

WITNESS SYSTEMS, INC.
NOMINATING COMMITTEE CHARTER

The Purpose of the Nominating Committee

The purpose of the Nominating Committee is to assist the Board of Directors in identifying, screening and recommending qualified candidates to serve as directors of the Company.

Membership

The Nominating Committee is comprised of at least two “independent” (as defined by The Nasdaq Stock Market) members of the Board, and one member is designated to serve as chairperson.

Responsibilities

The Nominating Committee will:

- (a) Recommend to the Board candidates for election or reelection by the Board at each Annual Meeting of Stockholders of the Company.
- (b) Recommend to the Board candidates for election by the Board to fill vacancies occurring on the Board.
- (c) Consider stockholder nominees that have been made in compliance with Section 2.12 of the Company’s Bylaws.
- (d) Make recommendations to the Board concerning the selection criteria to be used by the Committee in seeking nominees for election to the Board.
- (e) Aid in attracting qualified candidates to serve on the Board.
- (f) Make recommendations to the Board concerning the structure, composition and functioning of the Board and all Board committees.
- (g) Review any outside directorships in other public companies held by senior company officials.
- (h) Periodically receive recommendations from the Board, the officers of the Company, including the CEO, or other sources, regarding succession at the CEO and other senior officer levels.
- (i) Make reports and recommendations to the Board of Directors within the scope of its functions.

Minimum Qualification for Nominating Committee Nominations to the Board

- (a) Directors should be of the highest ethical character and share the values of Witness Systems.
- (b) Directors should have reputations, both personal and professional, consistent with the image and reputation of Witness Systems.
- (c) Directors should be highly accomplished in their respective fields, with superior credentials and recognition.
- (d) Each Director should have relevant expertise and experience, and be able to offer advice and guidance to the chief executive officer based on that expertise and experience.
- (e) The majority of Directors on the Board should be "independent," not only as that term may be legally defined, but also without the appearance of any conflict in serving as a Director. In addition, Directors should be independent of any particular constituency and be able to represent all stockholders of the Company.
- (f) Each Director should have the ability to exercise sound business judgment.
- (g) Directors should be selected with consideration of factors such as values and disciplines, ethical standards, age, diversity, background and skills, all in the context of the Board's view of its needs.

Evaluation Process

- (a) Chairman/CEO, the Nominating Committee or other Directors identify need to add new Director with specific criteria or to fill a vacancy on the Board.
- (b) Chair of Nominating Committee initiates search, working with support, and seeking input, from Directors and senior management.
- (c) Determine if the Nominating Committee members or other Directors have relationships with preferred candidates and can initiate contacts; if necessary, use search firm.
- (d) Initial slate of candidates that will satisfy specific criteria and otherwise qualify for membership on the Board, are identified and presented to the Nominating Committee.
- (e) Chairman/CEO and at least one member of the Nominating Committee interviews prospective candidate(s).
- (f) Full Board informally kept informed of progress.
- (g) Nominating Committee meets to consider and approve final candidate (conduct interviews as schedules permit).
- (h) Nominating Committee seeks full Board endorsement of recommended candidate.

Meetings

The Nominating 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 Nominating Committee constitute a quorum.