

# **CORPORATE GOVERNANCE GUIDELINES**

Adopted by the Board of Directors on December 6, 2005

The Board of Directors (the “**Board**”) of Cypress Bioscience, Inc. (the “**Company**”) has established the following guidelines (“**Governance Guidelines**”) for the conduct and operation of the Board.

## **1. BOARD COMPOSITION AND SELECTION**

### **1.1 Size and Classes of the Board**

The number of directors shall be established by the Board in accordance with the Bylaws of the Company. The Board currently consists of eight directors. The Board periodically reviews the appropriate size of the Board, which may vary to accommodate the availability of suitable candidates and the needs of the Company. The Board is divided into three classes that serve staggered three-year terms and are as nearly as equal as possible.

### **1.2 Independence of Directors**

It is the policy of the Company that the Board be composed of not less than a majority of independent directors, subject to any exceptions permitted by The Nasdaq Stock Market, Inc. (“**Nasdaq**”) listing standards. In determining independence, the Board will consider the definition of independence set forth in the Nasdaq listing standards, as well as other factors that will contribute to effective oversight and decision-making by the Board.

### **1.3 Management Directors**

The Board anticipates that the Company’s Chief Executive Officer will be nominated to serve on the Board. The Board may also appoint or nominate other members of the Company’s management whose experience and role at the Company are expected to assist the Board in fulfilling its responsibilities.

### **1.4 Selection of Chief Executive Officer and Chairman of the Board ;Lead Independent Director**

The Board will select the Company’s Chief Executive Officer and Chairman of the Board (“**Chairman**”) in the manner that it determines to be in the best interests of the Company’s stockholders. It is the policy of the Company that the positions of Chief Executive Officer and Chairman may be held by the same person, as the Board believes that that this practice has been effective for a number of years. The Board recognizes, however, that there may be circumstances that arise in the future that would lead it to separate these offices. The Chairman, or if the Chairman is not an independent director, one of the independent directors, may be designated by the Board as lead independent director to serve until replaced by the Board (“**Lead Independent Director**”). The Lead Independent Director will have the following responsibilities:

- Preside over executive sessions of the independent members of the Board without the attendance of management and communicate to the Chief Executive Officer the results of executive Board sessions;
- Assist in resolving any dispute that arises at any of the Committee's of the Board in the event the Chairman of the applicable Committee is unable to resolve such dispute within 30 days of the time the dispute occurs;
- Review, monitor and if the need arises, facilitate, open communication between management and the Board;
- Be available to provide additional representation of the Company as requested by the Chief Executive Officer; and
- Assist to the extent requested by the Nominating and Corporate Governance Committee in reviewing with the Chief Executive Officer the plans for succession to the office of the Company's Chief Executive Officer.

### **1.5 Selection of Directors**

The Board will be responsible for nominating members for election to the Board by the Company's stockholders at the annual meeting of stockholders. The Board is also responsible for filling vacancies on the Board that may occur between annual meetings of stockholders. The Nominating and Corporate Governance Committee is responsible for identifying, reviewing and evaluating and recommending to the Board candidates to serve as directors of the Company, in accordance with its charter and consistent with the criteria set by the Board in Section 1.6 below. The invitation to join the Board should be extended by the Chairman or Lead Independent Director.

### **1.6 Board Membership Criteria**

The Board will determine the appropriate characteristics, skills and experience for the Board as a whole and for its individual members. The Board considers recommendations for nominees from the Nominating and Corporate Governance Committee. In selecting candidates and existing directors for service on the Board, the minimum general criteria set forth below will be considered; specific additional criteria may be added with respect to specific searches. An acceptable candidate may not fully satisfy all of the criteria, but is expected to satisfy nearly all of them. The Board believes that candidates for director should have certain minimum qualifications, including being able to read and understand basic financial statements, being over 21 years of age and having the highest personal integrity and ethics. In considering candidates recommended by the Nominating and Corporate Governance Committee, the Board intends to consider such factors as possessing relevant expertise upon which to be able to offer advice and guidance to management, having sufficient time to devote to the affairs of the Company, demonstrated excellence in his or her field, having the ability to exercise sound business judgment and having the commitment to rigorously represent the long-term interests of the Company's stockholders. Candidates for director nominees are reviewed in the context of the current composition of the Board, the operating requirements of the Company and the long-term

interests of stockholders. In conducting this assessment, the Board considers diversity, age, skills, and such other factors as it deems appropriate given the current needs of the Board and the Company, to maintain a balance of knowledge, experience and capability. In the case of incumbent directors whose terms of office are set to expire, the Board reviews such directors' overall service to the Company during their term, including the number of meetings attended, level of participation, quality of performance, and any other relationships and transactions that might impair such directors' independence. In the case of new director candidates, the Board also determines whether the nominee must be independent for Nasdaq purposes.

### **1.7 Changes in Board Member Criteria**

The Board and the Company wish to maintain a Board composed of members who can productively contribute to the success of the Company. From time to time, the Board may change the criteria for Board membership to maximize the opportunity to achieve this success. When this occurs, existing members will be evaluated according to the new criteria. A director who no longer meets the complete criteria for board membership may be asked to adjust his or her committee assignments or resign from the Board.

### **1.8 Term Limits**

The Board does not believe it should limit the number of terms for which an individual may serve as a director. 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 Governance Guidelines.

### **1.9 Limits on Board Memberships**

The Board does not believe that its members should be prohibited from serving on boards or committees of other companies, and the Board has not adopted any guidelines limiting such activities. Directors should advise the Chairman and the Chairman of the Nominating and Corporate Governance Committee in advance of accepting an invitation to serve on the board or board committee of another company. The Board and the Nominating and Corporate Governance Committee will take into account the nature and time involved in a directors' service on other boards in evaluating the suitability of directors. Service on boards and board committees of other companies should be consistent with the Company's conflict-of-interest policies, including the Code of Conduct.

### **1.10 Retirement Age**

The Board does not believe that a fixed retirement age for directors is appropriate.

### **1.11 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 promptly 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.

## **2. ROLE OF THE BOARD OF DIRECTORS**

The Board is selected by the stockholders to provide oversight of, and strategic guidance to, senior management. The core responsibility of a Board member is to fulfill his or her fiduciary duties of care and loyalty and otherwise to exercise his or her business judgment in the best interests of the Company and its stockholders. Service on the Board requires significant time and attention on the part of directors. 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. Directors must participate in Board meetings, review relevant materials, serve on committees and prepare for meetings and discussions with management. Directors are expected to maintain an attitude of constructive involvement and oversight; they are expected to ask relevant, incisive and probing questions and require honest and accurate answers. Directors must act with integrity and are expected to demonstrate a commitment to the company, its values and its business and to long-term stockholder value. Directors are invited to attend the Company's annual meeting of stockholders, either in person or telephonically.

## **3. DIRECTOR ORIENTATION AND EDUCATION**

The Nominating and Corporate Governance Committee will implement an orientation process for directors that includes background material on the Company's policies and procedures, meetings with senior management and visits to Company facilities. The Company may, from time to time, offer continuing education programs to assist the directors in maintaining the level of expertise to perform his or her duties as a director.

## **4. DIRECTOR COMPENSATION**

The form and amount of director compensation for Board and committee service for non-management directors shall be determined by the Compensation Committee in accordance with the principles set forth in its charter and applicable legal and regulatory guidelines. The amount of compensation for non-management directors and committee members should be consistent with market practices of similarly situated companies and should encourage increased ownership of the Company's stock through the payment of a portion of director compensation in Company stock or options to purchase the Company's stock. In determining compensation, the Compensation Committee will consider the impact on the director's independence and objectivity.

## **5. BOARD MEETINGS**

### **5.1 Number of Meetings.**

The Board expects to have at least four regular meetings each year.

### **5.2 Attendance.**

Board members are expected to attend all meetings of the Board and committees on which they serve. Directors must notify the Chairman of circumstances preventing attendance at a meeting.

### **5.3 Preparation and Commitment.**

The Company will provide directors with appropriate preparatory materials in advance of a meeting, but in any event not later than three days prior to the meeting, except in unusual circumstances. Directors are expected to rigorously prepare for, attend, and participate in all Board and committee meetings. Each director is expected to ensure that other existing and planned future commitments do not materially interfere with the member's service as director.

### **5.4 Agenda.**

The Chairman will establish a schedule of subjects to be discussed during the year (to the extent this can be foreseen) and an agenda for each Board meeting. Each Board member is encouraged to suggest the inclusion of items on the agenda at any time. Each Board member is free to raise at any Board meeting subjects that are not on the agenda for that meeting.

### **5.5 Executive Session.**

The independent directors of the Board will meet periodically in executive session but no less than two times per year or such greater number as required by the Nasdaq listing standards. Executive session discussions may include such topics as the independent directors determine. The directors generally shall not take formal action at these sessions, but may make recommendations for consideration by the full Board. Executive sessions will be chaired by the Lead Independent Director.

### **5.6 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 will 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 Chairman of the appropriate committee will present such report.

## **6. BOARD COMMITTEES**

### **6.1 Number of Committees; Independence of Members**

The committee structure of the Board will consist of at least (a) an Audit Committee, (b) a Compensation Committee, (c) a Nominating and Corporate Governance Committee and any other committees the Board determines would be useful in assisting in implementing the Company's strategy. The Board may form, merge or dissolve committees as it deems appropriate from time to time. The Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee shall be composed entirely of independent directors.

## **6.2 Committee Functions**

**Audit Committee.** The Audit Committee oversees the Company's corporate accounting and financial reporting process. For this purpose, the Audit Committee performs several functions. The Audit Committee evaluates the performance of and assesses the qualifications of the independent auditors; determines and approves the scope of the engagement and compensation of the independent auditors; determines whether to retain or terminate the existing independent auditors or to appoint and engage new independent auditors; reviews and approves the retention of the independent auditors to perform any proposed permissible non-audit services; monitors the rotation of partners of the independent auditors on the Company's audit engagement team as required by law; confers with management and the independent auditors regarding the effectiveness of internal controls over financial reporting; establishes procedures, as required under applicable law, for the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls or auditing matters and the confidential and anonymous submission by employees of concerns regarding questionable accounting or auditing matters; reviews the financial statements to be included in the Company's Annual Report on Form 10-K; and discusses with management and the independent auditors the results of the annual audit and the results of the Company's quarterly financial statements.

**Compensation Committee.** The Compensation Committee reviews and approves the overall compensation strategy and policies for the Company. The Compensation Committee reviews and approves corporate performance goals and objectives relevant to the compensation of the Company's executive officers and other senior management; reviews and approves the compensation and other terms of employment of the Company's Chief Executive Officer; reviews and approves the compensation and other terms of employment of the other executive officers; and administers the Company's stock option and purchase plans, pension and profit sharing plans, stock bonus plans, deferred compensation plans and other similar programs.

**Nominating and Corporate Governance Committee.** The Nominating and Corporate Governance Committee identifies, reviews and evaluates candidates to serve as directors of the Company (consistent with criteria approved by the Board); reviews and evaluates incumbent directors; recommends to the Board for selection candidates for election to the board of directors; makes recommendations to the Board regarding the membership of the committees of the Board; and assesses the performance of management and the Board and develops a set of corporate governance principles for the Company.

## **6.3 Committee Charters**

All standing committees will operate pursuant to a written charter, which sets forth the responsibilities of the committee and procedures that the committee will follow. Unless otherwise directed by the Board, new committees formed by the Board will develop a written charter delineating its responsibilities. The charters of all committees will be subject to periodic review and assessment by each committee and each committee shall recommend any proposed charter changes to the Board.

#### **6.4 Board Committee Membership**

The Nominating and Corporate Governance Committee, after due consideration of the interests, independence and experience of the individual directors and the independence and experience requirements of Nasdaq, the rules and regulations of the Securities and Exchange Commission and applicable law, recommends to the Board annually the chairmanship and membership of each committee.

#### **6.5 Committee Meetings and Agenda**

The committee Chairman, in consultation with committee members, will determine the frequency and length of the meetings of the committee, consistent with any requirements set forth in the committee's charter. The Chairman of each committee, in consultation with the appropriate members of the committee and management, will develop the committee's agenda.

### **7. BOARD ACCESS TO MANAGEMENT; USE OF OUTSIDE DIRECTORS**

Board members have complete and open access to the Company's management. It is assumed that Board members will use judgment to ensure that this contact is not distracting to the operations of the Company or to the managers' duties and responsibilities and that such contact, to the extent reasonably practical or appropriate, will be coordinated with the Chief Executive Officer. Written communications to management should, whenever appropriate, be copied to the Chief Executive Officer.

### **8. CHIEF EXECUTIVE OFFICER EVALUATION; SUCCESSION PLANNING**

The Board should conduct an annual review of the Chief Executive Officer's performance. The evaluation should be based on objective criteria including performance of the business, accomplishment of long-term strategic objectives and the development of management. The evaluation will be used by the Compensation Committee in the course of its deliberations when considering the compensation of the Chief Executive Officer

The Nominating and Corporate Governance Committee should periodically review with the Chief Executive Officer the Company's plan for succession to the office of the Company's Chief Executive Officer and make recommendations to the Board with respect to the selection of appropriate individuals to succeed to this position. The Chief Executive Officer should at all times make available his or her recommendations and evaluations of potential successors, along with a review of any development plans recommended for such individuals.

### **9. BOARD ASSESSMENT**

The Nominating and Corporate Governance Committee will conduct an annual self-evaluation to determine whether the Board and its committees are functioning effectively. The Nominating and Corporate Governance Committee will receive feedback from all directors and report annually to the Board with an assessment. The assessment should include an evaluation of (a) the Board's and each committee's contribution as a whole and their effectiveness in serving the best interests of the Company and its stockholders, (b) specific areas in which the Board believes that the performance of the Board and its committees could be improved, (c) and overall Board composition and makeup. The results of these evaluations should be provided to the Board for further discussion as appropriate.

#### **10. REVIEW OF GOVERNANCE GUIDELINES**

The Nominating and Corporate Governance Committee will review and assess the adequacy of these Governance Guidelines at least annually and recommend any proposed changes to the Board for approval.