



**HEARTWARE INTERNATIONAL, INC. CHARTER**  
**OF THE AUDIT COMMITTEE OF THE**  
**BOARD OF DIRECTORS**

**I. PURPOSE**

This Charter specifies the scope of the responsibilities of the Audit Committee (the “Committee”) of the Board of Directors (the “Board”) of HeartWare International, Inc. (the “Company”) and the manner in which those responsibilities shall be performed, including its structure, processes and membership requirements

The primary purpose of the Committee is to oversee (i) the accounting and financial reporting processes of the Company including the audits of the Company’s financial statements and its systems of internal controls (ii) the qualifications, independence and performance of the Company’s registered public accounting firm, and (iii) the Company’s compliance with legal and regulatory requirements.

Although this Charter sets forth the Committee’s powers and responsibilities, the primary role of the Committee is to oversee the Company’s financial reporting and disclosure process. It is not the duty of the Committee to prepare or audit financial statements or determine that the Company’s financial statements and disclosures are complete, accurate and in accordance with generally accepted accounting principles and applicable rules and regulations. These responsibilities are management’s responsibilities, and are subject to the audit by the Company’s registered public accounting firm. Each member of the Committee shall be entitled to rely, to the fullest extent permitted by law, on the integrity of those persons and organizations within and outside the Company from whom such member receives information, and the accuracy of the financial and other information provided to the Committee by such persons or organizations.

**II. ORGANIZATION AND MEMBERSHIP REQUIREMENTS**

The Committee shall be comprised of three or more directors appointed annually, each of whom shall be “independent” under the applicable rules of The Nasdaq Stock Market (“Nasdaq”) and the Securities and Exchange Commission (the “SEC”). In addition, the Committee shall not include any member who has participated in the preparation of the financial statements of the Company or any current subsidiary at any time during the past three (3) years.

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 past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual’s financial sophistication (including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight

responsibilities). At least one member shall be an “audit committee financial expert” as determined by the Board in accordance with the rules of the SEC (a person who satisfies this definition of audit committee financial expert will also be presumed to have accounting or related financial management expertise).

The members of the Committee shall be appointed by the Board on the recommendation of the Nominating and Governance Committee and shall serve until their successors are duly elected and qualified or their earlier resignation or removal. Any member of the Committee may be removed or replaced by the Board on the recommendation of the Nominating and Governance Committee. Membership on the Committee shall automatically end at such time as the Board determines that a member ceases to meet the independence requirements of Nasdaq, the SEC, or other applicable law. Unless a chairperson is elected by the full Board, the members of the Committee may designate a chairperson by majority vote of the full Committee membership. The Chairperson shall preside at all regular sessions of the Committee and set the agenda for each Committee meeting in consultation with members of the Committee and of management.

### **III. MEETINGS**

The Committee shall meet as often as it deems appropriate to fulfill its responsibilities hereunder, but not less frequently than quarterly. Meetings may be called by the Chairperson of the Board or of the Committee. A majority of the members shall represent a quorum of the Committee, and, if a quorum is present, any action approved by at least a majority of the members present shall represent the valid action of the Committee. The Committee may also take any action permitted in this Charter without a meeting by unanimous written consent. The Committee shall maintain written minutes of its meetings along with any written consents taken without a meeting, which will be filed with the minutes of the Committee.

The Committee may meet with management, individual directors and any of its advisors at any time it deems appropriate to discuss any matters before the Committee. The Committee will periodically meet in separate executive sessions with management and with the Company’s registered public accounting firm.

### **IV. RESPONSIBILITIES**

To fulfill its responsibilities and duties hereunder, the Committee shall:

#### **A. Oversight of the Company’s registered public accounting firm**

1. Be directly and solely responsible for the appointment, compensation, retention (including termination) and oversight of an independent registered public accounting firm to act as the Company’s independent auditors, as well as any other registered public accounting firm, if necessary, (including resolution of disagreements between management and the registered public accounting firm regarding financial reporting) engaged for the purpose of preparing or issuing an audit report or related work for the Company. The registered public accounting firm will be retained by and report directly to the Committee.

2. At least annually, obtain a report from and discuss with the registered public accounting firm (i) the matters required to be discussed under generally accepted auditing standards, including Public Company Accounting Oversight Board (“PCAOB”) Auditing

Standards No. 16, concerning communications with audit committees, and (ii) the formal written statements received from the registered public accounting firm consistent with and in satisfaction of the applicable requirements of the PCAOB concerning auditor independence.

3. Evaluate annually the qualifications, performance and independence of the registered public accounting firm, including (i) reviewing whether the registered public accounting firm's quality control procedures are adequate, (ii) actively engaging in dialogue with the registered public accounting firm with respect to whether any disclosed relationships or services may impact the objectivity and independence of the registered public accounting firm, and (iii) reviewing and evaluating the qualifications, experience, and performance of the senior members of the audit team, including the lead partner, of the registered public accounting firm, 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. Review and, if applicable, make recommendations to the Board, regarding proposals relating to the appointment of the registered public accounting firm to be considered at the Company's annual meeting of stockholders.

4. Consult with the registered public accounting firm 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, 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.

5. Approve in advance the engagement of the registered public accounting firm for all audit services and non-audit services, based on independence, qualifications and, if applicable, performance, and approve the fees and other terms of any such engagement pursuant to pre-approval policies and procedures established by the Committee .

6. Meet with the registered public accounting firm prior to the audit to discuss the timing, planning and staffing of the audit.

7. Establish policies for the hiring of employees or former employees of the registered public accounting firm, taking into account the impact of such policies on auditor independence.

8. Regularly review with the registered public accounting firm any (i) difficulties encountered during the course of the audit and management's response thereto, (ii) restrictions on the scope of work or access to required information and (iii) significant disagreement among management and the registered public accounting firm in connection with the preparation of the financial statements.

9. Review with the registered public accounting firm any (i) accounting adjustments that were noted or proposed by the registered public accounting firm but that were "passed" (as immaterial or otherwise), (ii) communications between the audit team and the registered public accounting firm's national office respecting auditing or accounting issues presented by the engagement, (iii) "management" or "internal control" letter or schedule of unadjusted differences issued, or proposed to be issued, by the registered public accounting firm

to the Company, or (iv) other material written communication provided by the registered public accounting firm to the Company's management.

10. Review with the registered public accounting firm the critical accounting policies and practices used by the Company, all alternative treatments of financial information within generally accepted accounting principles ("GAAP") that the registered public accounting firm has discussed with management, the ramifications of the use of such alternative disclosures and treatments and the treatment preferred by the registered public accounting firm.

11. Review with the registered public accounting firm the registered public accounting firm's evaluation of the Company's identification of, accounting for, and disclosure of its relationships and transactions with related parties, including any significant matters arising from the audit.

## **B. Review of Financial Reporting, Policies and Processes**

1. Review and discuss with management and the registered public accounting firm the Company's annual audited financial statements (including the related notes) and any certification, report, opinion or review rendered by the registered public accounting firm, 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 registered public accounting firm the Company's quarterly financial statements.

3. Review and discuss with management and the registered public accounting firm the Company's disclosure under "Management's Discussion and Analysis of Financial Condition and Results of Operations" appearing in the Company's periodic reports.

4. Review and discuss with management all press releases regarding the Company's financial results and any other financial information as well as earnings guidance provided to securities analysts and rating agencies, including presentation of any pro forma and non-GAAP financial information.

5. Review with management and the registered public accounting firm any significant judgments made in management's preparation of the financial statements and the view of each as to appropriateness of such judgments.

6. Review with management its assessment of the effectiveness and adequacy of the Company's internal control structure and procedures for financial reporting ("Internal Controls"), review with the registered public accounting firm the attestation to and report on the assessment made by management, and consider with management and the registered public accounting firm whether any changes to the Internal Controls are appropriate in light of management's assessment or the registered public accounting firm's attestation.

7. 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 public 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.

8. Review and discuss with management and the registered public accounting firm 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.

9. Review with management and the registered public accounting firm 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 registered public accounting firm or management.

10. Review any special audit steps adopted in light of material control deficiencies. Review with the registered public accounting firm and management the extent to which changes or improvements in financial or accounting practices, as approved by the Committee, have been implemented.

#### **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 (i) 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, (ii) any material weaknesses in Internal Controls identified by the registered public accounting firm, and (iii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company’s Internal Controls.

2. Review, approve, and oversee any related-party transactions on an ongoing basis, after reviewing each such transaction for potential conflicts of interests and other improprieties.

3. Establish and oversee 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.

4. Oversee, review and, in consultation with the Nominating and Governance Committee, recommend that the Board approve updates to the Company’s Code of Business Conduct and Ethics applicable for all employees, officers and directors. The Committee will monitor the Company’s compliance with and enforcement of the Code of Business Conduct and Ethics, review with management any substantive changes to and waivers of the Code of Business Conduct and Ethics, and recommend related actions to the Board. The Committee will provide for and review promptly disclosure to the public of any change in, or waiver of, the Code.

5. The Committee may individually or as requested by the Board, review and investigate conduct it deems or is alleged by the Board 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 registered public accounting firm 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 and the steps management has taken to monitor and control such exposures.

8. Review on an annual basis with the Company's general counsel and report to the Board on (i) litigation, material government investigations and compliance with applicable legal and regulatory requirements, (ii) the adequacy and effectiveness of the Company's procedures and ensure compliance with its legal and regulatory responsibilities, and (iii) compliance with the Company's Code of Business Conduct and Ethics.

9. Prepare the report required by the rules of the SEC to be included in the Company's annual proxy statement.

10. Conduct an self-evaluation of the Committee's performance on an annual basis and report to the Board the results of such evaluation.

11. Review and reassess the Charter's adequacy at least annually and recommend any proposed changes to the Board for approval.

## **V. RESOURCES AND AUTHORITY**

The Committee may form and delegate authority to subcommittees, or to one or more members of the Committee, when appropriate.

The Committee, in discharging its oversight role, is empowered to study or investigate any matter of interest or concern that the Committee deems appropriate and request information from management in connection with such investigation, with full access to all books, records, facilities, and personnel of the Company. The Committee shall have the authority to retain and obtain advice or assistance from consultants, legal counsel or other advisors as appropriate to perform its duties hereunder, and to determine the terms, costs and fees for such engagements. The reasonable fees and costs of any consultant or advisor engaged by the Committee to assist the Committee in performing its duties hereunder shall be borne by the Company, including funding to compensate any registered public accounting firm engaged for the purpose of rendering or issuing an audit report or related work or performing other audit, review or attestation services for the Company. The Committee may also perform such other activities consistent with this Charter, the Company's Bylaws and governing law, as the Committee or the Board deems necessary or appropriate.