

WITNESS SYSTEMS, INC. AUDIT COMMITTEE CHARTER

The Purpose of the Audit Committee

The purpose of the Audit Committee is to represent and assist the Board of Directors in its general oversight of the company's accounting and financial reporting processes, audits of the financial statements, and internal control and audit functions. Management is responsible for (a) the preparation, presentation and integrity of the company's financial statements; (b) accounting and financial reporting principles; and (c) the company's internal controls and procedures designed to promote compliance with accounting standards and applicable laws and regulations. The company's independent auditing firm is responsible for performing an independent audit of the consolidated financial statements in accordance with generally accepted auditing standards.

The Audit Committee members are not professional accountants or auditors and their functions are not intended to duplicate or to certify the activities of management and the independent auditor, nor can the Committee certify that the independent auditor is "independent" under applicable rules. The Audit Committee serves a board level oversight role where it oversees the relationship with the independent auditor, as set forth in this charter, and provides advice, counsel and general direction, as it deems appropriate, to management and the auditors on the basis of the information it receives, discussions with the auditor, and the experience of the Committee's members in business, financial and accounting matters.

Membership

The Audit Committee is comprised of at least three directors determined by the Board of Directors to meet the independence and financial literacy and expertise requirements of The NASDAQ Stock Market, Inc. ("NASDAQ") and applicable federal law. At least one member of the Audit Committee must have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities. The Company will have, and will certify that it has, at least one member who is an "audit committee financial expert," as that term is defined by the SEC. Appointment to the Committee, including the designation of the Chair of the Committee and the designation of any Committee members as "audit committee financial experts", shall be made on an annual basis by the full Board upon recommendation of the Nominating Committee.

Responsibilities

The Audit Committee:

- Is directly responsible for the appointment, retention, compensation, and oversight of the work of the independent auditor. The independent auditor shall report directly to the Audit Committee.

- Obtains and reviews annually a report by the independent auditor describing the firm's internal quality-control procedures; any material issues raised by the most recent internal quality-control review or peer review or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues.
- Reviews and discusses the written statement from the independent auditor concerning any relationship between the auditor and the company or any other relationships that may adversely affect the independence of the auditor, and, based on such review, assesses the independence of the auditor.
- Establishes policies and procedures for the review and pre-approval by the Committee of all auditing services and permissible non-audit services (including the fees and terms thereof) to be performed by the independent auditor, with exceptions provided for de minimis amounts under certain circumstances as described by law.
- Reviews and discusses with the independent auditor: (a) its audit plans, and audit procedures, including the scope, fees and timing of the audit; (b) the results of the annual audit examination and accompanying management letters; and (c) the results of the independent auditor's procedures with respect to interim periods.
- Reviews and discusses reports from the independent auditors on (a) all critical accounting policies and practices used by the Company, (b) alternative accounting treatments within GAAP related to material items that have been discussed with management, including the ramifications of the use of the alternative treatments and the treatment preferred by the independent auditor, and (c) other material written communications between the independent auditor and management.
- Reviews with the independent auditor its judgments as to the quality, not just the acceptability, of the company's accounting principles and such matters as are required to be discussed with the Committee under generally accepted auditing standards.
- Discusses with management and the independent auditor quarterly earnings press releases, including the interim financial information and Business Outlook included therein, reviews the year-end audited financial statements and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, if deemed appropriate, recommends to the Board of Directors that the audited financial statements be included in the Annual Report on Form 10-K for the year.
- Reviews and discusses with management and the independent auditor various topics and events that may have significant financial impact on the company or that are the subject of discussions between management and the independent auditors.
- Reviews and discusses with management the company's major financial risk exposures and the steps management has taken to monitor and control such exposures.

- Reviews and has prior-approval authority for related-party transactions (as defined in the relevant NASDAQ requirements).
- Reviews and discusses with management and the independent auditor: (a) the adequacy and effectiveness of the company's internal controls (including any significant deficiencies and significant changes in internal controls reported to the Committee by the independent auditor or management; (b) the company's internal audit procedures; and (c) the adequacy and effectiveness of the company's disclosures controls and procedures, and management reports thereon.
- Reviews the use of auditors other than the independent auditor in cases such as management's request for second opinions.
- Reviews matters related to the corporate compliance activities of the company.
- Establishes procedures for the receipt, retention and treatment of complaints received by the company regarding accounting, internal accounting controls, or auditing matters, and the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters
- Establishes policies for the hiring of employees and former employees of the independent auditor.
- Publishes the report of the Committee required by the rules of the Securities and Exchange Commission to be included in the company's annual proxy statement
- When appropriate, designates one or more of its members to perform certain of its duties on its behalf, subject to such reporting to or ratification by the Committee as the Committee shall direct.
- The Audit Committee will engage in an annual self-assessment with the goal of continuing improvement, and will annually review and reassess the adequacy of its charter, and recommends any changes to the full Board.
- The Audit Committee shall have the authority to engage independent legal, accounting and other advisers, as it determines necessary to carry out its duties. The Audit Committee shall have sole authority to approve related fees and retention terms.
- The Audit Committee shall meet at such times and places as the Audit Committee shall determine. The Audit Committee shall meet in executive session with the independent auditor and management periodically. The Chairman of the Audit Committee shall report on Audit Committee activities to the full Board.
- The Chairman of the Audit Committee is to be contacted directly by the General Counsel, Chief Financial Officer or the independent auditor (1) to review items of a sensitive nature that can impact the accuracy of financial reporting or (2) to discuss significant

issues relative to the overall Board responsibility that have been communicated to management but, in their judgment, may warrant follow-up by the Audit Committee.

Meetings

The Audit Committee will meet as often as it deems necessary or appropriate, in its judgment, either in person or telephonically, and as such times and places as the Committee determines. The majority of the members of the Audit Committee constitute a quorum.

**WITNESS SYSTEMS, INC.
AUDIT COMMITTEE PRE-APPROVAL POLICY**

I. STATEMENT OF PRINCIPLES

The Audit Committee is required to pre-approve the audit and non-audit services performed by the independent auditor in order to assure that the provision of such services does not impair the auditor's independence. Unless a type of service to be provided by the independent auditor has received general pre-approval, it will require specific pre-approval by the Audit Committee. Any proposed services exceeding pre-approved cost levels will require specific pre-approval by the Audit Committee.

The appendices to this Policy describe the Audit, Audit-related, Tax and All Other services that have the general pre-approval of the Audit Committee. The term of any pre-approval is 12 months from the date of pre-approval, unless the Audit Committee specifically provides for a different period. The Audit Committee will annually review and pre-approve the services that may be provided by the independent auditor without obtaining specific pre-approval from the Audit Committee. The Audit Committee will revise the list of general pre-approved services from time to time, based on subsequent determinations.

II. DELEGATION

The Audit Committee may delegate pre-approval authority to one or more of its members. The member or members to whom such authority is delegated shall report any pre-approval decisions to the Audit Committee at its next scheduled meeting. The Audit Committee does not delegate its responsibilities to pre-approve services performed by the independent auditor to management.

III. AUDIT SERVICES

The annual Audit services engagement terms and fees will be subject to the specific pre-approval of the Audit Committee. The Audit Committee will approve, if necessary, any changes in terms, conditions and fees resulting from changes in audit scope, Company structure or other matters.

In addition to the annual Audit services engagement specifically approved by the Audit Committee, the Audit Committee may grant general pre-approval for other Audit services, which are those services that only the independent auditor reasonably can provide. The Audit Committee has pre-approved the Audit services listed in Appendix A. All other Audit services not listed in Appendix A must be specifically separately pre-approved by the Audit Committee.

IV. AUDIT-RELATED SERVICES

Audit-related services are assurance and related services that are reasonably related to the performance of the audit or review of the Company's financial statements and that are traditionally performed by the independent auditor. The Audit Committee believes that the

provision of Audit-related services does not impair the independence of the auditor, and has pre-approved the Audit-related services listed in Appendix B. All other Audit-related services not listed in Appendix B must be specifically separately pre-approved by the Audit Committee.

V. TAX SERVICES

The Audit Committee believes that the independent auditor can provide Tax services to the Company such as tax compliance, tax planning and tax advice without impairing the auditor's independence. However, the Audit Committee will not permit the retention of the independent auditor in connection with a transaction initially recommended by the independent auditor, the purpose of which may be tax avoidance and the tax treatment of which may not be supported in the Internal Revenue Code and related regulations. The Audit Committee has pre-approved the Tax services listed in Appendix C. All Tax services involving large and complex transactions not listed in Appendix C must be specifically separately pre-approved by the Audit Committee.

VI. ALL OTHER SERVICES

The Audit Committee may grant general pre-approval to those permissible non-audit services classified as All Other services that it believes are routine and recurring services, and would not impair the independence of the auditor. The Audit Committee has pre-approved the All Other services listed in Appendix D. Permissible All Other services not listed in Appendix D must be specifically separately pre-approved by the Audit Committee.

A list of the SEC's prohibited non-audit services is attached to this policy as Exhibit 1. The SEC's rules and relevant guidance should be consulted to determine the precise definitions of these services and the applicability of exceptions to certain of the prohibitions.

VII. PRE-APPROVAL FEE LEVELS

Pre-approval fee levels for all services to be provided by the independent auditor will be established annually by the Audit Committee. Any proposed services exceeding these levels will require specific pre-approval by the Audit Committee.

VIII. SUPPORTING DOCUMENTATION

With respect to each proposed pre-approved service, the independent auditor will provide detailed back-up documentation, which will be provided to the Audit Committee, regarding the specific services to be provided.

IX. PROCEDURES

Requests or applications to provide services that require specific separate approval by the Audit Committee will be submitted to the Audit Committee by both the independent auditor and the Chief Financial Officer, and must include a joint statement as to whether, in their view, the request or application is consistent with the SEC's rules on auditor independence.

Pre-Approved Audit Services for Fiscal Year 2004

Dated: January 14, 2004

<u>Service</u>	<u>Pre approved Fees</u>
Statutory audits or financial audits for subsidiaries or affiliates of the Company	\$60,000
Services associated with SEC registration statements, periodic reports and other documents filed with the SEC or other documents issued in connection with securities offerings (e.g., comfort letters, consents), and assistance in responding to SEC comment letters	\$60,000
Consultations by the Company's management as to the accounting or disclosure treatment of transactions or events and/or the actual or potential impact of final or proposed rules, standards or interpretations by the SEC, FASB, or other regulatory or standard setting bodies (Note: Under SEC rules, some consultations may be "audit-related" services rather than "audit" services)	\$60,000

Pre-Approved Audit-Related Services for Fiscal Year 2004

Dated: January 14, 2004

Service Range of Fees

<u>Service</u>	<u>Pre approved Fees</u>
Due diligence services pertaining to potential business acquisitions/ dispositions	\$60,000
Financial statement audits of employee benefit plans	\$60,000
Agreed-upon or expanded audit procedures related to accounting and/or billing records required to respond to or comply with financial, accounting or regulatory reporting matters	\$60,000
Internal control reviews and assistance with internal control reporting requirements	\$60,000
Consultations by the Company's management as to the accounting or disclosure treatment of transactions or events and/or the actual or potential impact of final or proposed rules, standards or interpretations by the SEC, FASB, or other regulatory or standard-setting bodies (Note: Under SEC rules, some consultations may be "audit" services rather than "audit- related" services)	\$60,000
Attest services not required by statute or regulation	\$60,000

Pre-Approved Tax Services for Fiscal Year 2004

Dated: January 14, 2004

<u>Service</u>	<u>Pre approved Fees</u>
U.S. federal, state and local tax planning and advice	\$60,000
U.S. federal, state and local tax compliance	\$60,000
International tax planning and advice	\$60,000
International tax compliance	\$60,000
Review of federal, state, local and international income, franchise, and other tax returns	\$60,000
Licensing or purchase of income tax preparation software from the independent auditor provided the functionality is limited to preparation of tax returns.	\$60,000

Pre-Approved All Other Services for Fiscal Year 2004

Dated: January 14, 2004

Service

Pre approved Fees

Prohibited Non-Audit Services

- Bookkeeping or other services related to the accounting records or financial statements of the audit client
- Financial information systems design and implementation
- Appraisal or valuation services, fairness opinions or contribution-in-kind reports
- Actuarial services
- Internal audit outsourcing services
- Management functions
- Human resources
- Broker-dealer, investment adviser or investment banking services
- Legal services
- Expert services unrelated to the audit

**WITNESS SYSTEMS, INC.
POLICY REGARDING COMPLIANCE WITH
SEC ATTORNEY CONDUCT RULES**

1. PURPOSE

The Securities and Exchange Commission (the “SEC”) has adopted rules (the “Attorney Conduct Rules”) requiring in-house and outside attorneys to report, up-the-ladder within a company, evidence of a material breach of the securities laws or a material violation of a fiduciary duty by the company or its directors, officers, employees or agents.

Witness Systems, Inc. (the “Company”) has adopted the following policy to set forth guidelines and procedures to ensure that its attorneys comply with the Attorney Conduct Rules.

2. SEC ENFORCEMENT

Compliance with the Attorney Conduct Rules is mandatory, and failure to comply may subject the non-compliant attorney to SEC enforcement action. The Attorney Conduct Rules do not provide for enforcement action against the Company for violation of the Attorney Conduct Rules.

3. APPLICATION

The Attorney Conduct Rules apply to all attorneys “appearing and practicing” before the SEC. Because the SEC’s definition of “appearing and practicing” is very broad and presents difficult interpretive questions, all Company attorneys should understand and comply with the Attorney Conduct Rules and this policy, regardless of whether they believe they are appearing and practicing before the SEC, and regardless of whether they regularly participate in securities law matters. The General Counsel, in conjunction with Company attorneys responsible for ensuring compliance with the Attorney Conduct Rules, will make the determination of whether a reporting attorney is appearing and practicing before the SEC.

Foreign attorneys generally will not be covered by the Attorney Conduct Rules unless they provide advice regarding US law without consulting US counsel. However, they should report and take other steps as required by this policy.

4. REPORTING OBLIGATIONS

The Attorney Conduct Rules require appearing and practicing attorneys to report up the ladder evidence of any “material violation” by the Company or a director, officer, employee or agent of the Company of which such attorney becomes aware. The term “material violation” includes a material violation of US federal or state securities law, a material breach of a fiduciary duty under US federal or state law, or a similar material violation. The SEC defines evidence of a material violation as “credible evidence, based upon which it would be unreasonable, under the circumstances, for a prudent and competent attorney not to conclude that it is reasonably likely that a material violation has occurred, is ongoing or is about to occur.”

This definition requires difficult judgments. For this reason, Company attorneys other than the General Counsel should not attempt to determine whether a particular violation is covered by the Attorney Conduct Rules. If an attorney becomes aware of evidence of any violation of law or breach of fiduciary duty by the Company or one of its officers, directors, employees or agents, the attorney must report that violation or breach to his or her supervisory attorney (if any) as well as to the General Counsel, as soon as possible, and in any event no later than three business days after becoming aware of the evidence.

An attorney who has questions about what may be a material violation may contact Loren Wimpfheimer, who has been designated the Company's Compliance Officer, or Brian Leslie, who has been designated the Company's Deputy Compliance Officer (or their successors), regarding attorney reporting under the Attorney Conduct Rules and is available to answer such questions.

If an attorney reasonably believes that reporting the violation of law or breach of fiduciary duty to the General Counsel would be futile (*e.g.*, if the General Counsel is or may be involved in the perceived wrongdoing), then the attorney may report to the Chief Executive Officer and/or Audit Committee of the Company's Board of Directors.

5. ASSESSMENT OF REPORTS

5.1 General Counsel Assessment

The General Counsel must assess evidence of material violations of law and breaches of fiduciary duty and decide on an appropriate response. When the General Counsel receives a report regarding evidence of a material violation or breach, or otherwise becomes aware of such evidence, he or she must conduct a reasonable inquiry to determine whether a material violation or breach of fiduciary duty contemplated by the Attorney Conduct Rules has occurred, is ongoing or is about to occur.

If the General Counsel reasonably believes that no material violation or breach exists, he must notify the reporting attorney and advise him or her of the basis for that determination. If the General Counsel reasonably believes that a material violation or breach covered by the Attorney Conduct Rules exists, he or she must: (1) take all reasonable steps to cause the Company to adopt an appropriate response; and (2) promptly advise the reporting attorney, the Company's Chief Executive Officer and the Audit Committee of that response.

The General Counsel is entitled to exercise his or her discretion in deciding how to respond, including with respect to the use of in-house counsel or the retention of outside counsel to investigate the evidence and recommend an appropriate response.

5.2 Reporting Attorney Assessment

An attorney who reports evidence of a material violation or breach to the General Counsel is responsible for assessing the General Counsel's response (as reported to the attorney by the General Counsel) to determine whether it is an "appropriate response" under the Attorney Conduct Rules and consider the need for further action.

An appropriate response is one that leads the reporting attorney reasonably to believe: (1) that no material violation or breach of fiduciary duty exists; (2) that the Company has adopted appropriate remedial measures; or (3) that the Company has directed an attorney to review the evidence and either has substantially implemented any remedial recommendations or has been advised that the attorney may assert a “colorable defense” on behalf of the Company (or the Company’s agent) in a proceeding relating to the evidence. If the reporting attorney believes that the General Counsel has provided an appropriate response within a reasonable time, the attorney is not obligated to take any additional action under the Attorney Conduct Rules.

If the reporting attorney concludes that the General Counsel has not provided an appropriate response within a reasonable time, the attorney must report the evidence to the Audit Committee of the Company’s Board of Directors. In assessing the appropriateness of any response, the reporting attorney may consult with the Company’s Compliance Attorney.

6. CONFIDENTIALITY AND RECORDS

Subject to their general ethical obligations, Company attorneys should not make public their reports under the Attorney Conduct Rules or take other action that breaches Company confidences or that might be viewed as a waiver of the attorney/client privilege. Any attorney who has questions about this policy should consult with the Company’s Compliance Attorney.

The General Counsel and any attorney who reports evidence of a violation under the Attorney Conduct Rules must make a written record establishing that the report was made, providing a brief description of the nature of the report, and noting whether a response was received.

7. OUTSIDE LAW FIRMS

The Company’s outside law firms that have attorneys who appear and practice before the SEC are expected to comply fully with the Attorney Conduct Rules and this policy by making appropriate reports to the Company’s General Counsel of evidence of a material violation or breach.

In this regard, every Company attorney who retains outside counsel on behalf of the Company must provide that counsel with a copy of this policy. The Company attorney also should request that the law firm designate a single attorney as the “point person” to make any required reports to the Company’s General Counsel and to receive notification regarding responses from the Company’s General Counsel.

8. ATTORNEYS RETAINED TO INVESTIGATE OR LITIGATE

In-house or outside attorneys who are directed by the General Counsel to investigate evidence of a material violation or breach or to defend the Company or its agent in litigation relating to such evidence are subject to different standards than those set forth in Section 4 above.

An attorney directed by the General Counsel to investigate evidence of a material violation has no obligation to report that evidence under the Attorney Conduct Rules if: (1) the attorney reports the results of the investigation to the General Counsel; and (2) except where the attorney

and the General Counsel reasonably believe that no material violation or breach of fiduciary duty exists, the General Counsel reports the results of the investigation to the Company's Board of Directors or a committee of independent directors.

Similarly, an attorney directed by the General Counsel to assert a colorable defense on behalf of the Company or its agent in an administrative or judicial proceeding relating to evidence of a material violation or breach has no reporting obligations if the General Counsel provides to the Board of Directors or a committee of independent directors reasonable and timely reports on the progress and outcome of the proceeding.

9. COMPLIANCE

A violation of this policy shall be deemed a violation of the Company Code of Business Conduct and Ethics. Employees who violate this policy shall be subject to disciplinary measures appropriate to the violation, up to and including immediate suspension or termination of employment.

Nothing in this policy shall obviate the obligation of an attorney to comply with any ethical or professional rule or standard regarding the reporting of any actual or potential violation of law to the Company or otherwise.

No attorney may be disciplined, reprimanded, dismissed or otherwise penalized for complying in good faith with the Attorney Conduct Rules or this policy. If an attorney has questions regarding the Attorney Conduct Rules or this policy, the attorney should contact the Company's Compliance Attorney.