

# **NOMINATING AND CORPORATE GOVERNANCE COMMITTEE CHARTER OF ACHAOPEN, INC.**

**(Adopted on January 30, 2014 and amended on June 5 2018)**

This Nominating and Corporate Governance Committee Charter (this “Charter”) was adopted (as amended) by the Board of Directors (the “Board”) of Achaopen, Inc., a Delaware corporation (the “Company”), on June 5, 2018. The purpose of the Nominating and Corporate Governance Committee (the “Committee”) is (i) to oversee and review the composition of the Board and committees in order to provide the necessary oversight for the Company; and (ii) to review and oversee the implementation of corporate governance policies, codes, and compliance programs relating to the Board and Company, other than financial compliance (including auditing, disclosure, and accounting), and information technology and cybersecurity, which shall continue to be the responsibility of the Audit Committee.

## **I. Membership**

The Committee shall be composed of two (2) or more directors, as determined by the Board, each of whom (a) satisfies the independence requirements of The Nasdaq Stock Market LLC (“NASDAQ”) and (b) has experience, in the business judgment of the Board, that would be helpful in addressing the matters delegated to the Committee.

The members of the Committee, including the chairperson (the “Chair”) of the Committee, shall be appointed by the Board. Committee members may be removed from the Committee, with or without cause, by the Board. Any action duly taken by the Committee shall be valid and effective, whether or not the members of the Committee at the time of such action are later determined not to have satisfied the requirements for membership provided herein.

## **II. Meetings and Procedures**

The Chair (or in his or her absence, a member designated by the Chair) shall preside at each meeting of the Committee and set the agendas for Committee meetings. The Committee shall have the authority to establish its own rules and procedures for notice and conduct of its meetings so long as they are not inconsistent with any provisions of the Company’s bylaws that are applicable to the Committee.

The Committee shall meet at least two (2) times per year and more frequently as required. Meetings of the Committee may be called by the Chair upon notice given at least twenty-four (24) hours prior to the meeting, or upon such shorter notice as shall be approved by the Committee. The Chair shall designate a secretary for each meeting who shall record minutes of all formal actions of the Committee. A majority of the Committee members shall constitute a quorum. A majority of the members present shall decide any questions brought before the Committee, except to the extent otherwise required by the Company’s certificate of incorporation or bylaws (each as in effect from time to time). Notwithstanding the foregoing, in the event the Committee consists of only two (2) members, both members must be present, in person or by phone, to constitute a quorum, and any questions brought before the Committee must be decided by unanimous vote. Unless otherwise restricted by the Company’s bylaws, any action required or permitted to be taken at any meeting of the Committee may be taken without a meeting if all members of the Committee consent thereto in writing (including by electronic transmission), and such writing (including any electronic transmission) is filed with the minutes of the Committee.

The Committee may, at its discretion, include in its meetings members of the Company's management, Board, or any other person whose presence the Committee believes to be desirable and appropriate. Notwithstanding the foregoing, the Committee may exclude from its meetings any person with a personal interest in the matters under discussion.

The Committee may retain any independent counsel or advisors that the Committee believes to be desirable and appropriate. The Committee may also use the services of the Company's regular legal counsel or advisors to the Company. The Company shall provide for appropriate funding, as determined by the Committee, for payment of compensation and expenses related to any such persons employed by the Committee. The Committee shall have the authority to retain and terminate any search firm to be used to identify director candidates, including the authority to approve such search firm's fees and other retention terms.

The Committee shall keep regular minutes of any meetings where actions are taken (unless such actions are taken and reported to the Committee's satisfaction in the minutes of the Board meetings). Any such minutes kept by the Committee shall be distributed to each member of the Committee. The Secretary of the Company shall maintain the original signed minutes for filing with the corporate records of the Company. The Committee shall report to the Board regarding its activities at appropriate times and as otherwise requested by the Chairperson of the Board.

### **III. Duties and Responsibilities**

#### **1. Identification, Nomination, Evaluation and Termination of Directors**

- a. The Committee shall identify and evaluate individuals qualified to serve on the Board consistent with criteria approved by the Board as vacancies arise and to seek out nominees to enhance the diversity, expertise and independence of the Board;
- b. The Committee shall develop and recommend to the Board a policy regarding the consideration of director candidates recommended by the Company's security holders and procedures for submission by security holders of director nominee recommendations.
- c. Whether as result of Board expansion or director resignation, the Committee shall recommend to the Board for selection the director nominees to be voted upon either by the Board or at the next annual meeting of stockholders of the Company (for service until their term expires).
- d. For purposes of (a), (b) and (c) above, the Committee may consider the following criteria, among others deemed appropriate, in recommending candidates for election to the Board:
  - (i) diversity of personal and professional background, perspective and experience;
  - (ii) personal and professional integrity, judgment, ethics and values;
  - (iii) experience in corporate management, operations or finance, such as serving as an officer or former officer of a publicly held company, and a general understanding of marketing, finance and other elements relevant to the success of a publicly-traded company in today's business environment;

- (iv) experience relevant to the Company's industry and with relevant social policy concerns;
  - (v) experience as a board member or executive officer of another publicly held company;
  - (vi) relevant academic expertise or other proficiency in an area of the Company's operations; and
  - (vii) any other relevant qualifications, attributes or skills.
- e. The Committee shall, at least annually, review the performance of the Board and shall consider the results of such evaluation when determining whether or not to recommend the nomination of such director for an additional term.
  - f. In appropriate circumstances, the Committee, in its discretion, shall consider and may recommend the removal of a director, and recommend to the Board appropriate action to be taken with respect to the removal.
  - g. The Committee shall review all resignations tendered by directors and recommend to the Board the action, if any, to be taken with respect to the resignation.

## **2. Corporate Governance and Compliance Oversight**

- a. The Committee shall, on a regular basis, review and recommend revisions to the Board regarding corporate governance matters, including, but not limited to, the Company's Corporate Governance Guidelines, certificate of incorporation, bylaws, this Charter and the charters of the Board's other committees.
- b. The Committee shall review and assess the composition of the various committees of the Board and recommend, for approval by the Board, the assignment and rotation of Board members to such committees.
- c. The Committee shall review the leadership structure of the Board and provide the Board with any recommendations for changes in such leadership structure.
- d. The Committee shall on a regular basis perform an evaluation of the performance of the Committee and its members, including a review of the Committee's compliance with this Charter.
- e. The Committee shall review and assess the Company's Code of Conduct;
- f. The Committee shall oversee and evaluate the Company's compliance program (other than financial, information technology and cybersecurity compliance), including reviewing the status and effectiveness with respect to certain legal and regulatory requirements and Company policies and codes.

- g. The Committee shall periodically engage with management, including but not limited to the Chief Compliance Officer and General Counsel, to review the Company efforts to support compliance;
- h. The Committee shall monitor risks related to non-financial, non-compensation and non-information technology/cybersecurity related risks, including but not limited to product development, manufacturing, product promotion and commercialization, human resources, environmental, social and governance matters.
- i. The Committee shall cause the Company to implement, maintain and monitor an ethics and compliance helpline designed to receive anonymous reports of any known or suspected violations of the Company's Code of Business Conduct and Ethics or any applicable laws and regulations. The Committee shall investigate any reports received through the helpline and report to the Board periodically with respect to the information received through the helpline and any related investigations.

### **3. Other Duties**

- a. The Committee shall recommend guidelines to the Board for corporate succession planning for the Company's Chief Executive Officer;
- b. The Committee shall, when required, oversee necessary aspects of related party transactions;
- c. The Committee shall coordinate onboarding and training of the directors as required by the SEC and the listing requirements of the NASDAQ and as otherwise appropriate;
- d. The Committee shall consider, and when appropriate, establish policies to facilitate, stockholder proposals and communications with the Board;
- e. In addition to the powers and responsibilities delegated 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 the Company's bylaws. The powers and responsibilities delegated by the Board to the Committee in this Charter or otherwise shall be exercised and carried out by the Committee as it deems appropriate without requirement of Board approval, and any decision made by the Committee (including any decision to exercise or refrain from exercising any of the powers delegated to the Committee hereunder) shall be at the Committee's sole discretion. While acting within the scope of the powers and responsibilities delegated to it, the Committee shall have and may exercise all the powers and authority of the Board. To the fullest extent permitted by law, the Committee shall have the power to determine which matters are within the scope of the powers and responsibilities delegated to it.

### **IV. Delegation of Duties**

In fulfilling its responsibilities, the Committee shall be entitled to delegate any or all of its responsibilities to a subcommittee of the Committee, to the extent consistent with the Company's

certificate of incorporation, bylaws, Corporate Governance Guidelines and applicable laws, regulations and NASDAQ rules.