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**PACER INTERNATIONAL, INC.**

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**Charter**  
**of the**  
**Audit Committee**  
**of the**  
**Board of Directors**

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**As Adopted**

**on**

**\_\_\_\_\_, 2004**

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**Table of Contents**

	<b><u>Page No.</u></b>
<b>ARTICLE I - LEGAL AUTHORITY.....</b>	<b>1</b>
<b>ARTICLE II - PURPOSE .....</b>	<b>1</b>
<b>ARTICLE III - COMPOSITION .....</b>	<b>2</b>
3.1 INDEPENDENCE.....	2
3.2 AUDIT COMMITTEE FINANCIAL EXPERT. ....	3
3.3 CERTIFICATIONS TO NASDAQ.....	3
<b>ARTICLE IV - MEETINGS.....</b>	<b>3</b>
<b>ARTICLE V - AUTHORITIES, DUTIES AND RESPONSIBILITIES.....</b>	<b>4</b>
5.1 SELECTION AND EVALUATION OF INDEPENDENT AUDITORS.....	4
5.2 OVERSIGHT OF ANNUAL AUDIT AND QUARTERLY REVIEWS. ....	5
5.3 OVERSIGHT OF FINANCIAL REPORTING PROCESS AND INTERNAL CONTROLS.....	7
5.4 INTERNAL AUDIT FUNCTION. ....	8
5.5 CEO AND CFO CERTIFICATIONS. ....	8
5.6 LEGAL AND REGULATORY COMPLIANCE. ....	8
5.7 EVALUATION OF THE COMMITTEE, CHARTER AND ACCOUNTING PERSONNEL.....	10
5.8 GENERAL. ....	10
<b>ARTICLE VI - DUTIES AND RESPONSIBILITIES OF MANAGEMENT AND         INDEPENDENT AUDITORS .....</b>	<b>11</b>

# **PACER INTERNATIONAL, INC.**

## **Charter of the Audit Committee of the Board of Directors**

### **ARTICLE I**

#### **LEGAL AUTHORITY**

The Audit Committee (the “Committee”) of the Board of Directors (the “Board”) of Pacer International, Inc. (the “Corporation”), is established pursuant to the authority granted under Section 4.1 of the Corporation’s Second Amended and Restated Bylaws and Section 48-18-206 of the Tennessee Business Corporation Act, and is intended to satisfy the requirements of Rule 4350(d)(1) of The Nasdaq Stock Market, Inc.’s Marketplace Rules (as amended and in effect from time to time, the “Nasdaq Rules”). It is the intention of the Board that this Charter shall at all times comply with applicable Nasdaq Rules, including Nasdaq Rule 4350(d)(1). The Committee shall be comprised of three or more directors as determined from time to time by resolution of the Board. The members of the Committee shall be elected by the Board at the annual organizational meeting of the Board or at such other time as may be determined by the Board. The Chairman of the Committee shall be designated by the Board, provided that if the Board does not so designate a Chairman, the members of the Committee, by majority vote, may designate a Chairman. The presence in person or by telephone of a majority of the Committee’s members shall constitute a quorum for any meeting of the Committee. All actions of the Committee shall require the vote of a majority of its members present at a meeting at which a quorum is present.

### **ARTICLE II**

#### **PURPOSE**

The Committee’s purpose is to assist the Board in overseeing the accounting, auditing, financial reporting, internal control and legal compliance functions of the Corporation and its subsidiaries. The Committee shall oversee the accounting and financial reporting processes of the Corporation and the audits of the Corporation’s financial statements, as required by Nasdaq Rule 4350(d)(1)(C). In connection with the foregoing, the Committee shall oversee the efforts of the Corporation’s independent accountants and the Corporation’s internal audit function, and shall take such actions as it may deem necessary to satisfy itself that the Corporation’s auditors are independent of management, within the meaning of and as required by Nasdaq Rule 4350(d)(1)(B). The Committee shall have the specific responsibilities and authorities required by Nasdaq Rule 4350(d)(3), as described in more detail in Article V below. In discharging its duties under this Charter, the Committee shall maintain free and open means of communications between the Board, the Corporation’s independent auditors, the Corporation’s internal audit personnel, and the financial and senior management of the Corporation.

**ARTICLE III**  
**COMPOSITION**

**3.1 Independence.**

(a) As required by Nasdaq Rule 4350(d)(2)(A):

(i) each member of the Committee shall be an “independent” director within the meaning of Nasdaq Rule 4200(a)(15), which as of the adoption date of this Charter generally provides that such member shall be free from any relationship that in the opinion of the Board would interfere with the exercise of his or her independent judgment in carrying out the responsibilities of a director and a member of the Committee;

(ii) each member of the Committee must meet the criteria for independence, sometimes called the heightened independence standards, set forth in Section 10A(m)(3) of the Securities Exchange Act of 1934 (as amended and in effect from time to time, the “Exchange Act”) and Rule 10A-3(b)(1) under the Exchange Act (subject to the exemptions provided in Rule 10A-3(c) under the Exchange Act), which, as of the adoption date of this Charter, generally require that a member of the Committee:

(A) may not accept any consulting, advisory or other compensatory fee from the Corporation other than for board services; and

(B) may not be an affiliated person of the Corporation (within the meaning of Rule 10A-3(c) under the Exchange Act);

(iii) each member of the Committee must not have participated in the preparation of the financial statements of the Corporation or any current subsidiary of the Corporation at any time during the past three (3) years;

(iv) each member of the Committee must be able to read and understand fundamental financial statements, including the Corporation’s balance sheet, income statement, and cash flow statement; and

(v) at least one member of the Committee must have (1) past employment experience in finance or accounting, (2) requisite professional certification in accounting, or (3) any other comparable experience or background which results in such member’s financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(b) Anything contained in clause (i) of paragraph (a) above to the contrary notwithstanding, if the Board makes the determination described in this paragraph (b) below, then as and to the extent permitted by the Nasdaq Rules (including Nasdaq Rule 4350(d)(2)(B)), one director who (i) is not independent within the meaning of Nasdaq Rule 4200(a)(15), (ii) meets the criteria for independence, sometimes called the heightened independence standards, set forth in Section 10A(m)(3) of the Exchange Act and the rules promulgated thereunder, and (iii) is not a current officer or employee or a Family Member (as defined in Nasdaq Rule

4200(a)(14)) of such officer or employee, may be appointed to the Committee if the Board, under exceptional and limited circumstances, determines that membership on the Committee by such person is required by the best interests of the Corporation and its stockholders and the Corporation discloses in its next annual proxy statement subsequent to such determination the nature of such person's relationship and the reasons for the Board's determination. A member appointed under this exception may not serve on the Committee longer than two (2) years and may not chair the Committee.

### **3.2 Audit Committee Financial Expert.**

If practicable, at least one member of the Committee must qualify as an "audit committee financial expert" within the meaning of Item 401(h)(1) of Regulation S-K promulgated by the Securities and Exchange Commission (the "SEC"). The Corporation will disclose in its annual report required by Section 13(a) of the Exchange Act whether or not it has at least one member who is an "audit committee financial expert," and such other related information as may be required to be disclosed by Item 401(h)(1).

### **3.3 Certifications to Nasdaq.**

As required from time to time by Nasdaq Rules (including Nasdaq Rules 4350(d)(1) through (4)), the Committee shall ensure that the Corporation provides Nasdaq with written confirmation of the following matters at such times as may be required by the Nasdaq Rules:

- (i) Board determinations of the independence of Committee members;
- (ii) the financial literacy of the Committee members;
- (iii) the determination that at least one of the Committee members has accounting or related financial management expertise;
- (iv) the annual review and reassessment of the adequacy of the Committee's charter;
- (v) any material noncompliance with the Nasdaq Rules related to corporate governance matters;
- (vi) any event causing noncompliance with the requirement that the Board have a majority of independent directors; and
- (vii) such other matters as may be required by the Nasdaq Rules.

## **ARTICLE IV**

### **MEETINGS**

The Committee shall meet with such frequency and at such intervals as it shall determine is necessary to carry out its duties and responsibilities. The Committee shall meet with the Corporation's independent accountants and management on a quarterly basis to review the Corporation's periodic financial statements prior to their filing with the SEC. In addition, the Committee shall meet periodically (but not less often than annually) with Corporation's senior

management, the Corporation's primary internal audit executive, the Corporation's General Counsel, and the Corporation's independent accountants in separate executive sessions to discuss any matters that the Committee or each of these groups or persons believe should be discussed privately. The Chairman of the Committee may work with management of the Corporation to establish the agendas and prepare and distribute written materials for Committee meetings. The Committee, in its discretion, may ask members of management or others to attend its meetings (or portions thereof) and to provide pertinent information as necessary. The Committee shall maintain minutes of its meetings and records relating to the Committee's activities and provide copies of such meetings and records to the Board.

## ARTICLE V

### AUTHORITIES, DUTIES AND RESPONSIBILITIES

The Committee shall have the following authorities, duties and responsibilities:

#### **5.1 Selection and Evaluation of Independent Auditors.**

(a) As required by Section 10A(m)(2) of the Exchange Act and Rule 10A-3(b)(2) under the Exchange Act, the Committee shall be solely and directly responsible for the appointment, compensation, retention, evaluation, and oversight (including, where appropriate, the termination and replacement) of the Corporation's independent auditors (including resolution of disagreements between the Corporation's management and the independent auditors regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the Corporation, and the Corporation's independent auditors shall report directly to the Committee. In connection with the foregoing:

(i) the Committee shall review and approve the Corporation's independent auditor's annual engagement letter, including the proposed scope and approach of the audit and the proposed fees contained therein;

(ii) the Committee shall instruct the Corporation's independent auditors that they are ultimately accountable to the Committee and the Board, and that the Committee and the Board are responsible for the selection (subject to shareholder approval if determined by the Board), evaluation and termination of the Corporation's independent auditors;

(iii) the Committee shall review the experience and qualifications of the senior members of the Corporation's independent auditors' team;

(iv) the Committee shall ensure that the lead audit partner with primary responsibility for the audit and the reviewing audit partner of the Corporation's independent auditors are rotated at least every five years, and that other audit partners (as defined by the SEC) are rotated at least every seven years; and

(v) the Committee shall pre-approve all auditing services and all non-audit services permitted to be performed by the Corporation's independent auditors. Such pre-approval may be given as part of the Committee's approval of the scope of the engagement of the independent auditors or on an engagement-by-engagement basis or

pursuant to pre-established policies. In addition, the authority to pre-approve non-audit services may be delegated by the Committee to one or more of its members, but such member's or members' non-audit service approval decisions must be reported to the full Committee at the next regularly scheduled meeting. The Corporation shall disclose in its Annual Reports on Form 10-K and its Quarterly Reports on Form 10-Q any approval of non-audit services during the period covered by the applicable report.

(b) The Committee shall oversee the independence of the Corporation's independent auditors by, among other things deemed necessary by the Committee, taking the following actions as contemplated by Nasdaq Rule 4350(d)(1)(B):

(i) requiring the independent auditors to deliver to the Committee on a periodic basis (but no less often than annually) a formal written statement delineating all relationships between the independent auditors and the Corporation;

(ii) reviewing and discussing periodically (but no less often than annually) with the independent auditors the requirements of Section 2-01 of Regulation S-X and Section 600 of Codification of Financial Reporting Policies of the SEC to determine whether there exists any relationship or arrangement which would cause the auditors to not be independent as required by the rules of the SEC; and

(iii) actively engaging in a dialogue with the independent auditors with respect to any disclosed relationships or services that may impact their objectivity and independence and recommending that the Board take appropriate action to satisfy itself of the auditors' independence.

## **5.2 Oversight of Annual Audit and Quarterly Reviews.**

In connection with the Committee's discharge of its responsibilities under this Charter, including those required by Section 10A(m)(2) of the Exchange Act, Rule 10A-3(b)(2) under the Exchange Act, and Nasdaq Rule 4350(d)(1)(C), the Committee shall undertake the following:

(a) The Committee shall review, discuss with the Corporation's independent auditors and, if appropriate, accept the annual audit plan of the independent auditors, including the scope of audit activities, and monitor such plan's progress and results during the year.

(b) In connection with ensuring compliance with Section 303 of The Sarbanes-Oxley Act of 2002, the Committee shall confirm through private discussions with the Corporation's independent auditors and the Corporation's management that no restrictions are being placed on the scope of the independent auditors' work.

(c) The Committee shall review and discuss with the independent auditors and management the results of the year-end audit of the Corporation's financial statements, including matters required to be brought to the Committee's attention pursuant to Statements on Auditing Standards No. 61 (Communication with Audit Committees), No. 60 (Communication of Internal Control Related Matters) and No. 54 (Illegal Acts by Clients) issued by the American Institute of Certified Public Accountants (the "AICPA"), including the following (as applicable):

(i) the audit report, the published financial statements, the management representation letter, the “Memorandum Regarding Accounting Procedures and Internal Control” or any similar memoranda prepared by the Corporation’s independent auditors, and management’s responses concerning such memoranda and reports;

(ii) the independent auditors’ judgments of the quality and appropriateness of the Corporation’s accounting principles as applied to financial reporting;

(iii) the methods used to account for significant unusual transactions;

(iv) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus;

(v) management’s process for formulating sensitive accounting estimates and the reasonableness of these estimates;

(vi) significant recorded and unrecorded audit adjustments;

(vii) any disagreements or other material accounting issues among the Corporation’s senior management, primary internal audit executive and independent auditors;

(viii) the nature and substance of any significant reserves; and

(ix) such other matters required to be communicated by the independent auditors to the Committee under generally accepted auditing standards, as amended.

(d) The Committee shall review and discuss with management and the Corporation’s independent auditors such accounting policies (and changes therein) of the Corporation, including any financial reporting issues which could have a material impact on the Corporation’s financial statements, as are deemed appropriate for review by the Committee prior to any interim or year-end filings with the SEC or other regulatory body.

(e) The Committee shall obtain from the independent auditors ad adequate assurance that the audit was conducted in a manner consistent with Section 10A of the Exchange Act, and shall recommend to the Board whether the annual audited financial statements should be included in the Corporation’s Annual Report on Form 10-K.

(f) The Committee shall review with the Corporation’s management and the independent auditors the Corporation’s interim financial statements to be included in Quarterly Reports on Form 10-Q prior to the filing thereof with the SEC, including the results of the independent auditors’ review the interim financial statements.

(g) The Committee shall review with the Corporation’s management and independent auditors the Corporation’s major financial risk exposures and the steps that management has taken to monitor and control such exposures.

(h) The Committee shall review and discuss with the Corporation’s management and independent auditors any significant financial or non-financial arrangements of the Corporation which do not appear on the financial statements of the Corporation.



(i) The Committee shall review and discuss with the Corporation's management and independent auditors any arrangements, transactions or courses of dealings between the Corporation and related parties that are significant in size or involve terms or other aspects that materially differ from those that would likely be negotiated with independent parties, and which arrangements, transactions or courses of dealing are necessary to an understanding of the Corporation's financial statements, financial condition, results of operations or cash flows.

### **5.3 Oversight of Financial Reporting Process and Internal Controls.**

(a) The Committee shall review and discuss the adequacy and effectiveness of the Corporation's accounting and internal control policies and procedures with the Corporation's management and independent auditors, and solicit any recommendations for the improvement of such internal controls procedures or establishment of new or more detailed controls or procedures where advisable.

(b) The Committee shall review and discuss with the Corporation's management and independent auditors the Corporation's operational and accounting internal controls, including controls for access to and the security of the Corporation's computerized information systems, including a review of whether the Corporation is operating in accordance with its prescribed policies, procedures and codes of conduct.

(c) The Committee shall review and discuss with the Corporation's management and independent auditors any reportable conditions or material weaknesses, as defined by the AICPA, that affect the Corporation's internal controls.

(d) The Committee shall receive periodic reports from the Corporation's management and independent auditors prepared by them for the Committee to assess the impact on the Corporation of significant accounting or financial reporting developments proposed by the Financial Accounting Standards Board, the SEC or any other regulatory body having jurisdiction over the Corporation, or any other significant accounting or financial reporting related matters that may have a bearing on the Corporation or its financial statements.

(e) The Committee shall review and discuss with the Corporation's management and independent auditors reports prepared by them for the Committee regarding significant financial reporting and accounting issues and judgments made in connection with the preparation of the Corporation's financial statements, including the selection, application and disclosure of critical accounting policies and analyses of the effect of alternative assumptions, estimates or methods on the Corporation's financial statements.

(f) The Committee shall review and discuss any significant changes to the Corporation's accounting principles and other items required to be communicated by the independent auditors under Statement of Auditing Standards No. 61 as part of their quarterly review. The Chairman may represent the entire Audit Committee for purposes of this review.

(g) The Committee shall conduct an appropriate review of all proposed related-party transactions required to be disclosed pursuant to SEC Regulation S-K, Item 404. The Committee shall monitor the Corporation's policies and procedures for ensuring that no such related party transaction is entered into by the Corporation unless the Committee has previously approved such transaction as required by Nasdaq Rule 4350(h). The Committee shall also

conduct a review of all such related party transactions on a periodic basis (but no less often than annually) in order to insure that such transactions are conducted in accordance with the Committee's or the Board's approvals and understandings regarding the same, that full and clear public disclosure of all such transactions is made (including any compensatory elements that may be included in any such transaction) in accordance with applicable Nasdaq Rules and SEC rules and regulations and that the Corporation has complied with all other Nasdaq Rules and SEC rules and regulations applicable to such transactions.

(h) The Committee shall obtain and review timely reports from the Corporation's independent auditors regarding:

(i) all critical accounting policies and practices used by the Corporation;

(ii) all alternative treatments of financial information within GAAP that the Corporation's independent auditors have discussed with management, the ramifications of the use of such alternative treatments, and whether the treatments adopted by the Corporation are acceptable to the Corporation's independent auditors; and

(iii) any management letter, schedule of unadjusted differences and all other material written communications between the independent auditors and management.

(i) The Committee shall review with the Corporation's management and independent auditors all earnings releases relating to the Corporation's annual or quarterly results of operations prior to their issuance.

#### **5.4 Internal Audit Function.**

(a) The Committee shall review the annual plan (and any changes), activities, organizational structure, and qualifications of the Corporation's internal audit function.

(b) The Committee shall review the appointment, performance, and replacement of the Corporation's primary internal audit executive.

(c) The Committee shall review and discuss with the Corporation's management and, as necessary, the Corporation's primary internal audit executive any significant reports prepared by the Corporation's primary internal audit executive, together with management's response and follow-up to these reports.

#### **5.5 CEO and CFO Certifications.**

The Committee shall discuss with the Corporation's Chief Executive Officer and Chief Financial Officer the processes involved in, and any material changes required as a result of, the Form 10-K and Form 10-Q certification process concerning deficiencies in design or operation of internal controls or any fraud involving the Corporation's management or employees who have a significant role in the Corporation's internal controls.

#### **5.6 Legal and Regulatory Compliance.**

(a) The Committee shall meet periodically (but not less often than annually) with the Corporation's General Counsel, and outside counsel when deemed necessary by the

Committee, to review material legal and regulatory matters affecting the Corporation, including any matters that may have a material impact on the Corporation's financial statements.

(b) As required by Item 306 of Regulation S-K promulgated by the SEC, the Committee shall prepare a report to be included in each annual proxy statement (or, if not previously provided during the fiscal year, any other proxy statement or consent statement relating to the election of directors) which states, among other things, whether:

(i) the Committee has reviewed and discussed with management the audited financial statements included in the Corporation's Annual Report on Form 10-K;

(ii) the Committee has discussed with the Corporation's independent auditors the matters that the auditors are required to discuss with the Committee pursuant to Statement on Auditing Standard No. 61 (as it may be modified or supplemented);

(iii) the Committee has received the written disclosures and the letter from the Corporation's independent auditors required by Independence Standards Board Standard No. 1, as it may be modified or supplemented, and has discussed with the independent auditors their independence from the Corporation; and

(iv) based on the review and discussions described in clauses (i), (ii) and (iii) above, the Committee has recommended to the Board that the audited financial statements be included in the Corporation's Annual Report on Form 10-K for the last fiscal year for filing with the SEC.

(c) The Committee shall include in the report referred to in paragraph (b) above a statement as to whether the Committee has considered whether the independent auditors provision to the Corporation of non-audit services, including information technology services referred to in Section 2-01(c)(4)(ii) of Regulation S-X, is compatible with maintaining the independent auditors' independence from the Corporation.

(d) The Committee shall review and reassess periodically the Corporation's policies and procedures for the internal review and approval of transactions between the Corporation and members of management, including the review and approval of officers' expense accounts and perquisites and use of corporate assets, to ensure among other things the Corporation's compliance with Nasdaq Rule 4350(h) and public disclosure requirements under Item 404 of Regulation S-K. The Committee shall consider the results of any review of these policies and procedures conducted by the Corporation's independent auditors.

(e) The Committee shall periodically (but not less often than annually) review and reassess with the Corporation's General Counsel (i) the Corporation's Statement of Policy Concerning Securities Trading (the "Statement of Policy"), and (ii) its program to monitor compliance with the Statement of Policy, and shall submit recommended changes to the Board.

(f) The Committee shall establish procedures for the receipt, retention and treatment of complaints received by the Corporation regarding accounting, internal accounting controls, or auditing matters, and the confidential, anonymous submission by Corporation employees of concerns regarding questionable accounting or auditing matters as required by Exchange Act Rule 10A-3(b)(4).

(g) The Committee shall review with the Corporation's management, the Corporation's General Counsel and the Corporation's independent auditors any correspondence with regulators or governmental agencies and any published reports which raise material issues regarding the Corporation's financial statements, accounting or financial policies, practices or procedures, or internal controls.

(h) The Committee shall obtain from the independent auditors all information required to be provided by them to the Committee pursuant to Section 10A of the Exchange Act.

#### **5.7 Evaluation of the Committee, Charter and Accounting Personnel.**

(a) The Committee shall periodically perform a self-assessment of its Committee's performance.

(b) The Committee shall review and reassess annually the adequacy of the Committee's charter and recommend any proposed changes to the Board for approval. The charter must specify:

(i) the scope of the Committee's responsibilities and how it carries out those responsibilities, including structure, process and membership requirements;

(ii) the ultimate accountability of the Corporation's independent auditors to the Board and the Committee and the Committee's and the Board's responsibility for selection, evaluation and, where appropriate, replacement of the independent auditors;

(iii) that the Committee is responsible for ensuring that the Corporation's independent auditors submit on a periodic basis to the Committee a formal written statement delineating all relationships between the independent auditors and the Corporation, consistent with Independence Standards Board Standard No. 1 (as it may be modified or supplemented); and

(iv) that the Committee is responsible for actively engaging in a dialogue with the independent auditors with respect to any disclosed relationships or services that may impact the objectivity and independence of the independent auditors and for recommending that the Board take appropriate action to oversee the independence of the independent auditors.

(c) The Committee shall review the Corporation's succession planning for financial and accounting personnel.

(d) The Committee will prepare the annual report of the Audit Committee required by applicable Securities and Exchange Commission ("SEC") disclosure rules.

#### **5.8 General.**

(a) With respect to the authorities, duties and responsibilities listed above, the Committee should:

(i) report regularly to the Board on its activities, as appropriate;

(ii) exercise reasonable diligence in gathering and considering all material information;

(iii) understand and weigh alternative courses of conduct that may be available and focus on weighing the benefit versus harm to the Corporation and its stockholders when considering alternative recommendations or courses of action; and

(iv) provide the Corporation's management, primary internal audit executive and independent auditors with appropriate opportunities to meet privately with the Committee.

(b) In carrying out its duties and responsibilities, the Committee shall have authority (i) to conduct or authorize investigations into any matters within the Committee's scope of responsibilities, (ii) to engage independent counsel and other experts and advisers, as it deems necessary to carry out its duties, as contemplated by Section 10A(m)(5) of the Exchange Act, Rule 10A-3(b)(4) under the Exchange Act, and Nasdaq Rule 4350(d)(3), and (iii) to perform such additional activities, and to consider such other matters, within the scope of its responsibilities, as the Committee or the Board deems necessary or appropriate.

(c) As required by Section 10A(m)(6) of the Exchange Act, Exchange Act Rule 10A-3(b)(5), and Nasdaq Rule 4350(d)(3), the Corporation shall provide appropriate funding, as determined by the Committee, for the payment of (i) compensation to any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the Corporation, (ii) compensation of any advisors employed in accordance with this Article, and (iii) the Committee's ordinary administrative costs that are necessary or appropriate in carrying out its duties. The Committee will act in reliance on the Corporation's management, primary internal audit executive, independent auditors, and such advisors and experts as it deems necessary or appropriate.

## **ARTICLE VI**

### **DUTIES AND RESPONSIBILITIES OF MANAGEMENT AND INDEPENDENT AUDITORS**

While the Committee has the duties and responsibilities set forth in this charter, the Committee is not responsible for planning or conducting the audit or for determining whether the Corporation's financial statements are complete and accurate and are in accordance with generally accepted accounting principles. Similarly, it is not the responsibility of the Committee to ensure that the Corporation complies with all laws and regulations, its code of ethics and its Statement of Policy. These are the responsibilities of the Corporation's management and independent auditors.

As adopted by the Corporation's  
Board of Directors on March \_\_, 2004.