

**SPHERE 3D CORP.  
AUDIT COMMITTEE CHARTER**

**1 Purpose**

The Audit Committee will assist the Board of Directors of Sphere 3D Corporation in its oversight of the integrity and reliability of the Corporation's accounting principles and practices, financial statements and other financial reporting, and disclosure principles and practices used by the Corporation's management. In compliance with the Multilateral Instrument 52-110 and the applicable rules and regulations of the United States Securities and Exchange Commission and the NASDAQ Listing Rules, the Audit Committee shall have responsibility overseeing (i) the qualifications, independence and performance of the independent auditors (hereafter also referred to as the "external auditors") of the Corporation, (ii) the establishment by management of an adequate system of internal controls and procedures, (iii) the effectiveness of the internal controls and procedures, and (iv) the compliance by the Corporation with legal and regulatory requirements.

**2 Composition**

The Board of Directors will appoint the Audit Committee members and an Audit Committee Chair. The Audit Committee shall be composed of three members of the Board of Directors. Each Audit Committee member will be Financially Literate. One member of the Audit Committee shall be considered a "financial expert" as defined by the United States Securities and Exchange Commission. The composition and qualifications of all Audit Committee members shall comply with all applicable legal and regulatory requirements and will be kept current as regulations evolve. Each member of the Audit Committee shall be an Independent Director.

**3 Meetings**

The Audit Committee will meet at least four times per year and at least once every fiscal quarter, with authority to convene additional meetings, as circumstances require. All Audit Committee members are expected to attend each meeting, in person or via telephone conference. The Audit Committee will invite members of management, auditors or others to attend meetings and provide pertinent information, as necessary. It will hold private meetings with auditors and executive sessions. The Audit Committee may meet privately with any single member of management or any combination of members of management, as it deems appropriate. Meeting agendas will be prepared and provided in advance to members, along with appropriate briefing materials. Minutes will be prepared.

**4 Duties and Responsibilities**

**4.1 Financial Reporting**

- 4.1.1 Review with management and the external auditors any items of concern, any proposed changes in the selection or application of major accounting policies and the reasons for the change, any identified risks and uncertainties, and any issues requiring management judgment, to the extent that the foregoing may be material to financial reporting.
- 4.1.2 Consider any matter required to be communicated to the Audit Committee by the external auditors under applicable generally accepted auditing standards,

applicable law and listing standards, including the external auditors' report to the Audit Committee (and management's response thereto) on: (i) all critical accounting policies and practices used by the Corporation; (ii) all alternative accounting treatments of financial information within generally accepted accounting principles that have been discussed with management, including the ramifications of the use of such alternative treatments and disclosures and the treatment preferred by the external auditors; and (iii) any other material written communications between the external auditors and management.

- 4.1.3 Require the external auditors to present and discuss with the Audit Committee their views about the quality, not just the acceptability, of the implementation of generally accepted accounting principles with particular focus on accounting estimates and judgments made by management and their selection of accounting principles.
- 4.1.4 Discuss with management and the external auditors (i) any accounting adjustments that were noted or proposed (i.e., immaterial or otherwise) by the external auditors but were not reflected in the financial statements; (ii) any material correcting adjustments that were identified by the external auditors in accordance with generally accepted accounting principles or applicable law; (iii) any communication reflecting a difference of opinion between the audit team and the external auditors' national office on material auditing or accounting issues raised by the engagement; and (iv) any "management" or "internal control" letter issued, or proposed to be issued, by the external auditors to the Corporation.
- 4.1.5 Discuss with management and the external auditors any significant financial reporting issues considered during the fiscal period and the method of resolution. Resolve disagreements between management and the external auditors regarding financial reporting.
- 4.1.6 Review with management and the external auditors (i) any off-balance sheet financing mechanisms being used by the Corporation and their effect on the Corporation's financial statements; and (ii) the effect of regulatory and accounting initiatives on the Corporation's financial statements, including the potential impact of proposed initiatives.
- 4.1.7 Review with management and the external auditors and legal counsel, if necessary, any litigation, claim or other contingency, including tax assessments, that could have a material effect on the financial position, operating results or cash flows of the Corporation, and the manner in which these matters have been disclosed or reflected in the financial statements.
- 4.1.8 Review with the external auditors any audit problems or difficulties experienced by the external auditors in performing the audit, including any restrictions or limitations imposed by management, and management's response. Resolve any disagreements between management and the external auditors regarding these matters.
- 4.1.9 Review the results of the external auditors' audit work including findings and recommendations, management's response, and any resulting changes in accounting practices or policies and the impact such changes may have on the financial statements.

- 4.1.10 Review and discuss with management and the external auditors the audited annual financial statements and related management's discussion and analysis, make recommendations to the Board with respect to approval thereof, before being released to the public, and obtain an explanation from management of all significant variances between comparable reporting periods.
- 4.1.11 Review and discuss with management and the external auditors all interim unaudited financial statements and quarterly reports and related interim management's discussion and analysis and make recommendations to the Board with respect to the approval thereof, before being released to the public.
- 4.1.12 Discuss the type and presentation to be included in earnings releases (paying particular attention to any use of *pro forma* or "adjusted" non-GAAP information). Such review may be general (consisting of discussing the types of information to be disclosed and the types of presentations to be made), and each press release or each instance in which the Corporation provides earnings guidance need not be discussed in advance.
- 4.1.13 Make recommendations to the Board regarding the appointment and replacement of the Chief Financial Officer and review with the Chief Financial Officer the appointment and replacement of other members of senior management who will be involved in financial reporting.
- 4.1.14 In conjunction with the Compensation Committee, review succession plans for the Chief Financial Officer.
- 4.1.15 Review the necessary information to file the Annual Information Form, if required by applicable legislation to be filed, and to distribute management information circular as required by Form 52-110F1.

#### **4.2 Disclosure Controls, Internal Controls and Risk Management**

- 4.2.1 Review the adequacy of the internal controls over financial reporting that have been adopted by the Corporation, any special audit steps adopted in light of material control deficiencies and the adequacy of disclosures about changes in internal control over financial reporting.
- 4.2.2 Review with management the disclosure controls and procedures that have been adopted by the Corporation and review periodically, but in no event less frequently than quarterly, management's conclusions about the effectiveness of such disclosure controls and procedures, including any material non-compliance with them.
- 4.2.3 Review periodically the Corporation's policies with respect to financial risks, and discuss with management the Corporation's major financial risk exposures and the steps taken to monitor and control such risks.

#### **4.3 External Auditors**

- 4.3.1 Be solely responsible for the appointment, compensation, retention and oversight of the work of any external auditor engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the Corporation.

- 4.3.2 Instruct the external auditors that:
  - 4.3.2.1 they are ultimately accountable to the Audit Committee, as representatives of shareholders; and
  - 4.3.2.2 they must report directly to the Audit Committee.
- 4.3.3 Confirm that the external auditors have direct and open communication with the Audit Committee and that the external auditors meet regularly with the Audit Committee without management present to discuss any matters that the Audit Committee or the external auditors believe should be discussed privately.
- 4.3.4 Evaluate the external auditors' qualifications, performance, and independence and report its conclusions to the Board. As part of that evaluation, the Audit Committee will:
  - 4.3.4.1 at least annually, request and review a formal report by the external auditors describing: the firm's internal quality-control procedures; any material issues raised by the most recent internal quality-control review, or peer review, of the firm, 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 any such issues; and (to assess the auditors' independence) all relationships between the external auditors and the Corporation, including the amount of fees received by the external auditors for the audit services and for various types of non-audit services for the periods prescribed by applicable law;
  - 4.3.4.2 annually evaluate the qualifications, performance and independence of the external auditors, including the extent of non-audit services and fees, the extent to which the compensation of the audit partners of the external auditors is based upon selling non-audit services, the timing and process for implementing the rotation of the lead audit partner, reviewing partner and other partners providing audit services for the Corporation, whether there should be a regular rotation of the audit firm itself, and whether there has been a "cooling off" period of one year for any former employees of the external auditors who are now employees with a financial oversight role, in order to assure compliance with applicable law on such matters; and
  - 4.3.4.3 annually review and evaluate senior members of the external audit team, including their expertise and qualifications, taking into account the opinions of management and the internal auditor.
- 4.3.5 Review and approve the Corporation's policies for hiring employees and former employees of the external auditors. Such policies should include, at minimum, a one-year hiring "cooling off" period.
- 4.3.6 Meet with the external auditors to review and approve the annual audit plan of the Corporation's financial statements prior to the annual audit being undertaken by the external auditors, including reviewing the year-to-year co-ordination of the audit plan and the planning, staffing and extent of the scope of the annual audit. This review should include an explanation from the external auditors of

the factors considered by the external auditors in determining their audit scope, including major risk factors. The external auditors will report to the Audit Committee all significant changes to the approved audit plan.

- 4.3.7 Review and report to the Board the basis and amount of the external auditors' fees with respect to the annual audit in light of all relevant matters.
- 4.3.8 Review and pre-approve all non-audit service engagement fees and terms in accordance with applicable law, including those provided to the subsidiaries of the Corporation by the external auditors or any other person in its capacity as external auditors of such subsidiary. The Audit Committee may delegate this responsibility to one or more members who will present the pre-approvals to the full Audit Committee at its next scheduled meeting. If desired, the Audit Committee may establish specific policies and procedures for the engagement of the external auditors to perform non-audit services, provided that (i) the pre-approval policies and procedures are detailed as to the particular service to be provided; (ii) the Audit Committee's responsibilities are not delegated to management; and (iii) the Audit Committee is informed of each non-audit service for which the external auditors are engaged. Between scheduled Audit Committee meetings, the Chair of the Audit Committee, on behalf of the Audit Committee, is authorized to pre-approve any audit or non-audit service engagement fees and terms. At the next Audit Committee meeting, the Chair of the Audit Committee will report to the Audit Committee any such pre-approval given.

#### **4.4. Internal Auditors**

- 4.4.1 Review the responsibilities, budget, projects and staffing of the internal audit function and consult with management and the external auditors, as appropriate, regarding the appointment, reassignment, replacement, compensation or dismissal of the head of internal audit.
- 4.4.2 Review the significant reports to management prepared by the Corporation's internal audit function and management's responses.

#### **4.5 Compliance**

- 4.5.1 Monitor compliance by the Corporation with all payments and remittances required to be made in accordance with applicable law, where the failure to make such payments could render the directors of the Corporation personally liable.
- 4.5.2 Obtain regular updates from management regarding compliance with laws and regulations and the process in place to monitor such compliance.
- 4.5.3 Review, with corporate counsel where required, any litigation, claims, tax assessments, transactions, material inquiries from regulators and government agencies or other contingencies which may have a material impact on financial results or which may otherwise affect the financial well-being of the Corporation, as well as the findings of any examination by regulatory authorities and any external auditors' observations relating to such matters.
- 4.5.4 Establish and oversee the procedures in a Code of Ethics Policy to address:

- 4.5.4.1 the receipt, retention and treatment of complaints received by the Corporation regarding accounting, internal accounting controls or auditing matters; and
- 4.5.4.2 the confidential, anonymous submission by employees of concerns regarding such matters.
- 4.5.5 Review and approve or ratify related party transactions and confirm that any political and charitable donations conform to policies and budgets approved by the Board.

## **5 Reporting**

The Audit Committee will regularly report to the Board its findings and actions. In connection therewith, the Audit Committee should review with the Board any issues that arise with respect to the quality or integrity of the Corporation's financial statements, the Corporation's compliance with legal or regulatory requirements, the performance and independence of the Corporation's external auditors or the performance of the internal audit function.

## **6 Minutes**

Minutes will be kept of each meeting of the Audit Committee and will be available to each member of the Board.

## **7 Review and Evaluation**

The Audit Committee will annually review and evaluate the adequacy of this charter and recommend any proposed changes to the Board. The Audit Committee will participate in an annual performance evaluation in accordance with a process developed by the Nominating and Governance Committee, the results of which will be reviewed by the Board.

## **8 Chair**

Each year, the Board will appoint one member to be Chair of the Audit Committee. If, in any year, the Board does not appoint a Chair of the Audit Committee, the incumbent Chair of the Audit Committee will continue in office until a successor is appointed.

## **9 Removal and Vacancies**

Any member of the Audit Committee may be removed or replaced at any time by the Board and shall cease to be a member of the Audit Committee upon ceasing to be a director. The Board may fill vacancies on the Audit Committee by appointment from among its members. If and whenever a vacancy shall exist on the Audit Committee, the remaining members may exercise all its powers so long as a quorum (at least two committee members) remains in office. Subject to the foregoing, each member of the Audit Committee shall remain as such until the next annual meeting of shareholders after that member's election.

## **10 Access to Outside Advisors**

The Audit Committee may, without seeking approval of the Board or management, select, retain, terminate, set and approve the fees and other retention terms of the external auditors and any other outside advisor, as it, acting reasonably, deems appropriate. The Corporation will provide for

appropriate funding, for payment of compensation to any such advisors, and for ordinary administrative expenses of the Audit Committee.

#### **11 Limitation of Audit Committee's Role**

While the Audit Committee has the responsibilities and powers set forth in this charter, it is not the duty of the Audit Committee to plan or conduct audits, or to determine that the Corporation's financial statements and disclosures are complete and accurate and are in accordance with generally accepted accounting principles and applicable rules and regulations. These are the responsibilities of management and the external auditors.

#### **11 Definitions**

Legal terms used in this charter have the meanings attributed to them below. Terms not otherwise defined herein have the meanings attributed to them in Multilateral Instrument 52-110, as amended from time to time.

**"Financially Literate"** means the ability to read and understand a set of financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the Corporation's financial statements.

**"Independent Director"** means a director who meets the requirements set forth in Rule 5605 of the NASDAQ Listing Rules, Rule 10A-3 promulgated under the United States Securities Exchange Act of 1934, as amended, and Multilateral Instrument 52-110.