

CHARTER OF THE NOMINATING AND GOVERNANCE COMMITTEE
of the
BOARD OF DIRECTORS
of
NAPSTER, INC.

1. **Purpose.** The purpose of the Committee is to: (a) assist the Board of Directors (the “Board”) in identifying individuals qualified to become Board members and Board committee members, and to select, or to recommend that the Board select, the director nominees for each annual meeting of stockholders and the Board committee nominees for approval by the Board; and (b) monitor and evaluate our Board’s corporate governance policies and make recommendations to our Board with respect thereto.
2. **Membership.** The Committee will be comprised of two or more directors. All members of the Committee will be independent directors (as determined by the Board) under the independence requirements of NASDAQ and applicable law. The members of the Committee will be appointed by and serve at the discretion of the Board. The Chairperson of the Committee shall be selected by the Board.
3. **Specific Responsibilities and Duties.** The Board delegates to the Committee the express authority to do the following, to the fullest extent permitted by applicable law and the Company’s Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws (the “Bylaws”):
 - (a) **Board Composition.** Evaluate the size and composition of the Board, develop criteria for Board membership, and evaluate the independence of existing and prospective directors.
 - (b) **Candidates and Nominees.** Actively seek and evaluate qualified individuals to become new directors as needed.
 - (c) **Current Directors.** Review the suitability of each Board member for continued service when his or her term expires and when he or she has a significant change in status.
 - (d) **Committees.** Evaluate the nature, structure and composition of other Board committees.
 - (e) **Governance Guidelines.** Monitor and evaluate from time to time the Corporate Governance Policy of the Company and make recommendations to the Board with respect thereto.
 - (f) **Review Charter.** Review and reassess the adequacy of this Charter at least annually.
 - (g) **Other Actions.** Take such other actions as may be requested or required by the Board from time to time.

- (h) **Recommendations; Reports.** Make recommendations and report to the Board and other Board committees with respect to any of the foregoing matters.
4. **Search Firm.** The Board delegates to the Committee the express authority to decide whether to retain a search firm to assist the Committee in identifying, screening and attracting director candidates. If the Committee decides in its discretion to retain such a firm, the Board delegates to the Committee the sole authority to retain and terminate any such firm and to approve the search firm's fees and other retention terms.
5. **Meetings.** The Committee will meet with such frequency, and at such times, as its Chairperson, or a majority of the Committee, determines. A special meeting of the Committee can be called by the Chairperson and will be called promptly upon the request of any two Committee members. The agenda of each meeting will be prepared by the Chairperson and circulated to each member prior to the meeting date. Unless the Committee or the Board adopts other procedures, the provisions of the Company's Bylaws applicable to meetings of Board committees will govern meetings of the Committee.
6. **Minutes.** Minutes of each meeting will be kept. The Committee will report to the Board regularly or whenever requested to do so by the Board.
7. **Subcommittees.** The Committee has the power to appoint subcommittees, but no subcommittee will have any final decision making authority on behalf of Board or the Committee.
8. **Reliance; Experts; Cooperation.**
- 8.1 Retention of Counsel and Advisors.** The Committee has the power, in its discretion, to retain at the Company's expense such counsel, advisors and experts as it deems necessary or appropriate to carry out its duties.
- 8.2 Reliance Permitted.** The Committee will act in reliance on management, the Company's independent public accountants, internal auditors, and advisors and experts, as it deems necessary or appropriate to enable it to carry out its duties.
- 8.3 Investigations.** The Committee has the power, in its discretion, to conduct any investigation it deems necessary or appropriate to enable it to carry out its duties.
- 8.4 Required Participation of Employees.** The Committee shall have unrestricted access to the Company's employees, independent public accountants, internal auditors, and internal and outside counsel, and may require any employee of the Company or representative of the Company's outside counsel or independent public accountants to attend a meeting of the Committee or to meet with any members of the Committee or representative of the Committee's counsel, advisors or experts.