

## **CORPORATE GOVERNANCE GUIDELINES**

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### **DATA DOMAIN, INC. BOARD OF DIRECTORS GUIDELINES ON SIGNIFICANT CORPORATE GOVERNANCE ISSUES**

#### **A. BOARD COMPOSITION**

##### **1. Selection of Chairman and CEO**

The Board should be free to make this choice any way that seems best for the Company at a given point in time. The Board does not have a policy on whether or not the roles of Chief Executive Officer and Chairman should be separate and, if they are to be separate, whether the Chairman should be selected from the non-employee Directors or be an employee.

##### **2. Size of the Board**

The Board currently has eight (8) authorized directors. The Board periodically reviews the appropriate size of the Board, and the number of authorized directors may be changed from time to time in accordance with the Company's Bylaws.

##### **3. Mix of Inside and Outside Directors**

The Board believes that there should be a substantial majority of independent directors on the Board. However, the Board believes that, in addition to the Chief Executive Officer, it may be useful and appropriate from time to time to have other "inside directors" (defined as directors who are separately compensated as employees of, or consultants to, the Company) serve on the Board.

##### **4. Board Definition of What Constitutes Independence for Outside Directors**

Each director designated as an "independent director" shall be independent in accordance with the applicable rules of The Nasdaq Global Market ("Nasdaq") and the Securities and Exchange Commission. Because it is not possible to anticipate or explicitly provide for all potential conflicts of interest that may affect independence, the Board is also responsible to affirmatively determine that each independent director has no other material relationship with the Company or its affiliates or any executive officer of the Company or his or her affiliates. A relationship will be considered "material" if in the judgment of the Board it would interfere with the Director's independent judgment.

The Board may, from time to time, designate an independent director designated as the Lead Independent Director if the Chairman is not considered independent. The Lead Independent Director shall be responsible for calling special meetings of the independent directors, chairing all meetings of independent directors and performing such other responsibilities as shall be designated by a majority of the independent directors from time to time.

## **5. Board Membership Criteria**

The Nominating/Corporate Governance Committee is responsible for reviewing with the Board from time to time the appropriate skills and guidelines required of Board members in the context of the current make-up of the Board. These guidelines and skills of the Board, as a whole, may include (i) various and relevant career experience, (ii) relevant skills, such as an understanding of enterprise protection storage systems for disk backup and network-based recovery systems, (iii) financial expertise, (iv) diversity and (v) local and community ties. The minimum qualifications and skills that each director should possess include (a) the highest professional and personal ethics and values, (b) broad experience at the policy-making level in business, government, education, technology or public interest, (c) a commitment to enhancing stockholder value and (d) sufficient time to carry out their duties and to provide insight and practical wisdom based on experience. The Nominating/Corporate Governance Committee evaluates the foregoing factors, among others, and does not assign any particular weighting or priority to any of these factors.

## **6. Recommendation of Candidate by Stockholders**

The Board's policy is to consider all bona fide director candidates recommended by stockholders of the Company. The Board has established the following procedures by which stockholders may submit recommendations of director candidates:

(a) To recommend a candidate for election to the Board, a stockholder must notify the Nominating/Corporate Governance Committee by writing to the In-House Counsel of the Company.

(b) Such stockholder's notice shall set forth the following information:

(i) To the extent reasonably available, information relating to such director candidate that would be required to be disclosed in a proxy statement pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in which such individual is a nominee for election to the Board;

(ii) The director candidate's written consent to (A) if selected, be named in the Company's proxy statement and proxy and (B) if elected, to serve on the Board; and

(iii) Any other information that such stockholder believes is relevant in considering the director candidate.

## **7. Identification and Evaluation of Nominees.**

The Nominating/Governance Committee is responsible for regularly assessing the appropriate size of the Board and whether any vacancies on the Board are expected due to retirement or otherwise. In the event that vacancies are anticipated, or otherwise arise, the Nominating/Governance Committee is responsible for considering various potential candidates for director. The Nominating/Governance Committee should consider bona fide candidates from all relevant sources, including current Board members, professional search firms, stockholders

and other persons. As described above, the Nominating/Governance Committee considers bona fide director candidates recommended by stockholders. The Nominating/Governance Committee is responsible for evaluating director candidates in light of the Board membership criteria described above, based on all relevant information and materials available to the Nominating/Corporate Governance Committee. This includes information and materials provided by stockholders recommending director candidates, professional search firms and other parties.

## **8. Selection of New Director Candidates**

All nominees for election to the Board shall be approved by a majority of the independent directors on the Board. The Board delegates the screening process involved to the Nominating/Corporate Governance Committee, with the expectation that other members of the Board and management will be requested to take part in the process as appropriate.

## **9. Directors Who Change Their Present Job Responsibility**

The Board does not believe that directors who retire or change from the position they held when they came on the Board should necessarily leave the Board. There should, however, be an opportunity for the Board, via the Nominating/Corporate Governance Committee, to review the continued appropriateness of Board membership under these circumstances. This evaluation will lead the Board to conclude one of the following: (i) that the director should continue to serve the Company at the pleasure of the stockholders, (ii) that the director should tender his/her resignation immediately, or (iii) that the director should finish out his or her term, but not stand for re-election.

## **10. Term Limits**

The Board does not believe it should establish term limits. While term limits could help insure that there are fresh ideas and viewpoints available to the Board, they hold the disadvantage of losing the contribution of directors who over time have developed increasing insight into the Company and its operations and therefore provide an increasing contribution to the Board as a whole.

## **11. Retirement Policy**

A director will not be renominated for election to the Board if he or she would be 72 or older at the time of the election. The Board has not adopted a retirement policy for officers.

## **12. Board Compensation Review**

The Board's general policy is that Board compensation should be a mix of cash and equity-based compensation. Inside directors will not be paid for Board membership in addition to their regular employee compensation. Independent directors may not receive consulting, advisory or other compensatory fees from the Company in addition to their Board compensation.

It is appropriate for the staff of the Company to report from time to time to the Compensation Committee on the status of Board compensation in relation to other similar U.S. companies. Changes in Board compensation, if any, should come at the suggestion of the Compensation Committee, but with full discussion and concurrence by the Board.

### **13. Director Stock Ownership**

The Board believes that an alignment of director interests with those of stockholders is important. All directors are expected to own stock in the Company in accordance with the policy established by the Compensation Committee and approved by the Board.

## **B. RESPONSIBILITIES OF THE BOARD OF DIRECTORS**

### **1. Primary Responsibilities**

The primary responsibilities of the Board are oversight, counseling and direction to the management of the Company in the interest and for the benefit of the Company's stockholders. The Board shall discharge its responsibilities either directly or through one or more committees. These responsibilities include:

- **Management planning and oversight** - Selecting, evaluating and compensating the Chief Executive Officer (CEO) and planning for CEO succession; providing counsel and oversight in the selection, evaluation and compensation of, and succession planning for, other members of senior management; and approving the appointment and compensation of executive officers. If necessary, removing the CEO or other principal officers.
- **Strategic and operational planning** - Reviewing, understanding and approving long-term strategic plans and annual operating plans, and monitoring the implementation and execution of those plans.
- **Major corporate actions** - Reviewing, understanding and approving significant financial and business transactions and other major corporate actions. As appropriate, determining dividend policy and authorizing the payment of dividends, if any.
- **Financial reporting** - Reviewing, understanding and approving financial statements and reports, and overseeing the establishment and maintenance of controls, processes and procedures to ensure accuracy, integrity and clarity in financial and other disclosures.
- **Governance, compliance and risk management** - Establishing and maintaining governance and compliance processes and procedures to ensure that Data Domain is managed with the highest standards of responsibility, ethics and integrity.
- **General advice to management** - Providing general advice and counsel to the CEO and senior management in connection with issues arising during the course of managing Data Domain's business.
- **Miscellaneous** – With the advice of the Nominating/Corporate Governance Committee, review and approve changes in the Company's Certificate of Incorporation and Bylaws. With the advice of the Compensation Committee, approve major compensation plans,

including stock option plans and other equity-based plans, and any significant changes to any of these, and in the case of equity-based plans, submit them to the stockholders for approval if required by the rules of Nasdaq.

The Board has delegated to the Chief Executive Officer, working with the other executive officers of the Company, the authority and responsibility for managing the business of the Company in a manner consistent with the standards and practices of the Company, and in accordance with any specific plans, instructions or directions of the Board. The Chief Executive Officer and management are responsible to seek the advice and, in appropriate situations, the approval of the Board with respect to extraordinary actions to be undertaken by the Company.

Each Board member is expected to (i) prepare for, attend, and participate in all Board and applicable Committee meetings and (ii) ensure that other existing and planned future commitments do not materially interfere with the member's service as a director. Each Board member is encouraged to attend the Company's annual meeting of stockholders in person.

## **2. Corporate Business Principles**

Members of the Board shall act at all times in accordance with the requirements of the Company's Code of Business Conduct, which shall be applicable to each Director in connection with his or her activities relating to the Company. This obligation shall at all times include, without limitation, adherence to the Company's policies with respect to conflicts of interest, confidentiality, protection of the Company's assets, ethical conduct in business dealings and respect for and compliance with applicable law. Any waiver of the requirements of the Code of Business Conduct with respect to any individual director shall be reported to, and be subject to the approval of, the Board of Directors.

## **C. BOARD MEETINGS**

### **1. Scheduling and Selection of Agenda Items for Board Meetings**

Regular Board meetings are scheduled in advance and typically held at least five (5) times per year. In addition to regularly scheduled meetings, additional Board meetings may be called upon appropriate notice at any time to address specific needs of the Company. The Board may also take action from time to time by unanimous written consent.

The Chairman of the Board, in consultation with the other members of the Board, shall draft the agenda for each meeting and distribute it in advance to the Board. Each Director may propose the inclusion of items on the agenda, request the presence of or a report by any member of the Company's management, or at any Board meeting raise subjects that are not on the agenda for that meeting.

### **2. Board Material Distributed in Advance**

Information and data that is important to the Board's understanding of the business should, to the extent practicable, be distributed to the Board in writing or electronically before the Board meets. Supplemental written materials will be provided to the Board on a periodic basis and at any time upon request of Board members.

As a general rule, materials on specific subjects should, to the extent practicable, be sent to the Board members in advance so that Board meeting time may be conserved and discussion time focused on questions that the Board has about the material. Sensitive subject matters may be discussed at the meeting without written or electronic materials being distributed in advance or at the meeting.

### **3. Board Presentations and Access to Employees**

The Board has complete access to any employee of Data Domain, Inc. and its subsidiaries.

The Board encourages management to schedule managers to present at Board meetings who: (i) can provide additional insight into the items being discussed because of personal involvement in these areas, or (ii) have future potential that management believes should be given exposure to the Board.

### **4. Access to Independent Advisors**

The Board and its committees have the right at any time to retain independent outside auditors and financial, legal, or other advisors, and the Company will provide appropriate funding, as determined by the Board or any committee, to compensate those independent outside auditors or advisors, as well as to cover the ordinary administrative expenses incurred by the Board and its committees in carrying out their duties.

### **5. Outside Directors' Discussion**

The Board's policy is to have a separate meeting time for the independent directors at each regularly scheduled meeting of the Board. The Chairman (if independent) or the Lead Independent Director (to the extent one has been appointed) will assume the responsibility of chairing the regularly scheduled meetings of independent directors.

### **6. Director Continuing Education**

The Nominating/Corporate Governance Committee, with the assistance of management, is responsible for overseeing and implementing, as necessary, director continuing education programs, including compliance with any applicable director continuing education requirements. The Company shall provide for reasonable financial and administrative support for attendance at qualifying university or other independent continuing education programs.

## **D. BOARD COMMITTEES**

### **1. Number of Committees**

The three regular committees are the Audit, Compensation and Nominating/Corporate Governance Committees. There will, from time to time, be occasions on which the Board may want to form a new committee or disband a current committee depending upon the circumstances.

As outlined more specifically in the Audit Committee Charter, the Audit Committee oversees the Company's accounting practices, system of internal controls, audit processes, and financial reporting processes.

As outlined more specifically in the Compensation Committee Charter, the Compensation Committee discharges certain responsibilities of the Board relating primarily to executive compensation and makes recommendations to the Board regarding its remaining responsibilities relating primarily to executive compensation.

As outlined more specifically in the Nominating/Corporate Governance Committee Charter, the Nominating/Corporate Governance Committee (i) oversees the nomination of directors for service on the Board and its committees and other related matters and (ii) reviews and considers developments in corporate governance practices and recommends to the Board a set of effective corporate governance policies and procedures applicable to the Company.

In addition, the Board of Directors has adopted a Charter of the Stock Option Administrator delegating authority to a member of the Board of Directors (initially, Company's Chief Executive Officer) to grant stock options to certain employees in connection with their initial hire or subsequent promotion, provided that such grants may not exceed 50,000 shares to any individual in any 12-month period. All option grants in excess of 50,000 shares and any equity awards to the Company's Board members, Section 16 officers and employees above the director-level must be approved by the Compensation Committee or the full Board of Directors. All grants by the Stock Option Administrator must be made in accordance with the Company's Equity Award Policy.

## **2. Assignment and Term of Service of Committee Members**

The Board is responsible for the appointment of Committee members and the Committee Chairperson. Committee assignments are reviewed annually and it is expected that Committee assignments will rotate from time to time among the Board members.

## **3. Frequency and Length of Committee Meetings and Committee Agenda**

The Committee chairs, in consultation with appropriate members of management, will determine the frequency and length of the Committee meetings and develop the Committee agendas. The agendas and meeting minutes of the Committees will be shared with the full Board, and other Board members are welcome to attend Committee meetings, absent a finding of the Committee of the need to meet in closed session.

# **E. MANAGEMENT REVIEW AND RESPONSIBILITY**

## **1. Annual Evaluation of the Chief Executive Officer**

The Compensation Committee shall evaluate the performance of the CEO. Based on this evaluation and other relevant criteria, the Committee shall conduct annual review and, subject to review by the Board, determine the CEO's salary and contingent compensation.

## **2. Formal Evaluation of Other Executive Officers**

In consultation with the CEO and subject to review by the Board, the Compensation Committee shall evaluate the performance of, and determine the salaries and contingent compensation of, the Company's other Section 16 officers, including establishing incentive compensation plans for such individuals, establishing targets and incentive awards under such plans and making any determinations required to be made under such plans.

## **3. Succession Planning and Management Development**

The Chief Executive Officer reviews succession planning and management development with the Board on an annual basis.

## **4. Board Interaction with Institutional Investors, Press, Customers, Etc.**

The Board believes that management speaks for the Company. Individual Board members may, from time to time, meet or otherwise communicate with various constituencies that are involved with the Company, but it is expected that Board members would do this with the knowledge of management and, in most instances, at the request of management.

The Nominating/Corporate Governance Committee of the Board of Directors shall review these Corporate Governance Guidelines, on at least an annual basis and report to the Board with any recommendations it may have in connection therewith.

## **F. STOCKHOLDER – DIRECTOR COMMUNICATIONS**

### **1. Policy**

The Board believes that stockholders should have an opportunity to send communications to the Board.

### **2. Procedures**

Any communication from a stockholder to the Board generally or a particular director should be in writing and should be delivered to the In-House Counsel or Chief Financial Officer of the Company at the principal executive offices of the Company. Each such communication should set forth (i) the name and address of such stockholder, as they appear on the Company's books, and if the stock is held by a nominee, the name and address of the beneficial owner of the stock, and (ii) the class and number of shares of the Company's stock that are owned of record by such record holder and beneficially by such beneficial owner.

The person receiving such stockholder communication shall, in consultation with appropriate directors as necessary, generally screen out communications from stockholders to identify communications that (i) are solicitations for products and services, (ii) matters of a personal nature not relevant for stockholders or (iii) matters that are of a type that render them improper or irrelevant to the functioning of the Board and the Company.

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