

**GENESEE & WYOMING INC.**

**AUDIT COMMITTEE OF THE BOARD OF DIRECTORS**

**CHARTER**

**I. PURPOSE**

The Audit Committee (the “Committee”) shall:

- A. Provide assistance to the Board of Directors in fulfilling its responsibility to the shareholders, potential shareholders and investment community with respect to its oversight of:
  - (i) the quality and integrity of the corporation’s financial statements;
  - (ii) the corporation’s compliance with legal and regulatory requirements;
  - (iii) the independent auditor’s qualifications and independence; and
  - (iv) the performance of the corporation’s internal audit function and independent auditors.
- B. Prepare the audit committee report that the Securities and Exchange Commission (the “SEC”) requires be included in the corporation’s annual proxy statement.

**II. STRUCTURE AND OPERATIONS**

Independence Requirement

The Committee shall be comprised of three or more members of the Board of Directors, each of whom is determined by the Board of Directors to be “independent” under the rules of the New York Stock Exchange, Inc. and the rules of the SEC implementing Section 301 of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”).

Financial Literacy & Expertise Requirement

All members of the Committee shall have a working familiarity with basic finance and accounting practices (or acquire such familiarity within a reasonable period after his or her appointment) and at least one member must be an “audit committee financial expert” as defined by the SEC and as required by the New York Stock Exchange.

Limitation on Memberships of other Audit Committees

No member of the Committee may serve on the audit committee of more than three public companies, including the corporation, unless the Board of Directors determines that such simultaneous service would not impair the ability of such member to effectively serve on the Committee and the corporation’s annual proxy statement discloses such determination.

### Limitation on Other Compensation

No member of the Committee shall receive compensation from the corporation or its affiliates other than (i) director's fees for service as a director of the corporation or an affiliate, but only to the extent the directorship on the affiliate's board of directors and related compensation has been approved by the corporation's board of directors and (ii) a pension or similar compensation for past performance, provided that such compensation is fixed and is not contingent on continued or future service to the corporation.

### Appointment and Removal

The members of the Committee shall be appointed by the Board of Directors and shall serve until such member's successor is duly elected and qualified or until such member's earlier resignation or removal. The members of the Committee may be removed, with or without cause, by a majority vote of the Board of Directors.

### Chairman

Unless a Chairman is elected by the full Board of Directors, the members of the Committee shall designate a Chairman by the majority vote of the full Committee membership. The Chairman will chair all regular sessions of the Committee and set the agendas for Committee meetings.

### Subcommittees

The Committee may form subcommittees for any purpose that the Committee deems appropriate and may delegate to such subcommittees such power and authority as the Committee deems appropriate; provided, however, that (i) no subcommittee will consist of fewer than two members and (ii) no subcommittee will hold any power or authority required by any law, regulation or listing standards to be exercised by the Committee as a whole.

## III. MEETINGS

The Committee shall meet at least quarterly, or more frequently as circumstances dictate. As part of its goal to foster open communication, the Committee shall periodically meet separately with each of the following:

- (i) management;
- (ii) the person or persons responsible for the internal audit function for the corporation, which may include someone who is not an employee of the corporation but is performing such function on behalf of the corporation (the "Internal Audit Group"); and
- (iii) the independent auditors;

in each case, to discuss any matters that the Committee or any of these groups believe would be appropriate to discuss privately. In addition, the Committee should meet with the independent auditors and management quarterly to review the corporation's financial statements in a manner consistent with that outlined in Section IV of this Charter.

At all meetings of the Committee, a majority of the members shall constitute a quorum for the transaction of business and the act of a majority of Committee members at any meeting at which there is a quorum shall be an act of the Committee. Any matter that is put to a vote which results in a tie shall be decided by a vote of the full Board of Directors. The Chairman of the Board of Directors or any member of the Committee may call meetings of the Committee. All meetings of the Committee may be held telephonically. All non-management directors who are not members of the Committee may attend meetings of the Committee but may not vote. Additionally, the Committee may invite to its meetings, or communicate with, any director, officer or employee of the corporation and such other persons as it deems appropriate in order to carry out its responsibilities. The Committee may also exclude from its meetings any persons it deems appropriate in order to carry out its responsibilities.

#### IV. RESPONSIBILITIES AND DUTIES

##### Overview

The following functions shall be the common recurring activities of the Committee in carrying out its responsibilities outlined in Section I of this Charter. These functions should serve as a guide with the understanding that the Committee may carry out additional functions and adopt additional policies and procedures as may be appropriate in light of changing business, legislative, regulatory, legal or other conditions. The Committee shall also carry out any other responsibilities and duties delegated to it by the Board of Directors from time to time related to the purposes of the Committee outlined in Section I of this Charter.

##### Review of Financial and Other Information

1. Review with management and the independent auditors prior to public dissemination the corporation's annual audited financial statements and quarterly financial statements, including the corporation's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations," any comments or recommendations of the independent auditor, any reports of the independent auditor with respect to interim financial reviews as required by Statement on Auditing Standards 100 (any and all references to "Statements of Auditing Standards" or "Independent Standards Board" in this Charter shall include any amendments or supplements to such applicable standards).
2. Discuss with the independent auditors the matters required to be discussed by Statement of Auditing Standards No. 61 and Statement of Auditing Standards No. 90 and the written disclosures required by the Independent Standards Board Standard No.1.
3. Review and discuss with management prior to dissemination: (i) the corporation's earnings press releases (paying particular attention to the use of any "pro forma" or "adjusted" non-GAAP measures) and (ii) financial information and earnings guidance provided to analysts and rating agencies. The Committee's discussion in this regard may be general in nature (*i.e.*, discussion of the types of information to be disclosed and the type of presentation to be made).
4. Perform any functions required to be performed by it or otherwise appropriate under applicable law, rules or regulations, the corporation's by-laws and the

resolutions or other directives of the Board of Directors, including review of any certification required to be reviewed in accordance with applicable law or regulations of the SEC.

#### Independent Auditors

5. Directly appoint, retain, review and terminate independent auditors and approve all audit engagement fees and terms.
6. Inform the corporation's independent auditors that such auditing firm shall report directly to the Committee.
7. Review, at least annually, the qualifications, performance and independence of the independent auditors. In conducting its review and evaluation, the Committee should:
  - (i) obtain and review a report by the corporation's independent auditors describing:
    - (a) the auditing firm's internal quality-control procedures;
    - (b) any material issues raised by the most recent internal quality-control review, or peer review, of the auditing firm, 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 auditing firm, and any steps taken to deal with any such issues; and
    - (c) all relationships between the independent auditors and the corporation in order to assess the auditors' independence.
  - (ii) ensure the timely rotation of the lead and concurring audit partners and other "audit partners", in each case to the extent required by the rules promulgated by the SEC, and consider whether there should be regular rotation of the audit firm itself.
  - (iii) confirm with the independent auditor that the audit partners do not earn or receive any compensation based on selling engagements to the corporation to provide any services, other than audit, review or attest services, to the extent such compensation would compromise the independence of accountant or auditor under the rules promulgated by the SEC.
  - (iv) take into account the opinions of management and the Internal Audit Group.
8. Oversee the work of the corporation's independent auditors, including the resolution of any disagreement between management and the auditors regarding financial reporting, for the purpose of preparing or issuing an audit report or related work.

## Pre-Approval of Auditor Engagements

9. Approve in advance any audit or non-audit engagement or relationship between the corporation and the independent auditors, other than “prohibited non-auditing services,” as determined from time to time by the SEC, the Public Company Accounting Oversight Board or the New York Stock Exchange through regulation or listing requirements.

The Committee may:

- (i) pre-approve audit and non-audit services based on policies and procedures adopted by the Committee, provided: (a) the policies and procedures are detailed as to the particular service, (b) the Committee is informed of each service on a timely basis, (c) such policies and procedures do not include delegation of the Committee’s responsibilities to management and (d) such policies and procedures are disclosed in the corporation’s annual reports; and/or
- (ii) delegate to one or more of its members the authority to approve in advance all audit or non-audit services to be provided by the independent auditors so long as decisions made by such member are presented to the full Committee at the immediately subsequent scheduled meeting.

Notwithstanding the foregoing, pre-approval is not necessary for minor non-audit services if:

- (i) the aggregate amount of all such non-audit services provided to the corporation constitutes not more than five percent of the total amount of revenues paid by the corporation to its auditors during the fiscal year in which the non-audit services are provided;
- (ii) such services were not recognized by the corporation at the time of the engagement to be non-audit services; and
- (iii) such services are promptly brought to the attention of the Committee and approved prior to the completion of the audit by the Committee or by one or more members of the Committee who are members of the Board of Directors to whom authority to grant such approvals has been delegated by the Committee.

## Financial Reporting Process

10. In consultation with the independent auditors, management and the Internal Auditor Group, review the integrity of the corporation’s financial reporting processes, both internal and external. In that connection, the Committee shall, prior to the filing by the corporation of its annual report and at such other times that the Committee deems appropriate, obtain and discuss with management and the independent auditors reports from management and the independent auditors regarding:

- (i) all critical accounting policies and practices to be used by the corporation;
  - (ii) 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 all alternative treatments of financial information within generally accepted accounting principles related to material items that have been discussed with the corporation's management, the ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the independent auditors;
  - (iii) major issues regarding accounting principles and financial statement presentations, including any significant changes in the corporation's selection or application of accounting principles;
  - (iv) major issues as to the adequacy of the corporation's internal controls and any specific audit steps adopted in light of material control deficiencies; and
  - (v) any other material written communications between the independent auditors and the corporation's management.
11. Review periodically the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the corporation.
12. Review with the independent auditors any audit problems or other difficulties encountered by the auditors in the course of the audit process, including any restrictions on the scope of the independent auditors' activities or on access to requested information, and any significant disagreements with management and management's responses to such matters. Without excluding other possibilities, the Committee may wish to review with the independent auditors:
- (i) any accounting adjustments that were noted or proposed by the auditor but were "passed" (as immaterial or otherwise),
  - (ii) any communications between the audit team and the audit firm's national office respecting auditing or accounting issues presented by the engagement and
  - (iii) any "management" or "internal control" letter issued, or proposed to be issued, by the independent auditors to the corporation.
13. Review and discuss with the independent auditor the responsibilities, budget and staffing of the corporation's Internal Audit Group.
14. Review and discuss with management and the independent auditors the policies and procedures in place to ensure the quality and integrity of the financial statements of the corporation's unconsolidated subsidiaries and investments that are accounted for under the equity method of accounting are properly reflected and accounted for in the corporation's financial statements.

## General

15. Review with management, the independent auditors and the persons responsible for the corporation's Internal Audit Group, the areas of material risk to the operations and financial results of the corporation, such as safety of operations, environmental regulations, major pending litigation, matters pertaining to financing costs, tax issues, any other major financial risks and exposures and the corporation's guidelines and policies with respect to risk assessment and risk management.
16. Set clear hiring policies for employees and former employees of the independent auditors. At a minimum, these policies must prohibit:
  - (i) the hiring of members of the corporation's audit engagement team in a position at the corporation which would cause the auditing firm to no longer qualify as independent under the rules promulgated by the SEC; and
  - (ii) the hiring of any employee or former employee:
    - (a) of the corporation's independent auditor without the prior approval of the Committee; or
    - (b) any firm providing the corporation with internal auditing services without the prior approval of the Committee.
17. Establish procedures for the receipt, retention and treatment of complaints received by the corporation regarding accounting, internal accounting controls, or auditing matters; and the confidential, anonymous submission by employees of the corporation of concerns regarding questionable accounting or auditing matters.

## Preparation of Reports

18. Prepare all Audit Committee reports required to be included in the corporation's proxy statement, pursuant to and in accordance with applicable rules and regulations of the SEC.
19. Report to the Board of Directors:
  - (i) with respect to any issues that arise with respect to the quality or integrity of the corporation's financial statements, the corporation's compliance with legal or regulatory requirements, the performance and independence of the corporation's independent auditors or the performance of the Internal Audit Group;
  - (ii) with respect to such other matters as are relevant to the Committee's discharge of its responsibilities; and
  - (iii) with respect to such recommendations as the Committee may deem appropriate.

The report to the Board of Directors may be written or take the form of an oral report by the Chairman or any other member of the Committee designated by the Committee to make such report.

20. Maintain minutes or other records of meetings and activities of the Committee.

#### Outside Advisors and Funding

The Committee, in discharging its oversight role, is empowered to study or investigate any matter of interest or concern that the Committee deems appropriate. In this regard, the Committee shall have the authority to retain outside legal, accounting or other advisors as it reasonably deems necessary to carry out its duties, including the authority to approve the fees payable to such advisors and any other terms of retention. The Committee shall be provided with funds necessary to engage outside advisors and to fund its ordinary administrative expenses that are necessary or appropriate to carry out its duties, in each case, as determined by the Committee in its sole discretion.

#### Access

The Committee, in discharging its oversight role, shall be given full access to all of the following:

- (i) all persons included in the Internal Audit Group;
- (ii) the Board of Directors;
- (iii) all employees of the corporation; and
- (iv) the Independent auditors;

in each case, as necessary, to carry out these responsibilities.

#### V. ANNUAL PERFORMANCE EVALUATION

The Committee shall perform a review and evaluation, at least annually, of the performance of the Committee and its members, including by reviewing the compliance of the Committee with this Charter. In addition, the Committee shall review and reassess, at least annually, the adequacy of this Charter and recommend to the Board of Directors any improvements to this Charter that the Committee considers necessary or valuable. The Committee shall conduct such evaluations and reviews in such manner as it deems appropriate.

#### VI. LIMITATION OF RESPONSIBILITY

The management of the corporation is responsible for the preparation, presentation and integrity of the corporation's financial statements. Management is responsible for maintaining appropriate accounting and financial reporting principles and policies and internal controls and procedures designed to assure compliance with accounting standards and applicable laws and regulations. The independent auditors are responsible for planning and carrying out a proper audit and reviews, including reviews of the corporation's annual financial statements, reviews of the quarterly financial statements prior to the filing of each quarterly report on Form 10-Q, and other procedures.



In fulfilling their responsibilities hereunder, it is recognized that the members of the Committee are not employees of the corporation and are not, and do not represent themselves to be, accountants or auditors by profession or experts in the fields of accounting or auditing, including in respect of auditor independence. Therefore, it is not the duty or responsibility of the Committee to conduct “field work” or other types of auditing or accounting reviews or procedures or to set audit or independence standards, and each member of the Committee shall be entitled to reply on

- (i) the integrity and skill of those persons and organizations within and outside the corporation from which it receives information ; and
- (ii) the accuracy of the financial and other information provided by such persons or organizations absent actual knowledge to the contrary (which shall be promptly reported to the Board of Directors).