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| AUDIT COMMITTEE CHARTER | | | |

This Audit Committee Charter governs the operations of the Audit Committee (the "Committee") of the Board of Directors (the "Board") of Vivani Medical, Inc., a California corporation ("Vivani"). This Charter is intended as a component of the flexible governance framework within which the Board, assisted by its committees, directs the affairs of Vivani. While it should be interpreted in the context of all applicable laws, regulations and listing requirements of the Nasdaq Capital Market, as well as in the context of Vivani's Amended and Restated Articles of Incorporation and Amended and Restated Bylaws, as the same may be amended or restated from time to time, this Audit Committee Charter is not, subject to any contractual or other commitments of Vivani, intended to establish by its own force any legally binding obligations.

I. GENERAL PURPOSE AND AUTHORITY; ROLE OF MANAGEMENT AND INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The general purpose of the Committee is to assist the Board in fulfilling its responsibility to oversee management regarding (i) the conduct of Vivani's accounting and financial reporting process and the integrity of the financial reports and other financial information provided by Vivani to shareholders and others; (ii) the functioning of Vivani's systems of internal accounting and financial reporting controls; (iii) the portions of Vivani's Code of Ethics that relate to the integrity of Vivani's accounting and financial reporting; and (iv) Vivani's risk management process. The Committee also oversees and reports to the full Board on Vivani's enterprise risk management framework that is designed to identify, evaluate, and manage Vivani's significant risks and exposures, including financial reporting, regulatory, credit, operational and technology risks. The Committee is also responsible for the engagement, compensation, performance, qualifications, and independence of Vivani's independent registered public accounting firm, its conduct of the annual independent audit of Vivani's financial statements, and its engagement for all other services. The Committee shall review and approve the report required by the rules of the U.S. Securities and Exchange Commission (the "SEC") to be included in Vivani's annual proxy statement.

In discharging its oversight role, the Committee encourages free and open communication among the Committee, Vivani's independent registered public accounting firm, and management, and is empowered to investigate any matter brought to its attention with all requisite access to all books, records, facilities and personnel of Vivani and to Vivani's independent registered public accounting firm and outside legal counsel. The Committee has the power to retain separate outside counsel, all auditors or other experts or advisors, different from Vivani's regular outside counsel, independent registered public accounting firm and other experts and advisors, and will receive adequate funding from Vivani to engage such counsel, auditors, experts and advisors. The Committee shall have the sole authority to retain, compensate, terminate, and oversee Vivani's independent registered public accounting firm and the independent registered public accounting firm is ultimately



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accountable to the Committee. In addition to the powers and responsibilities expressly delegated to the Committee in this Charter, the Committee may exercise any other powers and carry out any other responsibilities delegated to it by the Board from time to time consistent with Vivani's Bylaws and applicable laws and regulations.

Management is responsible for preparing Vivani's financial statements and for their accuracy and for maintaining effective internal control over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act. Vivani's independent registered public accounting firm is responsible for auditing those financial statements and the effectiveness of internal control over financial reporting. While the Committee has certain authority and oversight responsibilities under this Charter, it is not the responsibility of the Committee to plan or conduct audits. In the absence of their possession of a reason to believe that such reliance is unwarranted, the members of the Committee necessarily rely without independent verification on the information or documentation provided to them by, and on the representations made by, Vivani's management or other employees of Vivani, Vivani's independent registered public accounting firm, and/or any consultant or professional retained by the Committee, the Board, management or by any Board committee. Accordingly, the Committee's oversight does not provide an independent basis to determine that management has maintained appropriate accounting and financial reporting principles, or appropriate internal controls and disclosure controls and procedures designed to assure compliance with accounting standards and applicable laws and regulations. Furthermore, the Committee's authority and oversight responsibilities do not assure that the audits of Vivani's financial statements have been carried out in accordance with the standards of the Public Accounting Oversight Board (United States) ("PCAOB"), that the financial statements are presented in accordance with U.S. generally accepted accounting principles, or that Vivani's independent registered public accounting firm is in fact "independent."

II. COMMITTEE MEMBERSHIP

The Committee shall consist of not less than three members of the Board, each of whom shall be "independent" in accordance with applicable SEC rules, Nasdaq Capital Market listing requirements and Vivani's Corporate Governance Guidelines, subject to any exceptions contained in any of the foregoing. To that end Committee members shall not receive any compensation from Vivani except for service as directors or committee members. All members shall meet the financial literacy requirements of the Nasdaq Capital Market and at least one member shall be an "audit committee financial expert" as such term is defined in applicable SEC rules. No member shall have participated in the preparation of the financial statements of Vivani or a subsidiary of Vivani at any time during the past three years.

The members of the Committee shall be elected by the Board annually and shall continue to be members until their successors are elected and qualified or until their earlier retirement,



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resignation, or removal. Any member may be removed, with or without cause, by the Board at any time.

The Board may appoint one member to serve as Chair of the Committee, to convene and chair all regular and special sessions of the Committee, to set agendas for Committee meetings, to determine and communicate to management and the full Board the information needs of the Committee, and to report Committee determinations and actions on behalf of the Committee to the full Board. If the Board fails to appoint a Chair of the Committee, the members of the Committee shall annually elect a Chair by majority vote of the full Committee to serve at the pleasure of the majority of the full Committee. The Chair of the Committee shall generally not serve as Chair for more than six consecutive years.

III. COMMITTEE MEETINGS

The Committee shall meet as often as may be deemed necessary or appropriate, generally at least four times annually, or more frequently as circumstances dictate. The Committee may ask members of management or others to attend meetings and provide pertinent information as necessary. As part of its role to foster free and open communication and to discharge its oversight role, the Committee should meet at least quarterly with management and Vivani's independent registered public accounting firm and periodically in separate executive sessions with only the independent registered public accounting firm and Committee members present, or with only management and Committee members present, or with only Committee members present, to discuss any matters that the Committee believes should be discussed privately. Notwithstanding the foregoing, the Committee may also exclude from its meetings any person it deems appropriate, including but not limited to, any non-management director who is not a member of the Committee.

IV. KEY RESPONSIBILITIES

The Committee's role is one of oversight. Vivani's management is responsible for preparing Vivani's financial statements and Vivani's independent registered public accounting firm is responsible for auditing those financial statements. Additionally, the Committee recognizes that financial management, as well as Vivani's independent registered public accounting firm, have more time, knowledge and more detailed information concerning Vivani than do Committee members; consequently, in carrying out its oversight responsibilities, the Committee is not providing any expert or special assurance as to Vivani's financial statements or any professional certification as to work of Vivani's independent registered public accounting firm. Further, auditing literature, particularly Statement of Auditing Standards No. 100, defines the term "review" to include a particular set of required procedures to be undertaken by independent auditors. The members of the Committee are not independent auditors, and the term "review" as applied to the Committee in this Charter



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is not intended to have that meaning and should not be interpreted to suggest that the Committee members can or should follow the procedures required of auditors performing reviews of financial statements.

The following functions and responsibilities are set forth as a guide with the understanding that the Committee may diverge from this guide as appropriate given the circumstances. The Committee, in carrying out its responsibilities, believes its policies and procedures should remain flexible to best react to changing conditions and circumstances, and that the Committee should take appropriate actions to set the overall corporate "tone" for quality financial reporting, sound business risk practices and ethical behavior.

To fulfill its purpose the Committee shall:

1. Have the direct responsibility for the appointment, engagement, evaluation, compensation, retention, and oversight of the work of Vivani's independent registered public accounting firm and, where appropriate, the dismissal of Vivani's independent registered public accounting firm. Vivani's independent registered public accounting firm shall report directly to the Committee, and Committee's responsibility includes the resolution of disagreements between management and the independent registered public accounting firm regarding financial reporting.
2. Report its findings regularly to the Board, including any issues that arise with respect to the quality or integrity of Vivani's financial statements, Vivani's compliance with legal or regulatory requirements, and the performance and independence of Vivani's independent registered public accounting firm.
3. Consider and pre-approve all audit and non-audit services provided by Vivani's independent registered public accounting firm. All non-audit services permitted pursuant to law to be provided by the independent registered public accounting firm must be considered and pre-approved by the Committee and such approvals must be disclosed in Vivani's Annual Report on Form 10-K. The Committee may delegate the authority to grant pre-approvals to one or more members of the Committee, whose decisions must be presented to the full Committee at or prior to its scheduled meetings.
4. Consider and review with Vivani's independent registered public accounting firm and management: (i) the adequacy and effectiveness of Vivani's disclosure controls and procedures, and internal control over financial reporting; (ii) all significant deficiencies in the design or operation of Vivani's internal control over financial reporting that could adversely affect Vivani's ability to record, process,



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summarize and report financial data; (iii) any improper action, whether or not material, that involves management or other employees who have a significant role in Vivani's internal control over financial reporting; (iv) the adequacy and effectiveness of those portions of Vivani's Code of Ethics and Corporate Conduct that relate to the integrity of Vivani's financial reporting; and (v) the related findings and recommendations of Vivani's independent registered public accounting firm together with management's responses.

5. Consider and review with management, the Chief Financial Officer (the "CFO") and/or the Controller, and Vivani's independent registered public accounting firm: (i) significant findings during the year, including the status of previous audit recommendations; (ii) any audit problems or difficulties encountered in the course of audit work including any restrictions on the scope of activities or access to required information; (iii) any changes required in the planned scope of the audit plan; (iv) the overall scope and plans for the audit (including the audit budget and the adequacy of compensation and staffing); and (v) the coordination of audit efforts to monitor completeness of coverage, reduction of redundant efforts, and the effective use of audit resources.
6. Inquire of management, the CFO and/or the Controller, and Vivani's independent registered public accounting firm, about significant risks or exposures and assess the steps management has taken to minimize such risks. Oversee Vivani's enterprise risk management system and discuss with management, the CFO and/or the Controller, and Vivani's independent registered public accounting firm Vivani's systems and policies with respect to risk monitoring, assessment, and management.
7. Establish and maintain procedures for the receipt, retention and treatment of complaints received by Vivani regarding accounting, internal accounting controls or auditing matters, and the confidential, anonymous submissions by employees of concerns regarding questionable accounting or auditing matters
8. Inquire about Vivani's independent registered public accounting firm's view of the accounting treatment related to significant new transactions or other significant matters or events not in the ordinary course of business.
9. Review periodically with Vivani's management and General Counsel (if any) any legal and regulatory matters that may have a material impact on Vivani's financial statement compliance policies and programs.



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10. Review periodically with senior management the provisions of Vivani's Code of Ethics and Corporate Conduct bearing on the integrity of financial reporting and Vivani's policies and procedures with regard to trading by Vivani personnel in securities of Vivani and use in trading of proprietary or confidential information, including any waivers provided under such codes and policies since the last review.
11. Review and discuss with management and Vivani's independent registered public accounting firm the accounting policies and estimates that may be viewed as critical, and review and discuss any significant changes in the accounting policies of Vivani and any accounting and financial reporting proposals that may have a significant impact on Vivani's financial reports. Inquire about Vivani's independent registered public accounting firm's views of management's choices among alternative accounting principles and the quality, not just the acceptability, of Vivani's accounting principles as applied in its financial reporting.
12. Review and discuss with management and the independent registered public accounting firm any material off-balance sheet transactions, arrangements, obligations (including contingent obligations) and other relationships of Vivani with entities of which the Committee is made aware whose accounts are not consolidated in the financial statements of Vivani and that may have a material current or future effect on Vivani's financial condition, results of operations, liquidity, capital expenditures, capital resources or significant components of revenues or expenses.
13. Prior to any public disclosure thereof, review and discuss (or otherwise have the opportunity to comment on) earnings press releases, as well as financial information and earnings guidance provided to analysts.
14. Review with the independent registered public accounting firm; (i) all of its significant findings during the year, including the status of previous audit recommendations; (ii) any significant unadjusted audit differences; and (iii) any "management" or "internal control" letter issued by the independent registered public accounting firm to Vivani; and (iv) any other significant reports issued by the independent registered public accounting firm to Vivani.
15. Review and discuss with management and the independent registered public accounting firm any matters that are required to be communicated to the Committee under applicable auditing standards.



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16. Review and discuss Vivani's financial statements, and, as part of that review; (i) review with management and the independent registered public accounting firm, prior to public release, (A) Vivani's annual and quarterly financial statements to be filed with the SEC, (B) Vivani's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations," (C) any certifications regarding the financial statements or Vivani's internal accounting and financial controls and procedures and disclosure controls or procedures by Vivani's Chief Executive Officer or CFO that will be filed with or furnished to the SEC; (ii) with respect to the independent registered public accounting firm's annual audit report and certification, before release of the annual audited financial statements, meet separately with the independent registered public accounting firm without any management member present and discuss the adequacy of Vivani's system of internal control over financial reporting and the appropriateness of the accounting principles used in and the judgments made in the preparation of Vivani's audited financial statements and the quality of Vivani's financial reports; and (iii) make a recommendation to the Board regarding the inclusion of the audited annual financial statements in Vivani's Annual Report on Form 10-K to be filed with the SEC.
17. Periodically obtain and review a report by Vivani's independent registered public accounting firm describing: (i) the firm's internal quality-control procedures; (ii) any material issues raised by the most recent internal quality control review, or peer review, of the firm, or by any inquiry, investigation or inspection by governmental or professional authorities, within the preceding five years, regarding one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (iii) all relationships between Vivani and its independent registered public accounting firm (to be set out in the formal written statement described in Item 18 below).
18. Prior to engaging an independent registered public accounting firm and on an annual basis thereafter, request from Vivani's independent registered public accounting firm a formal written statement delineating all relationships between the independent registered public accounting firm and Vivani, consistent with the rules of the PCAOB. The Committee shall actively engage in a dialogue with Vivani's management and the independent registered public accounting firm with respect to any disclosed relationships or services that may impact the objectivity and independence of the independent registered public accounting firm from management and Vivani and take appropriate action in response to the independent registered public accounting firm's report to satisfy itself of the independent registered public accounting firm's objectivity and independence. On an annual basis, the Committee shall also; (i) confirm with the independent



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registered public accounting firm that such firm is in compliance with the partner rotation requirements established by the SEC; (ii) consider whether, in the interest of assuring continuing independence of Vivani's independent registered public accounting firm, Vivani should regularly rotate its independent registered public accounting firm; (iii) set clear policies for Vivani's hiring of employees or former employees of Vivani's independent registered public accounting firm; and (iv) if applicable, consider whether the independent registered public accounting firm's provision of any permitted non-audit services to Vivani is compatible with maintaining the independence of such firm.

19. Prepare a report to be included in Vivani's annual proxy statement meeting the requirements of applicable SEC rules.
20. Review with the Chief Financial Officer and approve the annual internal audit plan and any changes thereto; review each significant audit finding and management responses thereto; review and oversee the adequacy and effectiveness of the internal audit department; and review the performance evaluation and replacement (if necessary) of the head of internal audit.
21. Review with the Corporate Compliance Officer each significant open compliance matter and Vivani's actions with respect thereto.
22. Conduct an annual self-evaluation of the performance of the Committee and its members, including its and their effectiveness and the Committee's compliance with its Charter.
23. Review and reassess, at least annually, the adequacy of this Charter and submit any recommended changes to the Board for its consideration.
24. The Committee shall review Vivani's policies and procedures for reviewing and approving or ratifying "related person transactions" (defined as transactions required to be disclosed pursuant to Item 404 of Regulation S-K of the Exchange Act) and recommend any changes to the Board. In accordance with applicable Nasdaq Rules, the Committee shall review all "related person transactions" on an ongoing basis, and all such transactions must be approved by the Committee.



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