

CAPNIA, INC.

AUDIT COMMITTEE CHARTER

Adopted June 27, 2014 and effective as of
the closing of the Company's initial public offering

PURPOSE

The purpose of the Audit Committee of the Board of Directors (the "**Board**") of Capnia, Inc. (the "**Company**") shall be to:

- Provide oversight of the Company's accounting and financial reporting processes and the audit of the Company's financial statements;
- Assist the Board in oversight of (i) the integrity of the Company's financial statements, (ii) the Company's compliance with legal and regulatory requirements, (iii) the independent auditor's qualifications, independence and performance, and (iv) the Company's internal accounting and financial controls; and
- Provide to the Board such information and materials as it may deem necessary to make the Board aware of significant financial matters that require the attention of the Board.

In furtherance of these purposes, the Audit Committee will undertake those specific duties and responsibilities listed below, and such other duties as the Board may from time to time prescribe.

The Audit Committee's responsibility is one of oversight. The members of the Audit Committee are not employees of the Company, and they do not perform, or represent that they perform, the functions of management or the independent auditors. The Audit Committee relies on the expertise and knowledge of management and the independent registered accounting firm in carrying out its oversight responsibilities. The management of the Company is responsible for preparing accurate and complete financial statements in accordance with U.S. generally accepted accounting principles, establishing and maintaining appropriate accounting principles and financial reporting policies, and for satisfactory internal control over financial reporting. The independent registered accounting firm is responsible for auditing the Company's annual consolidated financial statements and the effectiveness of the Company's internal control over financial reporting, and for reviewing the Company's quarterly financial statements. It is not the responsibility of the Audit Committee to prepare or certify the Company's financial statements, nor to guarantee the audits or reports of the independent auditors, nor is it the duty of the Audit Committee to certify that the independent auditor is "independent" under applicable rules. These are the fundamental responsibilities of management and the independent auditors.

MEMBERSHIP

The Audit Committee members shall be appointed by, and shall serve at the discretion of, the Board. The Audit Committee shall consist of at least three members of the Board. The Board may designate one member of the Audit Committee as its chair. The Audit Committee may form and delegate authority to subcommittees when appropriate. Members of the Audit Committee must meet the following criteria (as well as any criteria

required by the SEC); *provided, however*, that the Company may avail itself of any phase-in rules applicable to newly-listed companies in connection with an initial public offering:

- Each member will be an independent director in accordance with (i) the audit committee requirements of the NASDAQ Stock Market, Inc. Marketplace Rules (the “**NASDAQ Rules**”) or the rules of the New York Stock Exchange (the “**NYSE Rules**”), as applicable, and (ii) the rules of the SEC;
- Each member will be able to read and understand fundamental financial statements, in accordance with the Audit Committee requirements of the NASDAQ Rules or the NYSE Rules;
- At least one member will have past employment experience in finance or accounting, requisite professional certification in accounting, or other comparable experience or background, including a current or past position as a principal financial officer or other senior officer with financial oversight responsibilities; and
- At least one member will be an “audit committee financial expert” as defined in the rules of the SEC.

RESPONSIBILITIES AND DUTIES

The responsibilities and duties of the Audit Committee may include (and shall include if required by applicable law, rule or regulation) the following:

Review Procedures

- Reviewing the reports of management and the independent auditors concerning the design, implementation and maintenance of the Company’s internal controls and procedures for financial reporting, including meeting periodically with the Company’s management and the independent auditors to review their assessment of the adequacy of such controls and to review before release the disclosure regarding such system of internal controls required under SEC rules to be contained in the Company’s periodic filings and the attestations or reports by the independent auditors relating to such disclosure;
- Reviewing and providing oversight of the external audit by (i) reviewing the independent auditors’ proposed audit scope and approach and approving the engagement letter with the independent auditors; (ii) discussing with the Company’s independent auditors the financial statements and audit findings, including any significant adjustments, management judgments and accounting estimates, significant new accounting policies, disagreements with management and any other required communications described in applicable accounting standards; (iii) reviewing with the independent auditors the Company’s critical accounting policies and practices, alternative treatments of financial information within generally accepted accounting principles that have been discussed with management and the treatment recommended by the independent auditors, and other material written communications between the independent auditors and management; and (iv) reviewing reports submitted to the Audit Committee by the independent auditors in accordance with applicable SEC requirements;
- Reviewing and discussing with management and the independent auditors the annual audited financial statements and quarterly unaudited financial statements, including the Company’s disclosures under “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” prior to filing the Company’s Annual Report on Form 10-K and Quarterly Reports on Form 10-Q, respectively, with the SEC;

- Approving the audited financial statements for inclusion in the Company's Annual Report on Form 10-K, in accordance with the rules and regulations of the SEC;
- Directing the Company's independent auditors to review before filing with the SEC, the Company's interim financial statements included in Quarterly Reports on Form 10-Q, using professional standards and procedures appropriate for conducting such reviews;
- Conducting a post-audit review of the financial statements and audit findings, including any suggestions for improvements provided to management by the independent auditors, and management's response to such suggestions;
- Reviewing with the independent auditor any audit problems or difficulties the independent auditor encountered in the course of audit work (e.g., restrictions on the scope of the independent auditor's activities or access to requested information and any significant disagreements with management) and the management's response;
- Reviewing, prior to announcement, Company press releases and other disclosures containing financial information for the purpose of ensuring that such press releases and other disclosures properly disclose financial information presented in accordance with GAAP and, to the extent non-GAAP information is included, adequately disclose how such non-GAAP information differs from the comparable GAAP information and ensure that disclosure of such non-GAAP information is not given undue prominence and that such non-GAAP information does not provide a misleading presentation of the Company's results of operations or financial condition;
- Providing oversight and review at least annually of the Company's risk management policies, including its investment policies, regulatory compliance procedures, and insurance coverages;
- Reviewing and approving in advance any proposed related party transactions;
- Reviewing, in conjunction with counsel, any legal matters that could have a significant impact on the Company's financial statements;
- Reviewing its own charter and processes on an annual basis; and
- Engaging in an annual assessment of the Audit Committee's performance.

Independent Auditors

- Having sole authority over appointing, compensating and overseeing the work of the independent auditors (including resolving disagreements between management and the independent auditors regarding financial reporting) who shall report directly to the Audit Committee for the purpose of preparing or issuing an audit report or related work;
- Reviewing the independence of the outside auditors, including (i) obtaining on a periodic basis a written statement from the independent auditors regarding relationships and services with the Company that may impact independence, as defined by applicable standards and SEC requirements, and discussing with the independent auditors their independence, (ii) presenting this statement to the Board, and (iii) to the extent there are relationships, monitoring and investigating them;

- Receiving and reviewing annually a report by the independent auditor describing the firm's internal quality-control procedures, any material issues raised by the most recent internal quality-control review, peer review, or PCAOB review, of the independent auditing firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five (5) years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and any other required reports from the independent registered public accounting firm;
- Reviewing and evaluating the lead partner of the independent auditor team and ensuring the rotation of the lead audit partner as required by law;
- Pre-approving audit and permissible non-audit services provided to the Company by the independent auditors, except where pre-approval is not required because such non-audit services are de minimis under the rules of the SEC, in which case subsequent approval may be obtained. The Audit Committee may delegate to one or more designated members of the Audit Committee the authority to pre-approve audit and permissible non-audit services, provided such pre-approval decision is presented to the full Audit Committee at its scheduled meetings; and
- Setting hiring policies for employees or former employees of the independent auditors.

Regulatory Compliance and Other Matters

- Overseeing compliance with the requirements of the SEC for disclosure of auditor's services and audit committee members, member qualifications and activities;
- If deemed appropriate by the Audit Committee, instituting special investigations with full access to all books, records, facilities and personnel of the Company;
- Discussing with management and the independent auditors the effect of regulatory and accounting initiatives as well as any off-balance sheet transactions and structures on the Company's financial statements;
- Reviewing management's monitoring of compliance with the Foreign Corrupt Practices Act;
- Providing a report for inclusion in the Company's proxy statement in accordance with the rules and regulations of the SEC; and
- Establishing procedures for receiving, retaining and treating complaints received by the Company regarding accounting, internal accounting controls or auditing matters and procedures for the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters.

MEETINGS

The Audit Committee will meet no less than four times per year. The Audit Committee may meet either in person or telephonically, and at such times and places as the Audit Committee determines. The Audit Committee may establish its own meeting schedule, which it shall provide to the Board. The Audit Committee may invite to its meetings other Board members, Company management and such other persons as the Audit Committee deems appropriate in order to carry out its responsibilities.

The Audit Committee shall meet separately with the Chief Executive Officer and separately with the Chief Financial Officer of the Company at such times as it deems appropriate to review the financial affairs of the Company. The Audit Committee will meet separately with the independent auditors of the Company, at such times as it deems appropriate, but not less than quarterly.

MINUTES

The Audit Committee will maintain written minutes of its meetings, which minutes will be filed with the minutes of the meetings of the Board.

REPORTS

The Audit Committee shall make regular reports to the full Board on the actions and recommendations of the Audit Committee.

COMPENSATION

Members of the Audit Committee shall receive such fees, if any, for their service as Audit Committee members as may be determined by the Board in its sole discretion.

Members of the Audit Committee may not receive any compensation from the Company except the fees that they receive for service as a member of the Board or any committee thereof.

COMMITTEE ACCESS, RESOURCES, RELIANCE ON INFORMATION AND OTHERS

The Audit Committee is at all times authorized to have direct, independent and confidential access to the Company's other directors, executive officers, management and personnel to carry out the Audit Committee's purposes. The Audit Committee is authorized to obtain at the Company's expense data, advice, consultation and documentation as the Audit Committee considers appropriate and to retain at the Company's expense consultants, independent counsel or other advisers selected by the Audit Committee to advise or assist the Audit Committee in the performance of any of the responsibilities and duties set forth above, or for any other matter related to the Committee's purposes.

In discharging his or her responsibilities, a member of the Committee is entitled to rely in good faith on reports or other information provided by the Company's management, its independent auditors, and other persons as to matters the member reasonably believes to be within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company.

Nothing in this Charter is intended to preclude or impair the protection provided under the Delaware General Corporation Law for good faith reliance by members of the Committee on reports, advice or other information provided by others (including reports, advice or other information provided by the Company's management, legal counsel or independent auditors, or independent professional advisers or consultants retained by the Committee).

These policies and procedures are not intended to create inflexible requirements, and are not intended to interpret applicable laws and regulations, or to modify the Company's articles of incorporation or its bylaws.