

EMPERY DIGITAL INC.

CHARTER OF THE AUDIT COMMITTEE

MEMBERSHIP

The Audit Committee (the “**Committee**”) of the Board of Directors (the “**Board**”) of Empery Digital Inc. (the “**Company**”) shall consist of three or more directors. Each member of the Committee shall be independent in accordance with the requirements of Rule 10A-3 of the Securities Exchange Act of 1934, as amended, the rules of the Nasdaq Stock Market (“**Nasdaq**”), and the rules and regulations of the Securities and Exchange Commission (the “**SEC**”). No member of the Committee can have participated in the preparation of the Company’s or any of its subsidiaries’ financial statements at any time during the past three years.

Each member of the Committee must be able to read and understand fundamental financial statements, including the Company’s balance sheet, income statement and cash flow statement, and must have a working familiarity with basic finance and accounting practices. In addition, at least one member of the Committee must have past employment experience in finance or accounting, requisite professional certification in accounting or other comparable experience or background that results in the individual’s financial sophistication, including being or having been a chief executive officer, chief financial officer or senior officer with financial oversight responsibilities. Additionally, at least one member of the Committee must be an “audit committee financial expert” as defined under the rules and regulations of the SEC. A person who satisfies this definition of audit committee financial expert will also be presumed to have financial sophistication.

The members of the Committee shall be appointed by the Board based on recommendations from the nominating and corporate governance committee of the Board. The members of the Committee shall serve for such term or terms as the Board may determine or until earlier resignation or death. The Board may remove any member from the Committee at any time with or without cause.

PURPOSE

The primary purpose of the Committee is to oversee the quality and integrity of the Company’s accounting and financial reporting processes and the audit of the Company’s financial statements. To fulfill its obligation, the Committee relies on:

- management for the preparation and accuracy of the Company’s financial statements;

- management for establishing effective internal controls and procedures to ensure the Company's compliance with accounting standards, financial reporting procedures and applicable laws and regulations;
- management for establishing an effective anti-fraud program; and
- the Company's independent auditors for an unbiased, diligent audit or review, as applicable, of the Company's financial statements.

DUTIES AND RESPONSIBILITIES

The following responsibilities and duties represent the common recurring activities of the Committee in fulfilling the purposes of the Committee set forth in this Charter. The Committee may undertake additional responsibilities and establish additional policies and procedures as may be appropriate from time to time to respond to changing business, legislative, regulatory, legal or other conditions. The Committee also will carry out any other responsibilities and duties delegated by the Board to the Committee.

Oversight of Independent Auditors.

1. To (a) select and retain an independent registered public accounting firm to act as the Company's independent auditors for the purpose of auditing the Company's annual financial statements, books, records, and accounts, (b) set the compensation of the Company's independent auditors, (c) oversee the work done by the Company's independent auditors (including resolutions of disagreements between management and the Company's independent auditor regarding financial reporting), (d) terminate the Company's independent auditors, if necessary, and (e) perform an annual evaluation of the performance of the independent auditors. The independent auditors shall report directly to the Committee.
2. To select, retain, compensate, oversee and terminate, if necessary, any other registered public accounting firm engaged for the purpose of preparing or issuing a report on the Company's internal controls, or perform other audit, review or attest services for the Company.
3. To pre-approve all audit and permitted non-audit and tax services that may be provided by the Company's independent auditors, and to establish such policies and procedures as the Committee deems necessary for the Committee's pre-approval of permitted services by the Company's independent auditors.
4. At least annually, to obtain and review a formal written statement by the Company's independent auditors that describes all relationships between the firm and the Company or any of its subsidiaries, consistent with Independence Standards Board Standard 1; and to actively engage in a dialogue with the

independent auditors with respect to any disclosed relationships or services that may impact the objectivity and independence of the independent auditors.

5. To assure the required rotation of the lead audit partner at the Company's independent auditors.
6. To review and discuss with the Company's independent auditors (a) all critical accounting policies and practices used by the Company; (b) all alternative treatments of financial information within generally accepted accounting principles ("GAAP") that have been discussed with management, the ramifications of the use of such alternative treatments and the treatment preferred by the independent auditors; and (c) other material written communications between the independent auditors and management.
7. To review and discuss with the Company's independent auditors any other matters required to be discussed by *PCAOB Auditing Standards No. 16, Communications with Audit Committees*.
8. At least annually, to obtain and review a report from the independent auditor describing the independent auditor's internal quality-control and material issues raised by any internal or external reviews of such procedures.
9. Request that the independent auditor inform the Committee of material issues on which the national office of the independent auditor was consulted by the Company's audit team.
10. Set clear policies for the Company's hiring of employees or former employees of the independent auditor.
11. Make inquiries to seek to assure that controls and approvals are in place to prevent the Company from engaging the independent auditor in any services that might undermine its independence.
12. Obtain from the independent auditor assurance that no fraud or illegal activity involving the Company has come to its attention and, to the extent applicable, the reporting obligations under Section 10A(b) of the Exchange Act (which imposes duties on independent auditors regarding illegal acts) has not been implicated.

Financial Statements, Earnings Releases and Guidance.

1. To review and discuss with the Company's independent auditors and management the Company's annual audited financial statements (including the related notes), the form of audit opinion to be issued by the auditors on the financial statements and the disclosure under "Management's Discussion and Analysis of Financial Condition and Results of Operations" to be included in the Company's annual report on Form 10-K before the Form 10-K is filed.

2. To recommend to the Board that the audited financial statements be included in the Company's Form 10-K and to produce the audit committee report required to be included in the Company's proxy statement. To review and discuss with the Company's independent auditors and management the Company's quarterly financial statements and the disclosure under "Management's Discussion and Analysis of Financial Condition and Results of Operations" to be included in the Company's quarterly report on Form 10-Q before the Form 10-Q is filed.
3. To review and discuss communications from the independent auditors, including with regard to (i) significant accounting policies; (ii) critical accounting policies and practices; (iii) critical accounting estimates; (iv) critical audit matters; (v) significant unusual transactions, (vi) new accounting pronouncements; (vii) alternative disclosure and accounting treatments permissible under GAAP for policies and practices related to material items that have been discussed with management, including ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the independent auditor; (viii) difficulties encountered in the course of the audit of the Company's financial statements, including any restrictions on the scope of activities or access to requested information, and management's response to the difficulties or problems; (ix) related party transactions; and (x) other material written communications between the independent auditor and management, including management letters or schedules of unadjusted differences.
4. To review and discuss (i) analyses prepared by management or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GAAP methods on the financial statements; (ii) the effect of regulatory and accounting initiatives, as well as the impact of off-balance sheet structures on the financial statements of the Company; and (iii) any use of artificial intelligence or other emerging technology in the Company's financial reporting process and any impacts of such use on the Company's financial reporting or internal controls.
5. To review and discuss with management the Company's earnings press releases and earnings guidance, including the type of information to be included and its presentation and the use of any pro forma or adjusted non-GAAP information, before their release to the public.
6. To review and discuss with management management's use of non-GAAP measures and metrics and, in particular, how these measures and metrics are

used to evaluate performance, whether they are consistently prepared and presented and the Company's related disclosure controls and procedures.

7. To discuss with management and the independent auditor any correspondence with regulators or governmental agencies and any published reports that raise material issues regarding, or call into question the integrity of, the Company's financial statements or accounting policies.

Controls and Procedures.

1. To review disclosures about any significant deficiencies or material weaknesses in the design or operation of internal controls and any fraud involving management or employees playing a significant role in the Company's internal controls, including, to the extent applicable, any disclosures made during the Company's chief executive officer and chief financial officer certification process in connection with the Company's Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q.
2. The Committee will review and discuss with management any internal audit staff or other personnel responsible for any internal audit function and the independent auditor the adequacy of the Company's internal controls, any special steps or remedial measures adopted in light of material control weaknesses or significant deficiencies and, to the extent applicable, the Company's internal controls report and the independent auditor's internal controls report prior to the filing of any Annual Report on Form 10-K or any Quarterly Report on Form 10-Q required to be filed by the Company with the SEC.
3. To establish and oversee procedures for: (a) the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls or auditing matters, (b) the confidential, anonymous submission by Company employees of concerns regarding questionable accounting or auditing matters; and (c) to establish such procedures as the Committee may deem appropriate for the receipt, retention and treatment of complaints received by the Company with respect to any other matters that may be directed to the Committee for review and assessment.
4. To review, approve and oversee any transaction between the Company and any related person (as defined in Item 404 of Regulation S-K).
5. To review and assess the Company's financial risk management process, including the adequacy of the company's overall financial control environment and controls in selected areas representing significant financial risk.

6. To oversee the implementation and administration of the Company's ethics and compliance functions, including compliance with the Company's Code of Ethics and other procedures established by the Company regarding ethical behavior, avoidance of conflicts of interest, and other related matters.
7. To review and oversee all related party transactions for potential conflicts of interest in accordance with the Company's Related Party Transactions Policy, including to the extent such transactions are required to be disclosed in any public filings made by the Company pursuant to Item 404 of Regulation S-K.
8. To review and discuss with management and any internal auditor (or other service provider responsible for any internal audit function) the Company's procedures and practices designed to provide reasonable assurance that: (i) the Company's books, records, accounts, and internal accounting controls are established and maintained in compliance with the Foreign Corrupt Practices Act of 1977 and similar laws and regulations to which the Company is subject, and (ii) the Company maintains adequate company-level controls to prevent or detect (A) any improper or illegal disbursement of corporate funds or property of value or (B) the making of any arrangement on behalf of the Company that may provide for or result in the improper or illegal disbursement of funds or property of value, in order that the Company be in compliance with such laws and regulations.
9. At least annually, to review and approve decisions by the Company and any of its subsidiaries to enter into (a) interest rate swaps or security-based swaps (together referred to as "swaps") transactions, as defined by the Dodd-Frank Wall Street Reform and Consumer Protection Act and subsequent regulations (the "Dodd-Frank Act"), including decisions to enter into swaps transactions that are exempt from the mandatory execution and clearing requirements under the Dodd-Frank Act (b) hedging transactions, (c) interest rate cap transactions or (d) fixed term debt transactions, or any amendments to the foregoing.

Matters Relating to Internal Auditors, Risk Assessment and Risk Management.

1. To the extent the Committee deems necessary or appropriate, with respect to any internal audit function established by the Company, the Committee will: (a) review the appointment and replacement of the senior internal auditing employee and discuss with the independent auditor and management the internal audit department responsibilities, budget and staffing and any recommended changes in the planned scope of the internal audit; (b) receive periodic reports on the scope and results of work performed by the internal audit function; and (c) review

the significant reports to management prepared by the internal auditing department and management's responses.

2. To oversee the Company's policies, procedures and practices with respect to risk assessment and management and to discuss with management the Company's material risks, including financial risks and risks related to information security, cyber security and data privacy and protection, any relevant major legislative and regulatory developments reasonably likely to materially impact or result in such risks and the steps management has taken to monitor, assess, control and report those risks.
3. To review and discuss with management and any other internal officers (including any internal auditors) or external advisors as it deems appropriate, with respect to the integrity of the Company's information technology systems, processes and data, and related risks, (i) the Company's cyber and technology-related risks, including with respect to network security, information security, data privacy and protection, and the development, deployment, or use of artificial intelligence; (ii) the Company's technologies, policies, processes, and practices for assessing, monitoring, managing, and mitigating those risks; (iii) the steps management has taken to identify, assess, monitor, manage, and mitigate those risks; (iv) the adequacy of security for the Company's information technology systems, processes, and data and the Company's practices for assessing the adequacy of security for the information technology systems, processes, and data of the Company's vendors or third party service providers, (v) the adequacy of controls and procedures for identifying and reporting material cyber security incidents, (vi) the Company's contingency plans and incident response and recovery plans in the event of a breakdown or security breach affecting the Company's information technology systems, processes, and data or the information technology systems, processes, and data of the Company's vendors or third party service providers, (vii) any specific cybersecurity issues that are reasonably likely to adversely affect the adequacy of the Company's internal controls, and (viii) the cybersecurity, cyber-resiliency, and technology aspects of the Company's business continuity and disaster recovery capabilities and contingency plans.
4. The Committee will perform such other functions as may be required by applicable laws, rules and regulations and the Company's certificate of incorporation or bylaws, or by the Board, and will report regularly to the Board.

OUTSIDE ADVISORS

The Committee shall have the authority, in its sole discretion, to retain and obtain the advice and assistance of independent outside legal counsel and such other advisors as it deems necessary to fulfill its duties and responsibilities under this Charter. The Committee shall set the compensation and oversee the work of any outside legal counsel and other advisors.

The Committee shall receive appropriate funding from the Company, as determined by the Committee in its capacity as a committee of the Board, for the payment of compensation to the Company's independent auditors, any other accounting firm engaged to perform services for the Company, any outside legal counsel and any other advisors to the Committee.

STRUCTURE AND OPERATIONS

The Board shall designate a member of the Committee as the chairperson (the "Chairperson"). The Chairperson has authority to prepare agendas for Committee meetings, presides over Committee meetings, determines subcommittee assignments, and reports to the Board on the Committee's behalf, as well as to designate another member of the Committee to perform such functions in the Chairperson's absence. In the event the Chairperson is not present at a meeting and has not designated another member of the Committee to perform such functions in their absence, the Committee members present at that meeting shall designate one of its members as the acting chair of such meeting.

The Committee shall meet no less than four times annually and more frequently as circumstances require. At least quarterly, the meetings of the Committee shall include an executive session of the Committee, absent members of management, and an executive session with the independent auditors. The Committee shall report regularly to the Board regarding its actions and make recommendations to the Board as appropriate. The Committee is governed by the same rules regarding meetings (including meetings in person or by telephone or other similar communications equipment), action without meetings, notice, waiver of notice, and quorum and voting requirements as are applicable to the Board.

The Chairperson and others on the Committee shall, to the extent appropriate, have contact throughout the year with senior management, other committee chairpersons, and other key Committee advisors, external and internal auditors, etc., as applicable, to strengthen the Committee's knowledge of relevant current and prospective business issues.

The Committee shall review this Charter at least annually and recommend any proposed changes to the Board for approval.

DELEGATION OF AUTHORITY

The Committee shall have the authority to delegate any of its responsibilities, along with the authority to take action in relation to such responsibilities, to one or more subcommittees as the Committee may deem appropriate in its sole discretion. The Chairperson may represent the entire Committee, as a subcommittee, with respect to functions of the Committee undertaken between meetings. Any actions of a subcommittee shall be presented to the full Committee at its next scheduled meeting.

PERFORMANCE EVALUATION

The Committee shall conduct an annual evaluation of the performance of its duties under this Charter and shall present the results of the evaluation to the Board. The Committee shall conduct this evaluation in such manner as it deems appropriate.