

**OPSWARE INC.**

**AMENDED AND RESTATED CHARTER OF THE  
AUDIT COMMITTEE OF THE  
BOARD OF DIRECTORS**

**As of February 25, 2003**

**I. Purpose**

The purpose of the Audit Committee (the “*Committee*”) of the Board of Directors (the “*Board*”) of Opsware Inc. (the “*Company*”) is to assist the Board in fulfilling its statutory and fiduciary oversight responsibilities relating to the Company’s financial accounting, reporting and internal controls.

**II. Responsibilities and Activities**

The following shall identify the principal responsibilities of the Committee, in each case followed by recurring activities of the Committee in support of those responsibilities. These activities are set forth as a guide with the understanding that the Committee may supplement them as appropriate and may establish policies and procedures from time to time that it deems necessary or advisable in fulfilling its responsibilities.

**A. Appoint and Oversee the Company’s Independent Auditors**

1. Appoint and, where appropriate, replace the independent auditors. Review the independence, performance, experience and qualifications of the independent auditors, and otherwise oversee the independent auditors.
2. Review and consider for approval processes and procedures to ensure the continuing independence of the independent auditors. These processes shall include obtaining and reviewing, on at least an annual basis, a letter from the independent auditors describing all relationships between the independent auditors and the Company required to be disclosed by Independence Standards Board Standard No. 1, reviewing the nature and scope of such relationships, discussing these relationships with the independent auditors and discontinuing any relationships that the Committee believes could compromise the independence of the auditors.
3. Pre-approve all audit and non-audit services to be provided by the independent auditors. These processes shall also include consideration of whether fees billed for information technology services and other non-audit services are compatible with maintaining the independence of the auditors.
4. Consider for approval the fees and other significant compensation to be paid to the independent auditors.

## **B. Review the Integrity of the Company's Financial Statements**

1. Review the Company's quarterly and annual financial statements, including any report or opinion by the independent auditors, prior to distribution to the public or filing with the SEC.
2. In connection with the Committee's review of the quarterly and annual financial statements, discuss with management and the independent auditors the Company's selection, application and disclosure of critical accounting policies; any significant issues, events and transactions; any significant changes regarding accounting principles, practices, judgments or estimates; any significant disagreements among management and the independent auditors; and any proposed changes in accounting or financial reporting that may have a significant impact on the Company.
3. In connection with the Committee's review of the quarterly financial statements, discuss with the independent auditors and management the results of the independent auditors' SAS 71 review of the quarterly financial statements.
4. In connection with the Committee's review of the annual financial statements:
  - Discuss any items required to be communicated by the independent auditors in accordance with SAS 61, as amended. These discussions should include the independent auditors' judgments about the quality and appropriateness of the Company's accounting principles, potential alternative treatments of financial information within generally accepted accounting principles, the reasonableness of significant judgments, the clarity and overall fairness of the disclosures in the Company's financial statements and any significant difficulties encountered during the course of the audit, including any restrictions on the scope of work or access to required information.
  - Recommend to the Board whether the annual financial statements should be included in the Annual Report on Form 10-K, based on (i) the Committee's review and discussion with management of the annual financial statements, (ii) the overall fairness of the presentation, (iii) the Committee's discussion with the independent auditors of the matters required to be discussed by SAS 61, and (iv) the Committee's review and discussion with the independent auditors of the independent auditors' independence and the written disclosures and letter from the independent auditors required by Independence Standards Board Standard No.1.

## **C. Review the Company's Controls**

1. Monitor the periodic reviews of the adequacy of the accounting and financial reporting processes and systems of internal control that are conducted by the independent auditors and by the Company's financial and senior management;
2. Establish procedures to receive information from the Company's Disclosure Committee regarding the Company's disclosure controls and internal controls.

3. Discuss with the independent auditors and management their periodic reviews of the adequacy of the Company's accounting and financial reporting processes and systems of internal control, including the adequacy of the systems of reporting to the Committee by each group.
4. Monitor the Company's compliance with legal and regulatory requirements as to financial accounting, reporting and internal controls.

**D. Assess the Company's Risk Management**

1. Discuss with management the Company's major risk exposures and the steps management has taken to monitor and control such exposures, including the Company's risk assessment and risk management policies.
2. Review on at least a quarterly basis the status of any legal or regulatory matters that could have a significant impact on the Company..
3. Establish procedures to receive and process complaints regarding accounting, internal auditing controls or auditing matters, and for employees to make confidential, anonymous complaints regarding questionable accounting or auditing matters.

**E. Oversee the Company's Disclosure and Reporting**

1. Review and discuss with management the Company's earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies.
2. Review the Management's Discussion and Analysis section of the Company's Forms 10-Q and 10-K, and where appropriate, registration statements under the Securities Act of 1933, prior to filing with the SEC and discuss with management and the independent auditors.

**F. Facilitate Communication Among the Independent Auditors, the Company's Senior Management and the Board**

1. Address any disagreements between management and the independent auditors regarding financial reporting.
2. Review the reports that are required to be delivered by the independent auditors addressing: (i) all critical accounting policies, estimates and practices used; (ii) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management, the ramifications of each

alternative and the treatment preferred by the independent auditors; and (iii) other material written communications and summaries of material oral communications between the independent auditors and management, such as any management letter or schedule of unadjusted differences.

3. Provide to the Board such additional information and materials as it may deem necessary to make the Board aware of significant financial accounting, reporting and internal control matters that require the attention of the Board.

4. Annually prepare a report to the Company's stockholders for inclusion in the Company's annual proxy statement as required by the rules and regulations of the SEC, as they may be amended from time to time.

#### **G. Approve Related Party Transactions**

1. Establish procedures to receive information from the Company's Disclosure Committee regarding transactions between the Company and any related party, as defined by applicable law and the rules of The Nasdaq Stock Market.

2. Review and consider for approval all such transactions.

#### **H. Other**

1. Perform any other activities required by applicable law, rules or regulations, including the rules of the SEC and any stock exchange or market on which the Company's Common Stock is listed, and perform other activities that are consistent with this charter, the Company's Bylaws and governing laws, as the Committee or the Board deems necessary or appropriate.

### **II. Membership**

All members of the Committee will be appointed by, and shall serve at the discretion of, the Board. Unless a chair is elected by the full Board, the members of the Committee may designate a chair by majority vote of the Committee membership. The Committee shall consist of three or more members of the Board, with the exact number being determined by the Board. Each member of the Committee shall be "independent" as defined by applicable law, including the rules and regulations of the SEC and The Nasdaq Stock Market, as they may be amended from time to time. Each member of the Committee shall have the ability to read and understand financial statements and at least one member shall qualify as a "financial expert" as required by the rules and regulations of the SEC and the Nasdaq Stock Market.

### **III. Meetings and Administration**

The Committee shall meet at least once each quarter and more frequently as determined to be appropriate by the Committee. The Committee shall meet at least once each quarter with the independent auditors, out of the presence of management, to review and discuss internal controls, the fullness and accuracy of the Company's financial statements and any other matters that the Committee or the auditors believe should be discussed privately with the Committee. The Committee shall also meet at least once each quarter with management about internal controls, the fullness and accuracy of the Company's financial statements and any other matters that the Committee, the auditors or management believe should be discussed.

The Committee shall maintain minutes of meetings and periodically report to the Board on significant matters related to the Committee's responsibilities.

### **IV. Charter Review**

The Committee shall review and reassess the adequacy of the Committee's charter at least annually. Submit the charter to the Board for review and approval and include a copy of the charter as an appendix to the Company's proxy statement as required by the rules and regulations of the SEC.

### **V. General Authority**

In order to fulfill its responsibilities, the Committee shall have unrestricted access to Company personnel and documents, shall have authority to direct and supervise an investigation into any matters within the scope of its duties, and shall have authority to retain such outside counsel, experts and other advisors as it determines to be necessary to carry out its responsibilities. The Company shall provide appropriate funding to the Committee, as determined by the Committee, for payment of compensation to the independent auditors and to any outside advisors employed by the Committee pursuant to this charter.

While the Committee has the responsibilities and powers set forth in this charter, it is not the duty of the Committee to plan or conduct audits or to determine that the Company's financial statements are complete and accurate and are in accordance with generally accepted accounting principles. This is the responsibility of management and the independent auditors.