

# ENERGY FOCUS, INC.

## CORPORATE GOVERNANCE GUIDELINES

Amended November 6, 2018

### INTRODUCTION

The Board of Directors (the “Board”) of Energy Focus, Inc. (the “Company”) has developed these Corporate Governance Guidelines (these “Guidelines”) to assist the Board in the exercise of its responsibilities and to best serve the interests of the Company and its stockholders. These Guidelines should be interpreted in the context of applicable laws and the Company’s Certificate of Incorporation, Bylaws and other corporate governance documents. These Guidelines are intended to serve as a flexible framework within which the Board may conduct its business and not as a set of legally binding obligations.

As indicated in the Code of Ethics and Business Conduct (the “Code”) adopted by the Board, among other objectives, the Board seeks to:

- (a) promote honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest;
- (b) promote full, fair, accurate, timely and understandable disclosure in reports and documents that the Company files with, or submits to, the Securities and Exchange Commission (the “SEC”) and in other public communications made by the Company;
- (c) promote compliance with applicable governmental laws, rules and regulations;
- (d) promote the protection of Company assets, including corporate opportunities and confidential information;
- (e) promote fair dealing practices;
- (f) deter wrongdoing; and
- (g) ensure accountability for adherence to the Code.

With these objectives in mind, the Nominating and Corporate Governance Committee (the “Committee”) will oversee the Company’s corporate governance practices and procedures, including identifying best practices and reviewing and recommending to the Board for approval any changes to these Guidelines. The Committee consists of two or more members of the Board who are independent in accordance with the rules of the Nasdaq Stock Market (“Nasdaq”).

### BOARD COMPOSITION AND DIRECTOR QUALIFICATIONS

1. **Number.** The number of directors is currently fixed, pursuant to the Company’s Bylaws, at six (6). The directors believe that five (5) to nine (9) members is an appropriate size for

the Company's Board. The appropriate size of the Board will be reviewed by the Board periodically to ensure that the Board can efficiently discharge its fiduciary duties and regulatory responsibilities.

- 2. Skills and Characteristics.** The Committee will review periodically with the Board the qualifications, qualities, skills, and other expertise required to be a director (the "Director Criteria"), which shall initially include: their diversity of personal and professional background, experience, and perspective; personal and professional integrity, ethics and values; experience relevant to the Company's industry and relevant concerns; practical and mature business judgment, including the ability to make independent analytical inquiries; the ability to commit sufficient time and attention to the activities of the Board; specific experience with accounting, finance, leadership and strategic planning; satisfaction of applicable independence criteria for independent members; and the absence of potential conflicts of interest with the Company's interests. The Board should consider these criteria in the context of an assessment of the operation and goals of the Board as a whole.
- 3. Nomination and Selections.** The Board is responsible for identifying and screening individuals qualified to become members of the Board, consistent with the Director Criteria. The Committee will make recommendations to the Board regarding the selection of candidates to be appointed by the Board to fill any vacancy and the nomination of individuals for election to the Board by the Company's stockholders.

The Board will consider recommendations for Board candidates submitted by stockholders in accordance with applicable laws, rules and regulations and the provisions of the Company's Certificate of Incorporation and Bylaws. Stockholders may submit recommendations by providing the person's name and appropriate background and biographical information in writing to the Board at Energy Focus, Inc., Attn: Board of Directors, 32000 Aurora Road, Suite B, Solon, Ohio 44139. To nominate a candidate for election as a director, stockholders must follow the procedures set forth in Section 2.5 of the Company's Bylaws.

- 4. Independence.** The Board will have a majority of directors who are independent directors. The Board may, from time to time, adopt specific additional criteria to assist in its determination of director independence in conjunction with the Nasdaq rules. The Board assesses on a regular basis and at least annually the independence of each director and, based on the recommendation of the Committee, makes a determination of whether such director is free of any direct or indirect material relationship with the Company or its management.
- 5. Board Leadership.** The Board may select its Chairman, including an Executive Chairman, in its discretion at any time and does not have a formal policy on whether the roles of Chief Executive Officer and Chairman of the Board should be separate. The Board may also select a Lead Director to assist the Board and the Chairman in the capacities specified by the Board. The Committee will periodically review the Board's leadership structure in light of the specific characteristics or circumstances of the

Company and recommend any changes to the Board for approval to ensure that the Company's leadership continues to meet the Company's needs.

- 6. Board Orientation and Continuing Education.** A thorough understanding of the Company's business is required to enable a director to make a substantial contribution to the Board. Accordingly, all new directors participate in an orientation program after their election to the Board. The orientation includes presentations by senior management to familiarize new directors with the Company's strategic plans, its significant financial, accounting and risk management issues, its compliance programs, its standards of business conduct and ethics, its principal officers, and its internal and independent auditors. The Company will explore and make available continuing education opportunities for directors, from time to time. In addition, directors are encouraged to participate in continuing education and other programs provided by outside sources.
- 7. Other Board Commitments and Changes in Job Responsibility.** Each Board member must ensure that other existing and anticipated future commitments do not interfere with the members' service as a director. Without specific approval of the Board, no director shall serve on more than three (3) additional public company boards. In order to comply with these guidelines, directors should advise the Committee of any invitations to join the board of any other public company prior to accepting another directorship. In addition, if a Board member changes his or her status and appointments or positions with other companies during his or her tenure as a director on the Board, such director shall submit his or her resignation for the Board's consideration, following a recommendation from the Committee, as to whether such resignation should be accepted based on the appropriateness of the continued service of such director.

## **COMMITTEE MATTERS**

- 1. Standing Committees and Independence of Committee Members.** The three standing committees of the Board are the Committee, the Audit and Finance Committee and the Compensation Committee. The Board may, from time to time, establish or maintain additional committees as necessary or appropriate, including an Executive Committee. In addition to the independence standards applicable to directors generally, Committee members, Audit and Finance Committee members and Compensation Committee members must also meet the independence standards under the Nasdaq rules applicable to such committees and other membership criteria specified in the respective charters for such committees.
- 2. Assignment of Committee Members.** The Committee will review each committee's structure and composition annually and make recommendations to the Board regarding the appointment of directors to serve as members.

## **MEETINGS OF THE BOARD; DIRECTOR RESPONSIBILITIES**

- 1. Agenda.** The Chairman of the Board, in consultation with the Chief Executive Officer, Secretary and members of management, establishes the agenda for each Board meeting.

The Chairman will consider the suggestions of directors as to items for inclusion on the agenda.

- 2. Advance Distribution of Board Materials.** Information and materials that are important to the Board's understanding of the business to be conducted at each Board meeting are distributed to the Board before the Board meets. Highly confidential or sensitive matters, matters not requiring advanced preparation, and matters that arise immediately prior to Board meetings may be presented and discussed without prior distribution of background material.
- 3. Executive Sessions.** The independent members of the Board will meet in executive session at least twice each year. If the Chairman of the Board is not an independent director, then any director then serving as a Lead Director or a presiding director selected by the Committee shall preside at any such session.
- 4. Director Attendance.** Absent unusual circumstances, each director is expected to adequately prepare for and attend all Board meetings and all meetings of the committee(s) of which the director is a member, and to spend the time needed and meet as frequently as necessary to discharge his or her responsibilities. Directors are also encouraged to attend the annual meeting of stockholders.
- 5. Board Access to Senior Management.** Directors have open access to the Company's senior management. Members of the Company's senior management will be invited to attend and participate in Board meetings from time to time to brief the Board and its committees on particular topics. The Board encourages senior management to bring into Board or committee meetings and other scheduled events members of management who can provide additional insight into matters being considered and/or whom senior management believes have future growth potential with the Company and should be given exposure to the Board. Meetings or contacts with management that a director wishes to initiate should generally be arranged through the Chief Executive Officer. Information disclosed to a director based on such meeting or contact shall be shared with the entire Board by the director. Any information disclosed shall be acted upon only by the Board, not by an individual director. The directors will use their judgment to ensure that any such contact is not disruptive to the business operations of the Company and will, to the extent not inappropriate, copy the Chief Executive Officer on any written communications between a director and an officer or employee of the Company.
- 6. Board Access to Independent Advisors.** The Board, the Committee, the Audit and Finance Committee and Compensation Committee, consistent with their respective charters, have the authority to retain, at the Company's expense, such outside counsel, experts and other advisors as they determine appropriate to assist them in the full performance of their functions.
- 7. Communications.** The Chief Executive Officer and Chief Financial Officer are responsible for establishing effective communications with the Company's various constituencies (such as stockholders, customers, employees, suppliers, community groups

and governmental authorities). The Board believes that management should speak for the Company and has adopted a Disclosure Policy governing such communications. Except as required by law, Nasdaq listing standards or a Board committee charter, it is expected that Board members will meet or otherwise communicate with the Company's constituencies only with the knowledge of management and, absent unusual circumstances or as contemplated by committee charters, only at the request of management.

## **ASSESSMENT AND LEADERSHIP DEVELOPMENT**

- 1. Assessing Board and Committee Performance.** The Committee shall oversee an annual evaluation of Board and committee effectiveness and performance, the results of which are discussed with the full Board. Each of the Audit and Finance and Compensation Committees also conduct annual self-assessments, the results of which are discussed with the members of the respective committees.
- 2. Management Development and Succession Planning.** The Board is responsible for planning for the succession to the position of Chief Executive Officer and other senior management positions. To assist the Board, the Committee will develop, with input from the Compensation Committee as appropriate, a succession plan to recommend to the Board for approval. The Chief Executive Officer should provide the Committee with an assessment of senior managers and their potential to succeed him or her and an assessment of persons considered potential successors to other senior management positions, including a review of any development plans recommended for such individuals. The Chief Executive Officer should also make available to the Committee recommendations regarding an emergency succession plan which addresses who should assume the role of Chief Executive Officer in the event that the Chief Executive Officer becomes unwilling or unable to perform his or her duties. The results of these reviews are reported to and discussed with the Board on a regular basis.

## **OTHER MATTERS**

- 1. Ethics and Compliance.** The Company maintains an ethics and compliance program that is designed to be effective in the context of the Company's business and operations. The Board shall be briefed upon and be provided information so that it may remain knowledgeable about the content and operation of the ethics and compliance program and shall exercise appropriate oversight with respect to the implementation and effectiveness of the compliance and ethics program. The Audit Committee oversees compliance with the Code for the Company's employees, including its executive officers and directors, including annual certification by such individuals as to such compliance. The full text of the Code is posted on the Company's website. The Company will disclose on its website future amendments to or waivers from the Code for its executive officers and directors promptly upon any such amendment or waiver. Any waiver from the Code provisions for directors or executive officers must be approved by the Board.
- 2. Review of Strategic Plans.** The Board reviews and evaluates at least annually the long-term strategic and business plans of the Company.

- 3. Risk Management.** The Board will provide oversight of the Company's risk management through its review of risks associated with the Company's operations and strategic initiatives, both as a Board and through Board committees.
- 4. Director Compensation.** The form and amount of director compensation for service on the Board and committees is recommended by the Compensation Committee in accordance with the policies and principles set forth in its charter, any Nasdaq listing standards or other applicable rules. The Compensation Committee conducts regular reviews of director compensation. Changes in director compensation, if any, are recommended by the Compensation Committee and approved by the full Board. The Compensation Committee will consider that director independence may be jeopardized if director compensation and perquisites exceed customary levels, or if the Company makes substantial charitable contributions to organizations with which a director is affiliated. No additional compensation is paid to members of management for serving on the Board.
- 5. Equity Consideration.** The Board must authorize the issuance by the Company of any equity securities in accordance with applicable state law, securities laws and regulations and Nasdaq listing requirements. The Board may delegate such authority, to extent permitted under such laws, regulations and requirements, to committees of the Board and to the Chief Executive Officer, provided that such authority is exercised solely within the specific parameters of such delegation.
- 6. Communicating with the Board.** Stockholders are invited to communicate to the Board or its committees by writing to: Energy Focus, Inc., Attn: Board of Directors, 32000 Aurora Road, Suite B, Solon, Ohio 44139.