



**CHARTER FOR THE AUDIT COMMITTEE  
OF THE BOARD OF DIRECTORS  
OF  
INTRAWARE, INC.**

**July 9, 2003**

**A. PURPOSE**

The purpose of the Audit Committee of the Board of Directors of Intraware, Inc. (the “**Company**”) shall be to:

1. Oversee the accounting and financial reporting processes of the Company and audits of the financial statements of the Company;
2. Assist the Board in oversight and monitoring of (i) the integrity of the Company’s financial statements, (ii) the Company’s compliance with legal and regulatory requirements, (iii) the independent auditor’s qualifications, independence and performance, and (iv) the Company’s internal accounting and financial controls;
3. Prepare the report that the rules of the Securities and Exchange Commission (the “**SEC**”) require be included in the Company’s annual proxy statement;
4. Provide to the Board the results of its monitoring and recommendations derived therefrom; and
5. Provide to the Board such additional information and materials as it may deem necessary to make the Board aware of significant financial matters that require the attention of the Board.

In addition, the Audit Committee will undertake those specific duties and responsibilities listed below and such other duties as the Board of Directors may from time to time prescribe.

**B. MEMBERSHIP**

The Audit Committee members will be appointed by, and will serve at the discretion of, the Board of Directors. The Audit Committee will consist of at least three members of the Board of Directors. Members of the Audit Committee must meet the following criteria (as well as any criteria required by the SEC):

1. Each member will be an independent director, as defined in (i) the rules of the SEC and (ii) NASDAQ Audit Committee requirements, including without limitation NASDAQ Marketplace Rules 4200 and 4350(d);

2. Each member will be able to read and understand fundamental financial statements, in accordance with NASDAQ Audit Committee requirements, including without limitation NASDAQ Marketplace Rule 4350(d); and
3. At least one member of the Audit Committee shall be an audit committee financial expert, as defined in (i) the rules of the SEC and (ii) NASDAQ Audit Committee requirements, including without limitation NASDAQ Marketplace Rule 4350(d).

### **C. RESPONSIBILITIES**

The responsibilities of the Audit Committee shall include:

#### *Financial Statement and Disclosure Matters*

1. Reviewing on a continuing basis the adequacy of the Company's system of internal controls, including meeting periodically with the Company's management and the independent auditor to review the adequacy of such controls and to review before filing the disclosure regarding such system of internal controls required under SEC rules to be contained in the Company's periodic filings and the attestations or reports by the independent auditor relating to such disclosure;
2. Reviewing and discussing with management and the independent auditor the annual audited financial statements, including the Company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations," prior to filing the Company's Annual Report on Form 10-K with the SEC, and recommending to the Board whether such financial statements should be included in such report;
3. Reviewing and discussing with management and the independent auditor the quarterly unaudited financial statements to be included with the Company's quarterly earnings press release, and reviewing and discussing with management the remaining quarterly unaudited financial statements and the Company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations" prior to filing the Company's Quarterly Reports on Form 10-Q with the SEC;
4. Discussing with management and the independent auditor significant financial reporting issues and judgments made in connection with the preparation of the Company's financial statements, including any significant changes in the Company's selection or application of accounting principles, any major issues as to the adequacy of the Company's internal controls and any special steps adopted in light of material control deficiencies;
5. Reviewing any disclosures made to the Audit Committee by the Company's Chief Executive Officer and Chief Financial Officer during their certification process for the Annual Report on Form 10-K and Quarterly Reports on Form 10-Q about any significant deficiencies in the design or operation of internal controls or material weaknesses therein and any fraud involving management or other employees who have a significant role in the Company's internal controls.
6. Conducting a post-audit review of the financial statements and audit findings, including any significant suggestions for improvements provided to management by the independent auditor;
7. Overseeing and reviewing the disclosure controls and procedures designed and maintained by the Company's Disclosure Committee;

### *Oversight of the Company's Relationship with the Independent Auditor*

8. Appointing and replacing the independent auditor (subject to shareholder ratification if applicable), compensating the independent auditor, including pre-approving all fees and terms for audit engagements and permissible non-audit engagements with the independent auditor, and overseeing the work of the independent auditor (including resolving disagreements between management and the independent auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work; the Company shall provide for appropriate funding, as determined by the Audit Committee, for payment of compensation to the independent auditor for the purpose of preparing or issuing such audit report or for such related work;
9. Pre-approving audit and non-audit services provided to the Company by the independent auditor (or subsequently approving non-audit services in those circumstances where a subsequent approval is necessary and permissible);
10. Reviewing and providing guidance with respect to the external audit and the Company's relationship with its independent auditor by (i) reviewing the independent auditor's proposed audit scope, approach and independence; (ii) obtaining on a periodic basis a statement from the independent auditor regarding relationships and services with the Company which may impact independence and presenting this statement to the Board of Directors, and to the extent there are relationships, monitoring and investigating them, including as provided in NASDAQ Marketplace Rule 4350(d)(1)(B); (iii) reviewing the independent auditor's periodic peer review; (iv) discussing with the Company's independent auditor the financial statements and audit findings, including any significant adjustments, management judgments and accounting estimates, significant new accounting policies and disagreements with management and any other matters described in SAS No. 61, as may be modified or supplemented; and (v) reviewing reports submitted to the Audit Committee by the independent auditor in accordance with the applicable SEC requirements;
11. Overseeing compliance with the requirements of the SEC for disclosure of auditor's services and audit committee members, member qualifications and member independence;

### *Compliance Oversight Responsibilities*

12. Reviewing and approving in advance any proposed related party transactions;
13. Reviewing, approving and monitoring the Company's code of ethics for its executive officers;
14. Establishing procedures for receiving, retaining and treating complaints received by the Company regarding accounting, internal accounting controls or auditing matters and procedures for the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters.
15. Reviewing, in conjunction with counsel, any legal matters that could have a significant impact on the Company's financial statements or compliance policies;
16. If necessary, instituting special investigations with full access to all books, records, facilities and personnel of the Company;

17. As appropriate, obtaining advice and assistance from outside legal, accounting or other advisors; the Company shall provide for appropriate funding, as determined by the Audit Committee, for payment of compensation to such advisors;
18. Providing oversight and review at least annually of the Company's investment policies;
19. Providing a report in the Company's proxy statement in accordance with the rules and regulations of the SEC; and
20. Reviewing its own charter, structure, processes and membership requirements annually.

#### **D. MEETINGS**

The Audit Committee shall meet as often as it determines, but not less frequently than quarterly.

The Audit Committee will meet in separate executive session with the independent auditor of the Company, at such times as it deems appropriate, to fulfill the responsibilities of the Audit Committee under this charter.

The Audit Committee may request any officer or employee of the Company or the Company's outside counsel or independent auditor to attend a meeting of the Audit Committee or to meet with any members of, or consultants to, the Audit Committee.

#### **E. MINUTES**

The Audit Committee will maintain written minutes of its meetings, which minutes will be filed with the minutes of the meetings of the Board of Directors.

#### **F. COMPENSATION**

Members of the Audit Committee shall receive such fees, if any, for their service as Audit Committee members as may be determined by the Board of Directors in its sole discretion. Such fees may include retainers and per meeting fees. Fees may be paid in such form of consideration as is determined by the Board of Directors.

Members of the Audit Committee may not receive any compensation from the Company except the fees and stock option grants that they receive for service as a member of the Board of Directors or any committee thereof.

#### **G. DELEGATION OF AUTHORITY**

The Audit Committee may delegate to one or more designated members of the Audit Committee the authority to pre-approve audit and permissible non-audit services, provided such pre-approval decision is presented to the full Audit Committee at its scheduled meetings.