS OF  
ENERGY RECOVERY, INC.**

**A. Purpose**

The purpose of the Nominating and Corporate Governance Committee (the “Committee”) of the Board of Directors (the “Board”) of Energy Recovery, Inc. (the “Company”) is to discharge the responsibilities of the Board to ensure that the Board and its committees are appropriately constituted to meet their legal obligations to the Company and its stockholders. To this end, the Committee is responsible for:

- (i) identifying and recommending candidates qualified to fill Board vacancies and newly-created director positions;
- (ii) recommending whether incumbent directors should be nominated for re-election to the Board upon expiration of such director’s term;
- (iii) recommending Board members to the Board for committee membership, taking into account the factors set forth in the charter of such committee, if any, as well as any other factors it deems appropriate;
- (iv) ensuring that a majority of the Board consists of individuals who are “independent” as required by applicable law and the rules of The NASDAQ Stock Market, Inc. (“NASDAQ”), and that members of each of the Audit Committee, Compensation Committee and the Nominating and Corporate Governance Committee of the Board are “independent” as required by applicable law and the NASDAQ rules, *provided that* the foregoing shall not be construed to discharge the Board’s responsibility under such law or rules to determine whether members of the Board or any committee thereof are “independent”;
- (v) developing and recommending to the Board a set of corporate governance principles applicable to the Company;
- (vi) generally addressing corporate governance issues for the Board; and
- (vii) reporting regularly to the Board as to its activities.

**B. Committee Membership**

The Committee shall consist of the number of independent directors that are members of the Board, which shall be fixed from time to time by the Board. Each member of the Committee shall meet the independence requirements of the NASDAQ rules. Members of the Committee shall be appointed by the Board, and shall serve at the pleasure of the Board for such term or terms as the Board may determine. A Committee member shall be automatically removed without further action of the Board if the member ceases to be a director of the Company or is found by the Board to no longer meet the applicable independence requirements.

**C. Committee Duties and Responsibilities**

The Committee shall have the following duties and responsibilities, as well as any functions as shall be required of nominating or corporate governance committees by the NASDAQ rules and the

Securities and Exchange Commission (the “SEC”). The below duties and responsibilities are set forth as a guide, and not as minimum requirements, with the understanding that the Committee may supplement them as appropriate, or may choose to fulfill its responsibilities in other ways which it deems advisable in its business judgment.

1. To establish the criteria for Board membership, based on the nature, size and complexity of the Company and the stage of its development, from time to time, which should include, among other factors the Committee may deem relevant, the factors set forth below under “Board Membership Criteria and Evaluation of Potential Nominees”;

2. To periodically review the structure, size and composition of the Board and make recommendations to the Board with regard to any adjustments that are deemed necessary;

3. To develop and recommend to the Board for its approval an annual Board and committee self-evaluation process to determine the effectiveness of the functioning of the Board and its committees, and oversee such annual self-evaluation process;

4. To consider, recruit and recommend to the Board candidates for election to the Board at each annual meeting of stockholders; to review candidates recommended by stockholders, establish the procedures by which such stockholder candidates will be considered by the Committee and publish these procedures in the Company’s annual meeting proxy statement (as applicable); to conduct the appropriate and necessary inquiries into the backgrounds and qualifications of possible candidates;

5. To develop, approve and periodically assess a process for stockholders to send communications to the Board;

6. To review the performance of the Board and the various committees of the Board, including the Committee, at least annually;

7. To make recommendations to the Board regarding committee structure and delegated responsibilities included in the charter of each committee of the Board;

8. To consider questions of actual or possible conflicts of interest, including related prior transactions, of Board members and of senior executives;

9. To receive and review an annual questionnaire furnished by each director identifying relationships between such director and members of his or her immediate family and the Company and recommending to the Board whether any such relationships are material or whether they satisfy the Board’s standards of independence;

10. To determine (i) the appropriate schedule for regular executive sessions of the non-management directors, (ii) whether, in the event the Chairman of the Board is a member of management, a single presiding director shall be selected for all such executive sessions or whether a procedure should be used for selection of the presiding director, and (iii) a method to be disclosed by the Company for interested parties to be able to communicate concerns directly to the Chairman of the Board or, in the event the Chairman of the Board is a member of management, the presiding director or the non-management directors as a group;

11. To recommend to the Board the appointment and removal of the members and chairs of the committees;

12. To make recommendations on the structure of Board meetings and to oversee the Company's processes for providing information to the Board;

13. To consider matters of corporate governance and to review periodically the Company's corporate governance principles and Code of Business Conduct and Ethics (as required by the NASDAQ rules and the SEC) and recommend to the Board any changes deemed appropriate;

14. To recommend to the Board director retirement policies; and

15. Perform any other activities consistent with this Charter, the Company's Certificate of Incorporation and Bylaws, as well as the applicable law, as the Committee or the Board deems necessary or appropriate.

#### **D. Board Membership Criteria and Evaluation of Potential Nominees**

In establishing the criteria for board membership and in evaluating a person as a potential nominee to serve as a director of the Company or as chair of any of the various committees, the Committee should consider, among other factors it may deem relevant, the following:

(i) whether or not the person has any relationships that might impair his or her independence, such as any business, financial or family relationships with the Company, its management, its stockholders or their affiliates;

(ii) whether or not the person serves on boards of, or is otherwise affiliated with, competing companies;

(iii) whether or not the person is willing to serve as, and willing and able to commit the time necessary for the performance of the duties of, a director of the Company;

(iv) the contribution which the person can make to the Board and the Company, with consideration being given to the person's experience as a senior executive at a publicly traded corporation, management consultant, investment banker, partner at a law firm or registered public accounting firm, professor at an accredited law or business school, experience in the management or leadership of a substantial private business enterprise, educational, religious or not-for-profit organization, or such other professional or other experience as the Committee may determine to be relevant to the person's qualifications for service on the Board; and

(v) the character and integrity of the person.

#### **E. Structure, Operations and Meetings of the Committee**

A majority of the Committee shall constitute a quorum for all purposes. The Board shall designate a member of the Committee as its Chair. If a Committee Chair is not designated or present, the members of the Committee may designate a Chair by majority vote. The Committee may act by a majority of the members present at a meeting of the Committee. In the event of a tie vote on any issue, the vote of the Committee Chair shall decide the issue.

The Committee shall meet as frequently as necessary to carry out its responsibilities under this Charter, at a time and place determined by the Committee Chair, with further meetings to occur when deemed appropriate or desirable by the Chair. The Committee members are expected to be present at all Committee meetings. The Committee Chair may call a Committee meeting upon due notice of each other

Committee member prior to the meeting. Members of management or others whose advice and counsel are relevant to the issues then being considered by the Committee may attend meetings of the Committee at the invitation of the Committee Chair, and may provide such pertinent information as the Committee may request. The Committee shall report to the Board at least once a year. The Committee Chair shall set the agenda of each meeting and arrange for the distribution of the agenda, together with supporting material, to the Committee members prior to each meeting. The Committee Chair will also cause minutes of each meeting to be prepared and circulated to the Committee members. The Committee may designate a non-voting Secretary or Acting Secretary for the Committee, who shall assist in the administration of meetings and prepare the minutes of such meeting as requested by the Committee.

The Committee is governed by the same rules regarding meetings (including meetings by conference telephone or similar communications equipment), action without meetings and voting requirements as are applicable to the Board. The Committee is authorized and empowered to adopt its own rules of procedure not inconsistent with (i) any provision of this Charter; (ii) any provision of the Certificate of Incorporation or the Bylaws of the Company; or (iii) the laws of Delaware.

#### **F. Annual Review**

Each year, the Committee shall compare its performance with the requirements of this Charter, set forth its goals and objectives for the upcoming year and recommend changes in this Charter, if any, considered appropriate by the Committee. Such evaluation shall be reported to the Board in such manner as the Committee from time to time determines. The Committee shall conduct its review and evaluation in such manner as it deems appropriate.

#### **G. Outside Advisors and Authority of the Committee**

The Committee shall have the resources and authority to discharge its duties and responsibilities, including the authority to retain counsel and other experts or consultants, and the Committee shall receive the appropriate funding from the Company for such purposes. Specifically, the Committee shall have the sole authority to select, retain or terminate a consultant or search firm to identify director candidates, and to approve the consultant or search firm's fees and other retention terms.

Any communication between the Committee and legal counsel in the course of obtaining legal advice will be considered privileged communications of the Company, and the Committee will take all necessary steps to preserve the privileged nature of those communications.

Nothing contained in this Charter is intended to, or should be construed as, creating any responsibility or liability of the members of the Committee except to the extent otherwise provided under applicable law.

Adopted: March 25, 2008