



## ARCHIPELAGO HOLDINGS, INC.

### AUDIT COMMITTEE CHARTER

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#### **Committee Membership**

*Composition of Committee:* The Audit Committee (“Committee”) of the Board of Directors (“Board”) of Archipelago Holdings, Inc. (“Company”) is a standing committee of the Board. Initially, the Committee shall be comprised of at least two directors who shall serve until the first scheduled meeting of the Board held after the Company’s initial public offering (“Initial Meeting”). At the Initial Meeting, the composition of the Committee shall be increased to at least three directors, and thereafter, the Committee shall continue to be comprised of at least three directors. The Board shall set the total number of members of the Committee, in its discretion.

*Appointment of Members:* The members of the Committee initially shall be appointed by the Board, and thereafter shall be elected annually by resolution of the Board at its first meeting following the annual meeting of the Company’s stockholders, or as soon as practicable thereafter as determined by the Board in its discretion. At such Board meetings, prospective members of the Committee shall be recommended to the Board by the Company’s Corporate Governance and Nominating Committee. Each member of the Committee shall serve at the pleasure of the Board and for such term or terms as the Board may determine. The members of the Committee may be removed or replaced by the Board in its discretion at any time.

Committee members may resign from the Committee by giving notice to the Board. A Committee member may resign Committee membership without resigning from the Board, but a member shall automatically cease to be a member of the Committee upon either ceasing to be a member of the Board or, after the Initial Meeting, ceasing to be “independent” as defined under the applicable rules and regulations of the Governing Standards (as defined below). The Board shall designate one member of the Committee as the chairperson of the Committee (“Chair”).

*Member Qualifications:* After the Initial Meeting, each member of the Committee shall meet the applicable requirements relating to audit committee members under the rules and regulations of the Pacific Exchange (“PCX”), Securities and Exchange Commission (“SEC”) and Sarbanes-Oxley Act of 2002 (collectively, “Governing Standards”), and each member of the Committee shall be “independent” and “financially literate” as defined by the rules of PCX.

*Required Board Determinations:* At the Initial Meeting and thereafter, the Board must make determinations that each member of the Committee meets the applicable “independence” and “financial literacy” requirements of each Governing Standard as interpreted by the Board in its business judgment. After the Initial Meeting and as required by the applicable Governing Standards, the Board also must make determinations whether: (i) there is at least one member of the Committee that has “accounting or related financial management expertise”; and (ii) any member of the Committee is an “audit committee financial expert”, in each case, as defined by such Governing Standards and interpreted by the Board in its business judgment. If at any time

the Board determines that a member of the Committee is an “audit committee financial expert”, it may presume that such member also has “accounting or related financial management expertise.”

### **Committee Meetings, Structure and Operations**

The Committee shall meet at least once every fiscal quarter (or more frequently if deemed necessary or desirable by the Chair or Board), to discuss with management the Company’s annual audited financial statements and quarterly financial statements, as applicable. The Committee should separately meet at least once a year (or more frequently if deemed necessary or desirable by the Chair or Board) with management, the head of the Company’s internal auditing department or function and the independent auditors, to discuss any matters that the Committee or any of these persons or firms believe should be discussed privately.

Any background materials, together with an agenda, should be distributed to the Committee members in advance of each Committee meeting. All meetings of the Committee shall be held pursuant to the By-laws of the Company with regard to notice and waiver thereof, and written minutes of each meeting (in the form approved at a subsequent meeting) shall be filed in the Company records. The Committee shall report regularly to the Board. The Committee may request any officer or employee of the Company or the Company’s outside counsel or independent auditors to attend a meeting of the Committee or to meet with any members of, or consultants to, the Committee. Members of the Committee may participate in a meeting of the Committee by means of conference call or similar communications equipment by means of which all persons participating in the meeting can hear each other. At any Committee meeting, in the event of a tie vote on any issue, the Chair’s vote shall decide the issue.

### **Purposes**

The primary purposes of the Committee are to:

1. assist Board oversight of the: (i) integrity of the Company’s financial statements; (ii) Company’s compliance with legal and regulatory requirements; (iii) independent auditors’ qualifications and independence, and (iv) performance of the Company’s internal audit function and independent auditors; and
2. prepare an audit committee report or other disclosures (including any recommendation of the Committee) as required by the SEC for inclusion in the Company’s annual proxy statement or annual report.

In fulfilling the foregoing purposes, it is recognized that the members of the Committee are not full-time employees of the Company and they are not (and do not represent themselves to be) performing the functions of auditors or accountants. The primary function of the Committee is oversight. Furthermore, the members of the Committee are under no duty to: (i) plan or conduct audits; or (ii) determine that the Company’s financial statements and disclosures are complete and accurate and are in accordance with generally accepted accounting principles (“GAAP”) and applicable rules and regulations.

## **Auditor’s Statement and Auditor’s Fee Report**

Immediately following the completion of each fiscal year, the Company’s independent auditors shall submit to the Committee (and the Committee shall request from the independent auditor), as soon as possible, a formal written statement (the “Auditors’ Statement”) describing: (i) the auditors’ internal quality-control procedures; (ii) any material issues raised by the most recent internal quality-control review or peer review of the auditors, 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 auditors, and any steps taken to deal with any such issues; and (iii) all relationships between the independent auditors and the Company, including at least the matters set forth in Independence Standards Board No. 1, in order to assess the auditors’ independence.

Immediately following the completion of each fiscal year, the independent auditors also shall submit to the Committee (and the Committee shall request from the independent auditor), a formal written statement of the fees billed by the Independent Auditor to the Company in each of the last two fiscal years (“Fee Report”) for each of the following categories of services rendered by the independent auditors: (i) the audit of the Company’s annual financial statements and the reviews of the financial statements included in the Company’s Quarterly Reports on Form 10-Q or services that are normally provided by the independent auditors in connection with statutory and regulatory filings or engagements; (ii) assurance and related services not included in clause (i) that are reasonably related to the performance of the audit or review of the Company’s financial statements, in the aggregate and by each service; (iii) tax compliance, tax advice and tax planning services, in the aggregate and by each service; and (iv) all other products and services rendered by the independent auditors, in the aggregate and by each service.

## **Authority, Duties and Responsibilities**

The Committee shall have the sole authority, duty and responsibility to appoint and/or replace the Company’s independent auditor and such auditors shall report directly to the Committee. The Committee shall be responsible for the compensation, retention, oversight and, where appropriate, termination of the independent auditors (including resolution of disagreements between management and the independent auditors regarding financial reporting) as well as any other registered public accounting firm engaged for the purpose of preparing or issuing an audit report or to perform audit, review or attestation services to the Company (which such firm shall also report directly to the Committee).

In addition, the Committee also shall have the duties and responsibilities listed below.

1. With respect to the Company’s engagement of its independent auditors, the Committee shall have the duty and responsibility to:
  - (i) pre-approve, and adopt appropriate procedures to pre-approve, all audit, audit-related (including internal control-related), tax and permitted non-audit services (including the specific terms thereof such as engagement fees) to be performed for the Company by its independent auditors (subject to the de minimis exception for non-audit services described in Section 10A(i)(1)(B) of the Securities Exchange

Act of 1934 (“Exchange Act”) which are approved by the Committee prior to the completion of the audit);

- (ii) review and discuss with the independent auditors any relationships or services disclosed in the Auditor’s Statement or Fee Report that may impact the quality of audit services or the objectivity and independence of the Company’s independent auditors; and
  - (iii) review and evaluate: (a) the qualifications, performance and independence of the lead partner of the independent auditors; (b) the timing and process for implementing the rotation of the lead audit partner, concurring partner and any other active audit engagement team partner; and (c) whether there should be a regular rotation of the audit firm itself.
2. With respect to the Company’s internal auditing department or persons performing that function, the Committee shall have the duty and responsibility to:
- (i) consult with management before the appointment, termination or replacement of the head of the Company’s internal auditing department or persons performing that function;
  - (ii) request, review and discuss summaries of and, as appropriate, the reports to management prepared by the Company’s internal auditing department or persons performing that function (including management’s responses thereto); and
  - (iii) review, at least annually, the responsibilities, policies, budget and staffing of the Company’s internal audit department or persons performing that function.
3. With respect to the Company’s accounting principles and policies, financial reporting and internal control over financial reporting, the Committee shall have the duty and responsibility to:
- (i) review and discuss the annual audited financial statements and quarterly financial statements with management and the independent auditor, including the company’s disclosure under “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in the Company’s SEC filings and annual reports to stockholders, if applicable;
  - (ii) review and discuss any reports or communications (and management’s and/or the internal audit department’s responses thereto) submitted to the Committee by the independent auditors required by or referred to in SAS 61 (as codified by AU Section 380);
  - (iii) meet with management, the independent auditors and where appropriate, the head of the Company’s internal auditing department or persons performing that function to:

- review and discuss: (a) the scope of the annual audit; and (b) any significant matters arising from the audit, including any audit problems or difficulties (whether raised by management, the internal auditing department or the independent auditors), relating to the Company's financial statements, such as any restrictions on the independent auditors, their activities or access to requested information or any significant disagreements between the independent auditors and management;
  - review and discuss: (a) any accounting adjustments that were noted or proposed by the independent auditor but were "passed" (as immaterial or otherwise) by management; (b) any communications between the audit team and their national office respecting auditing or accounting issues presented by the engagement; and (c) any "management" or "internal control" letter issued, or proposed to be issued, by the independent auditors to the Company; and
  - review and discuss, as appropriate: (a) any major issues regarding accounting principles and financial statement presentations, including any significant changes in the Company's selection or application of accounting principles; (b) major issues as to the adequacy of the Company's internal controls and any special audit steps adopted in light of material control deficiencies; (c) analyses prepared by management and/or the independent auditors 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; and (d) the effect of regulatory and accounting initiatives, as well as off-balance sheet structures (if any), on the financial statements of the Company.
- (iv) inquire of the Company's chief executive officer and chief financial officer as to the existence of any: (a) "significant deficiencies" or "material weaknesses" in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; and/or (b) fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting;
- (v) discuss guidelines and policies governing the process by which senior management of the Company and the relevant departments of the Company assess and manage the Company's exposure to risk, and to discuss the Company's major financial risk exposures and the steps management has taken to monitor and control such exposures;
- (vi) obtain (and review) from the independent auditors: (a) the report to the Committee required to be provided pursuant to Section 10A(k) of the Exchange Act; and (b) assurances that the audit was conducted in a manner consistent with Section 10A of the Exchange Act;

- (vii) discuss with the Company's General Counsel: (a) any significant legal, compliance or regulatory matters that may have a material effect on the financial statements or the Company's business (including material notices to or inquiries received from governmental agencies); (b) any reports made under the Company's procedures for complaints regarding questionable auditing matters; and (c) any reports made by any attorney concerning a potential "material violation" regarding the Company pursuant to the SEC attorney professional responsibility rules (17 C.F.R. Part 205) or otherwise;
- (viii) review and discuss: (a) the type and presentation of information included in earnings press releases (paying particular attention to any use of "pro forma," or "adjusted" non-GAAP, information); and (b) the types of financial information and earnings guidance provided (if any), and the types of presentations made, to analysts and rating agencies; and
- (ix) establish: (a) procedures for the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls or auditing matters; (b) for the confidential, anonymous submission by Company employees of concerns regarding questionable accounting, internal accounting controls or auditing matters; and (c) hiring policies for employees or former employees of the independent auditors.

### **Delegation to Subcommittee**

The Committee may, in its discretion, delegate all or a portion of its duties and responsibilities to a subcommittee of the Committee consisting of one or more members of the Committee. The Committee may, in its discretion, delegate to one or more of its members the authority to pre-approve any audit or non-audit services to be performed by the independent auditors, provided that any such approvals are presented to the Committee at its next meeting.

### **Performance Evaluation**

The Committee shall prepare and review with the Board an annual performance evaluation of the Committee, which evaluation shall compare the performance of the Committee with the requirements of this Charter. The performance evaluation shall also recommend to the Board any improvements to the Committee's Charter deemed necessary or desirable by the Committee. The performance evaluation by the Committee shall be conducted in such manner as the Committee deems appropriate. The report to the Board may take the form of an oral report by the Chair or any other member of the Committee designated by the Committee to make the report.

### **Resources and Authority of the Committee**

The Committee shall have the resources and authority appropriate or necessary to discharge its duties and responsibilities, including the authority to select, retain, terminate, and approve the fees and other retention terms of special or independent counsel, accountants or other experts and advisors, as it deems necessary or appropriate, without seeking approval of the Board or management.

The Committee's responsibility is one of oversight. It is the responsibility of the Company's management to conduct its business in accordance with applicable laws and regulations. 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 he or she receives information, and the accuracy of the information provided to the Committee by such persons or organizations.

The Company shall provide for appropriate funding, as determined by the Committee, in its capacity as a committee of the Board, for payment of:

1. Compensation to the independent auditors and any other public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the Company;
2. Compensation of any advisers employed by the Committee; and
3. Ordinary administrative expenses of the Committee that are necessary or appropriate in carrying out its duties.

#### **Conflicts of Interest**

From time to time and as it deems necessary, the Committee may conduct a review of all related party transactions on an ongoing basis in order to identify potential conflict of interest situations.