



## Corporate Governance Guidelines

### A BOARD COMPOSITION

#### 1 Size of the Board

The Board has 7 positions in accordance with our bylaws. Of those positions, currently 5 are filled by directors. Two of Intraware's shareholders have the right to designate a director, but currently neither has done so. One of those shareholders has designated an observer who may participate in meetings but does not vote. The Board periodically reviews the appropriate size of the Board.

#### 2 Mix of Inside and Independent Directors

Intraware will maintain a majority of independent directors on its Board. Currently 4 of the Board's 5 directors are independent. The Board also believes that it is useful and appropriate to have members of management as directors. Currently one of the Board's members, the Chairman, is a member of management (the President and CEO).

#### 3 Board Definition of What Constitutes Independence for Non-Employee Directors

Intraware defines an "independent" director in accordance with the Nasdaq Stock Market issuer requirements for independent directors (Nasdaq Stock Market Rule 4200). 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 for determining that each independent director has no other material relationship with Intraware or any of its executive officers or their family members. A relationship will be considered "material" if, in the judgment of the Board, it would interfere with the director's independent judgment.

#### 4 Board Membership Criteria

The Nominating and Corporate Governance Committee, composed solely of independent directors, is responsible for nominating director candidates from time to time to ensure that the Board maintains an appropriate mix of skills and characteristics. In considering candidates, the Nominating and Corporate Governance Committee considers such issues as personal and professional integrity; appropriate experience, particularly in the areas of information technology, services, finance, and/or sales and marketing; demonstrated ability and judgment; and the candidate's other professional commitments.

Board members are expected to rigorously prepare for, attend, and participate in all Board and applicable committee meetings. Each Board member is expected to ensure that other existing and planned future commitments do not materially interfere with the member's service as a director.

5 **Selection of New Director Candidates**

The Board delegates the screening process involved in selecting new director candidates to the Nominating and Corporate Governance Committee, with the expectation that other members of the Board, and of management, will participate in the process as appropriate. The Nominating and Corporate Governance Committee and the Board will consider shareholder nominees according to the criteria described above.

6 **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 and Corporate Governance Committee, to review the continued appropriateness of Board membership under these circumstances.

7 **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 Intraware and its operations and therefore provide an increasing contribution to the Board as a whole.

8 **Board Compensation**

It is the general policy of the Board 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 Intraware in addition to their Board compensation. This prohibition will not preclude an independent director from receiving compensation from a company with which Intraware does bona fide business, where our independent director is an employee or director of that other company, so long as the independent director's compensation from the other company is not tied in any significant way to the company's relationship with Intraware.

Intraware staff will report to the Nominating and Corporate Governance Committee from time to time on Intraware's Board compensation package in relation to other representative U.S. companies.

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

- 1      The primary responsibilities of the Board of directors are oversight, counseling and direction to Intraware's management in the interest and for the benefit of Intraware's stockholders. The Board's detailed responsibilities include:
  - (a)      Selecting the Chief Executive Officer and other senior executives, and, through the Compensation Committee, regularly evaluating their performance and approving their compensation;
  - (b)      Reviewing and, where appropriate, approving Intraware's major financial objectives, strategic and operating plans, and actions;
  - (c)      Overseeing the conduct of Intraware's business to evaluate whether the business is being properly managed; and
  - (d)      Through the Audit Committee and Nominating and Corporate Governance Committee, overseeing the processes for maintaining the integrity of Intraware with regards to its financial statements and other public disclosures, and compliance with law and ethics.
  - (e)      The Board of directors has delegated to the Chief Executive Officer, working with the other executive officers of Intraware, the authority and responsibility for managing the business of Intraware in a manner consistent with the standards and practices of Intraware, and in accordance with any specific plans, instructions or directions of the Board. The Chief Executive Officer and management are responsible for seeking the advice and, in appropriate situations, the approval of the Board with respect to extraordinary actions to be undertaken by Intraware.

### **2**      **Code of Ethics**

Members of the Board of directors shall act at all times in accordance with the requirements of Intraware's Code of Ethics, which shall apply to each director in his or her activities relating to Intraware. This obligation shall include, without limitation, adherence to Intraware's policies with respect to conflicts of interest, confidentiality, protection of Intraware's assets, insider trading, disclosure and financial reporting, ethical conduct in business dealings and respect for and compliance with applicable law. Any waiver of the requirements of the Code of Ethics with respect to any individual director shall be reported to, and be subject to the approval of, the Audit Committee of the Board.

## **C**      **BOARD MEETINGS AND MATERIALS**

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

- (a)      The Board typically schedules five regular meetings per year, including four quarterly meetings and a meeting devoted to Intraware's annual fiscal budget and strategic plan. Regular meetings are typically scheduled at least 3 months in advance. In addition to regularly scheduled meetings, additional Board meetings may be

called upon appropriate notice at any time to address specific needs of Intraware. The Board may also take action from time to time by unanimous written consent.

- (b) Typically, the meetings are held at Intraware's headquarters in Orinda, California.
- (c) The Chairman of the Board and the Corporate Secretary, in consultation with the Chief Financial Officer and other members of the Board, 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 Intraware's management, or at any Board meeting raise subjects that are not on the agenda for that meeting.
- (d) The annual cycle of agenda items for Board meetings is expected to change on a periodic basis to reflect business and legal issues that arise from time to time, Board requests, and the work done by the Board Committees. It is expected that the Board will have regularly-scheduled presentations from Intraware's Finance, Sales and Marketing, and other key departments and functions. Typically one meeting will be devoted to Intraware's annual fiscal budget and strategic plan.

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

- (a) Information that is important to the Board's understanding of the business and its meeting agenda items should be distributed in writing, electronically or in hard copy, to the Board 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.
- (b) As a general rule, materials on specific subjects should 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 materials being distributed in advance or at the meeting.

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

- (a) The Board has complete access to contact and meet with any Intraware employee. The Corporate Secretary shall, whenever requested, assist in arranging and facilitating such meetings.
- (b) The Board encourages management to schedule managers to present at Board Meetings who: (a) can provide additional insight into the items being discussed because of personal involvement in these areas, or (b) have future potential that management believes should be given exposure to the Board.

## 4 **Executive Sessions of Independent Directors**

The Board's policy is to have separate executive sessions of only the independent directors, as part of regularly scheduled Board Meetings. One of the independent directors will report to the Corporate Secretary as appropriate for the recording of minutes.

5 **Director Education**

Intraware believes that it is important for directors to remain current on issues and developments affecting their fiduciary duties, corporate governance, the industries in which Intraware operates, and legal matters. Intraware encourages its directors to attend educational programs and read appropriate materials in these areas. To assist in this effort, Intraware will from time to time circulate relevant materials, notify its directors of educational opportunities, and arrange for in-house and third-party presentations.

D **BOARD COMMITTEES**

1 **Number and Composition of Committees**

The current four committees of the Board are the Audit; Compensation; Nominating and Corporate Governance; and Special Litigation committees. Depending on changes within Intraware, the Board, or the business or regulatory issues facing the company, the Board may wish to form a new committee or disband a current committee. All committees are composed entirely of independent directors. Committee memberships are assigned by the Board, with the assistance of the Nominating and Corporate Governance Committee, based on the Board member's particular expertise, experience, and interests.

2 **Committee Charters**

Each committee will have a written charter, approved by the Board, which describes the committee's general authority and responsibilities. Each committee will periodically review its charter, and will work with the Nominating and Corporate Governance Committee and the Board to make any appropriate revisions.

3 **Outside Experts**

Each committee has the authority to engage outside experts, advisers and counsel to the extent it considers appropriate to assist the committee in its work.

4 **Reports to Board**

Each committee will regularly report to the Board concerning the committee's activities.

5 **Committee Responsibilities**

- (a) The Audit Committee's primary responsibilities are to hire, oversee and compensate the independent certified public accountants that

audit Intraware's financial statements, monitor the effectiveness of Intraware's internal financial and accounting organization and controls, and oversee Intraware's financial reporting.

- (b) The Compensation Committee's primary responsibilities are to review and determine salaries and other matters relating to compensation of the executive officers of Intraware, and administer Intraware's stock option plans.
- (c) The Nominating and Corporate Governance Committee evaluates, proposes and approves nominees for election or appointment to the Board, and evaluates the composition, organization and governance of the Board and its committees. This committee also is responsible for creating and updating these Corporate Governance Guidelines and recommending them to the Board for adoption.

**6 Frequency and Length of Committee Meetings and Committee Agenda**

The committee chairman, in consultation with appropriate members of management, will determine the frequency and length of the committee meetings and develop the committee's agenda. The agendas and meeting minutes of the committees will be made available to the full Board, and other Board members are welcome to attend committee meetings.

**E REVIEW BY NOMINATING AND CORPORATE GOVERNANCE COMMITTEE**

The Nominating Corporate Governance Committee of the Board shall review these Corporate Governance Guidelines from time to time and report to the Board any recommendations it may have in connection therewith, and such review shall be referred to in the company's proxy statements.

Effective: September 8, 2005