

AUDIOEYE, INC.

# CHARTER OF THE AUDIT COMMITTEE OF THE BOARD OF DIRECTORS

(as of January 14, 2021)

## 1. STATEMENT OF POLICY

The Audit Committee (the “**Committee**”) of the Board of Directors (the “**Board**”) of AudioEye, Inc. (the “**Company**”) has the responsibility and authority to assist the Board in fulfilling its oversight responsibilities by reviewing and reporting to the Board on the quality and integrity of the financial reports and other financial information provided by the Company to any governmental body or to the public, and on the Company’s compliance with legal and regulatory requirements. The Committee shall also review the qualifications, independence and performance, and approve the terms of engagement of the Company’s independent auditor, review the performance of the Company’s internal audit function and prepare any reports required of the Committee under rules of the Securities and Exchange Commission (the “**SEC**”).

The Company shall provide appropriate funding, as determined by the Committee, to permit the Committee to perform its duties under this Charter, to compensate its advisors and to compensate any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or related work or performing other audit, review or attestation services for the Company. The Committee, at its discretion, has the authority to initiate investigations and hire legal, accounting or other outside advisors or experts to assist the Committee, as it deems necessary to fulfill its duties under this Charter. The Committee may also perform such other activities consistent with this Charter, the Company’s bylaws (as the same may be amended from time to time) and governing law, as the Committee or the Board deems necessary or appropriate.

## 2. ORGANIZATION AND MEMBERSHIP REQUIREMENTS

The Committee shall be appointed by the Board and shall be comprised of at least three directors, each of whom shall satisfy the independence and experience requirements of the Nasdaq Capital Market (“Nasdaq”), provided that the Committee membership shall be subject to the exemptions afforded issuers under SEC and Nasdaq rules. The Committee shall not include any member who:

- accepts any consulting, advisory or other compensatory fee, directly or indirectly, from the Company or any subsidiary of the Company, other than in his or her capacity as a member of the Committee, the Board or any other committee of the Board; or
- is an affiliate of the Company or any subsidiary of the Company.

Each member of the Committee must be able to read and understand fundamental financial statements, including a balance sheet, income statement and cash flow statement. In addition, at least one member shall have the level of financial sophistication required by Nasdaq and at least one member shall be an “audit committee financial expert” as defined by the SEC. No Committee member shall simultaneously serve on the audit committee of more than two other public companies without prior disclosure to the Committee and the Board and an affirmative determination by the Board that such service does not impair the ability of such member to serve effectively on the Committee, which determination shall be disclosed in the annual proxy statement.

Each member of the Committee and its Chair shall be appointed by the Board on the recommendation of the Nominating and Corporate Governance Committee. The Board may remove or replace any member from the Committee at any time with or without cause on the recommendation of the Nominating and Corporate Governance Committee. The chair of the Committee shall preside at all regular meetings of the Committee and set the agenda for each Committee meeting.

### **3. MEETINGS**

The Committee shall meet as often as it determines necessary or appropriate, but not less frequently than quarterly. Meetings may take place in person, by telephone or by video/audio conference. The Committee may meet with management or individual directors at such time as it deems appropriate to discuss any matters before the Committee. The Committee may request that any employee of the Company attend any of its meetings or meet with any Committee member or consultant. The Committee shall meet periodically in executive session without the presence of management.

The Committee may form and delegate authority to subcommittees, or to one or more members of the Committee, when appropriate. The Committee shall meet with management, internal auditors and the independent auditor in separate executive sessions as appropriate. The Committee shall meet with the independent auditor and management on a quarterly basis to review the Company’s financial statements and financial reports.

A majority of the members shall represent a quorum of the Committee. Formal action to be taken by the Committee shall be by unanimous written consent or by the affirmative vote of at least a majority of the members present at a meeting at which a quorum is present. Any actions taken by the Committee during any period in which one or more of the members fail for any reason to meet the membership requirements set forth above shall still constitute duly authorized actions of the Committee for all corporate purposes.

The Committee shall maintain written minutes of all meetings, which minutes will be filed with the minutes of the meetings of the Board.

#### **4. COMMITTEE AUTHORITY AND RESPONSIBILITIES**

The Committee has the responsibilities and powers set forth in this Charter. Management is responsible for the preparation, presentation and integrity of the Company's financial statements; for the appropriateness of the accounting principles and reporting policies that are used by the Company; and for establishing and maintaining internal controls over financial reporting. The independent auditor is responsible for auditing the Company's financial statements and the effectiveness of internal controls over financial reporting, and for reviewing the Company's unaudited interim financial statements.

The Committee, in carrying out its responsibilities, believes its policies and procedures should remain flexible in order to best react to changing conditions and circumstances. The Committee will take appropriate actions to monitor the overall corporate effort for quality financial reporting, sound business risk practices and ethical behavior.

The following shall be the principal duties and responsibilities of the Committee. These matters are set forth as a guide with the understanding that the Committee may supplement them as appropriate, from time to time, subject to Board approval:

**A. Oversight of the Company's Independent Auditor.**

1. Be directly responsible for the appointment, compensation, retention and oversight of any independent auditor (including resolution of disagreements between management and the independent auditor regarding financial reporting) engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the Company, with each such auditor reporting directly to the Committee; and approve, as necessary, the termination of the engagement of the independent auditor.

2. Periodically review and discuss with the independent auditor (i) the matters required to be discussed by applicable auditing standards as in effect from time to time, and (ii) the formal written statements received from the independent auditor relating to its independence, including without limitation, descriptions of (x) all relationships between the independent auditor and the Company, (y) any disclosed relationships or services that may impact the independent auditor's objectivity and independence and (z) whether any of the Company's senior finance personnel were recently employed by the independent auditor.
3. Obtain and review annually a report from the independent auditor describing (i) the independent auditor's internal quality-control procedures, (ii) any material issues raised by the most recent internal quality-control review or peer reviews 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 such issues, and (iii) all relationships between the independent auditor and the Company.
4. Evaluate annually and oversee the qualifications, performance and independence of the independent auditor, including a review of whether the independent auditor's quality-control procedures are adequate and a review and evaluation of the lead partner of the independent auditor, taking into account the opinions of management and the Company's internal auditors, and report to the Board on its conclusions, together with any recommendations for additional action.
5. Consult with the independent auditor to assure the rotation of the lead audit partner having primary responsibility for the audit and the audit partner responsible for reviewing the audit every five years, and consider issues related to the timing of such rotation and the transition to new lead and reviewing partners, and consider whether, in order to assure continuing auditor independence, there should be regular rotation of the audit firm, and report to the Board on its conclusions.
6. Approve in advance the engagement of the independent auditor for all audit services and permitted non-audit services, based on independence, qualifications and, if applicable, performance, and approve the fees and other terms of any such engagement; provided, however, that (i) the Committee may establish pre-approval policies and procedures for any engagement to render such services, provided that such policies and

procedures (x) are detailed as to particular services, (y) do not involve delegation to management of the Committee's responsibilities hereunder and (z) provide that, at its next scheduled meeting, the Committee is informed as to each such service for which the independent auditor is engaged pursuant to such policies and procedures; and (ii) the Committee may delegate to one or more members of the Committee the authority to grant pre-approvals for such services, provided that the decisions of such member(s) to grant any such pre-approval shall be presented to the Committee at its next scheduled meeting.

7. Meet with the independent auditor prior to the audit to discuss the planning and staffing of the audit and discuss with the independent auditor the responsibilities, budget and staffing of the internal audit function.
8. Establish clear policies for the hiring of employees or former employees of the independent auditor who participated in any capacity in the audit of the Company, taking into account the impact of such policies on auditor independence.
9. Regularly review with the independent auditor any problems or difficulties encountered during the course of the audit and management responses to such problems or difficulties.
10. Review with the independent auditor any restrictions on the scope of work or access to required information and any significant disagreement among management and the independent auditor in connection with the preparation of the financial statements.
11. Review with the independent auditor any accounting adjustments that were noted or proposed by the independent auditor but that were "passed" (as immaterial or otherwise), any communications between the audit team and the independent auditor's national office respecting auditing or accounting issues presented by the engagement, any "management" or "internal control" letter or schedule of unadjusted differences issued, or proposed to be issued, by the independent auditor to the Company, or any other material written communication provided by the independent auditor to the Company's management.
12. Review with the independent auditor the critical accounting policies and practices used by the Company, all alternative treatments of financial information within United States generally accepted accounting principles

(“GAAP”) that the independent auditor has discussed with management, the ramifications of the use of such alternative disclosures and treatments and the treatment preferred by the independent auditor.

**B. Review of Financial Reporting, Policies and Processes, and Internal Audit Function.**

1. Review and discuss with management and the independent auditor the Company’s annual audited financial statements and any certification, report, opinion or review rendered by the independent auditor, and recommend to the Board whether the audited financial statements should be included in the Company’s annual report on Form 10-K.
2. Review and discuss with management and the independent auditor the Company’s quarterly financial statements.
3. Review and discuss as appropriate with the Company’s outside tax advisors the Company’s annual tax filing compliance along with the significant assumptions and estimates made in preparing the annual income tax provision and related assessment of any necessary FIN 48 reserves.
4. Review and discuss with management and the independent auditor the Company’s disclosure under “Management’s Discussion and Analysis of Financial Condition and Results of Operations” appearing in the Company’s periodic reports.
5. Review and discuss with management press releases regarding the Company’s financial results and any other information provided to securities analysts and rating agencies, including any “pro-forma,” “non-GAAP” or adjusted financial information.
6. Periodically meet separately with management, with internal auditors and with the independent auditor.
7. Review with management and the independent auditor any significant judgments made in management’s preparation of the financial statements and the view of each as to appropriateness of such judgments.
8. Review with management its assessment of the effectiveness and adequacy of the Company’s internal control structure and procedures for financial reporting (“Internal Controls”), and consider with management

and the independent auditor whether any changes to the Internal Controls are appropriate in light of management's assessment.

9. To the extent it deems appropriate, review with management its evaluation of the Company's procedures and controls designed to assure that information required to be disclosed in the Company's periodic reports is recorded, processed, summarized and reported in such reports within the time periods specified by the SEC for the filing of such reports ("Disclosure Controls"), and consider whether any changes are appropriate in light of management's evaluation of the effectiveness of such Disclosure Controls.
10. Review and discuss with management and the independent auditor any off-balance sheet transactions or structures and their effect on the Company's financial results and operations, as well as the disclosure regarding such transactions and structures in the Company's public filings.
11. Review with management and the independent auditor the effect of regulatory and accounting initiatives on the financial statements. Review any major issues regarding accounting principles and financial statement presentations, including any significant changes in selection of an application of accounting principles. Consider and approve, if appropriate, changes to the Company's auditing and accounting principles and practices as suggested by the independent auditor or management.
12. Review any analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including the effects of alternative GAAP methods on the financial statements.
13. Review any special audit steps adopted in light of material control deficiencies.
14. Review the appointment and replacement of the Company's internal audit function. Review and discuss with the internal auditors (i) the charter, purpose, authority and organizational reporting lines of the internal audit function and (ii) the annual audit plan, changes to the audit plan and progress against the audit plan. Review reports to management and the Board prepared by the internal auditors. Consult with management and

the internal auditor the responsibilities, budget and staffing of the internal audit function and the planning and execution of internal audit activities.

**C. Risk Management, Related Party Transactions, Legal Compliance and Ethics.**

1. Review with the chief executive and chief financial officer of the Company any report on significant deficiencies in the design or operation of the Internal Controls that could adversely affect the Company's ability to record, process, summarize or report financial data, any material weaknesses in the Internal Controls identified to the auditors, and any fraud that involves management or other employees who have a significant role in the Company's Internal Controls.
2. Review and approve related-party transactions in compliance with the Company's Related Party Transactions Policies and Procedures.
3. Establish 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 the Company of concerns regarding questionable accounting or auditing matters. Adopt, as necessary, appropriate remedial measures or actions with respect to such complaints or concerns.
4. In consultation with the Nominating and Corporate Governance Committee, consider and present to the Board for adoption a Code of Business Conduct and Ethics for all employees and directors, which meets the requirements of Item 406 of the SEC's Regulation S-K, and provide for and review prompt disclosure to the public, if and as required, of any change in, or waiver of, such Code of Business Conduct and Ethics. Review such Code of Business Conduct and Ethics periodically and recommend such changes to such Code of Business Conduct and Ethics as the Committee shall deem appropriate, and adopt procedures for monitoring and enforcing compliance with such Code of Business Conduct and Ethics.
5. As requested by the Board, review and investigate conduct alleged by the Board or management to be in violation of the Company's Code of Business Conduct and Ethics, and adopt as necessary or appropriate, remedial, disciplinary, or other measures with respect to such conduct.



6. Discuss with management and the independent auditor any correspondence with regulators or governmental agencies that raise material issues regarding the Company's financial statements or accounting policies.
7. Discuss guidelines and policies to govern the process by which risk assessment and management is undertaken and handled. Discuss with management the Company's major financial risk exposures, including financial, operational, data privacy, cyber and data security and legal and regulatory risks, and the steps management has taken to monitor and control such exposures.
8. Periodically recommend to the Board that either the full Board or its committees oversee and review relevant elements of the Company's risk management policies, oversee and review those elements of the policies assigned to the Committee and monitor the quality of the Company's risk management implementation and execution.
9. Review with the Company's general counsel, or in the absence of a general counsel, the Company's chief financial officer, and report to the Board on litigation, material government investigations and compliance with applicable legal requirements and the Company's Code of Business Conduct and Ethics.
10. Prepare the Committee report required by the rules of the SEC to be included in the Company's annual proxy statement.
11. Make regular reports to the Board.

## 5. ANNUAL REVIEW

The Committee shall review and reassess the adequacy of this Charter at least annually. The Committee shall also review on at least an annual basis the scope of responsibilities of the Committee and the Committee's performance of its duties. Any proposed changes to this Charter or the scope of responsibilities of the Committee, where indicated, shall be referred to the Board for appropriate action.