

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 31, 2020

GI DYNAMICS, INC.  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation)

000-55195  
(Commission  
File Number)

84-1621425  
(IRS Employer  
Identification No.)

320 Congress Street  
Boston, MA 02210  
(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: (781) 357-3300

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act: None.

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

Effective as of December 31, 2020 (the “Effective Date”), (i) GI Dynamics, Inc. (the “Company”) and Charles Carter, the Company’s Chief Financial Officer, Treasurer and Secretary, mutually agreed to terminate Mr. Carter’s employment with the Company under the terms of his Offer Letter Agreement, dated as of September 19, 2019 (the “Offer Letter”), and (ii) the Company engaged Mr. Carter for his continued services as a consultant. Mr. Carter will continue to serve in the capacity of Chief Financial Officer, Treasurer and Secretary until his successor is duly appointed and qualified in accordance with the Company’s bylaws or his earlier resignation, removal or death.

In connection with the transition of Mr. Carter’s engagement with the Company, from an employee to a consultant, the parties entered into a Consulting Agreement and a Retention Bonus Agreement, each of which is described below.

***Consulting Agreement***

Effective as of the Effective Date, the Company entered into a Consulting Agreement (the “Consulting Agreement”) with Mr. Carter, pursuant to which Mr. Carter agreed to provide certain consulting services (the “Services”) to the Company, including the services Mr. Carter was providing to the Company as its employee. The Company will pay Mr. Carter \$250 per hour as consideration for the Services.

The Consulting Agreement has an initial term that runs through March 31, 2021, and may be extended upon mutual written agreement of the parties. The Company may, at any time and upon written notice to Mr. Carter, immediately terminate the Consulting Agreement: (i) for “Cause” (as defined in the Consulting Agreement), (ii) upon Mr. Carter’s death or (iii) following Mr. Carter’s failure to perform the Services due to illness, accident or any other physical or mental incapacity. Mr. Carter may, at any time and upon written notice to the Company, immediately terminate the Consulting Agreement: (i) if he is asked to perform services that are significantly different from the services he performed during his employment with the Company or (ii) for the Company’s non-payment of any invoiced amount due to Mr. Carter within thirty days of the Company’s receipt of such invoice.

The foregoing description of the Consulting Agreement does not purport to be complete a description of the rights and obligations of the parties thereunder and is qualified in its entirety by reference to the Consulting Agreement, a copy of which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

***Retention Bonus Agreement***

Effective as of the Effective Date, the Company also entered into a Retention Bonus Agreement (the “Retention Agreement”) with Mr. Carter, which sets forth certain terms and conditions of Mr. Carter’s engagement with the Company as a consultant under the Consulting Agreement.

Pursuant to the terms and conditions of the Retention Agreement, Mr. Carter will receive a one-time cash bonus of \$208,685 (the “Retention Bonus”), subject to tax withholding under applicable law, which will be paid within seven days following the Effective Date. The Retention Bonus is in lieu of any other severance benefits that Mr. Carter may be eligible to receive under Section 7 of the Offer Letter.

The Retention Bonus is subject to forfeiture if the Consulting Agreement is terminated prior to March 31, 2021 (the “Retention Date”) and the basis for such termination is (i) for “Cause” (as defined in the Retention Agreement) by the Company or (ii) for any reason by Mr. Carter that does not constitute “Good Reason” (as defined in the Retention Agreement). Accordingly, in the event the Consulting Agreement is terminated prior to the Retention Date by the Company for Cause or by Mr. Carter for any reason other than Good Reason, then Mr. Carter will be required to repay all or a portion of the Retention Bonus pursuant to the following schedule: (i) termination prior to January 31, 2021: 3/3 of the Retention Bonus to be repaid (i.e., \$208,685.00); (ii) termination between February 1, 2021 and February 28, 2021: 2/3 of the Retention Bonus to be repaid (i.e., \$139,123.33); (iii) termination between March 1, 2021 and March 31, 2021: 1/3 of the Retention Bonus to be repaid (i.e., \$69,561.66); and (iv) termination after March 31, 2020: 0/3 of the Retention Bonus to be repaid (i.e., \$0.00). Any such amounts due to be repaid will be paid by Mr. Carter to the Company within ten days following termination of the Consulting Agreement, as described above.

The foregoing description of the Retention Agreement does not purport to be a complete description of the rights and obligations of the parties thereunder and is qualified in its entirety by reference to the Retention Agreement, a copy of which is attached hereto as Exhibit 10.2 and is incorporated herein by reference.

#### Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<b>Exhibit No.</b>	<b>Description</b>
10.1+	<a href="#"><u>Consulting Agreement, effective as of December 31, 2020, between GI Dynamics, Inc. and Charles Carter.</u></a>
10.2+	<a href="#"><u>Retention Bonus Agreement, effective as of December 31, 2020, between GI Dynamics, Inc. and Charles Carter.</u></a>

+ Indicates a management contract or compensatory plan or arrangement.

## **SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**GI DYNAMICS, INC.**

Dated: January 15, 2021

/s/ Charles Carter

Charles Carter

Chief Financial Officer

**CONSULTING AGREEMENT**

This **CONSULTING AGREEMENT** (the “Agreement”) is effective the 31<sup>st</sup> day of December 2020 (the “Effective Date”) by and between Charles R. Carter (the “Consultant”) and GI Dynamics, Inc., 320 Congress Street, Boston, MA 02210 (the “Company”).

**WHEREAS**, GI Dynamics desires to retain Consultant as an independent contractor and Consultant is willing to serve in that capacity, on the terms described below. In consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Consultant and Company agree as follows:

1. Services. Consultant agrees to personally render to the Company the services described on Exhibit A attached hereto and incorporated herein by reference (the “Services”). During the Term (as defined below), Consultant agrees to provide the Services upon the Company’s request and approval by the Authorized Representative/Supervisor listed in Exhibit A. The Company will not control the manner or means by which Consultant performs the Services.
  2. Term of Consulting Arrangement. This Agreement commences on the Effective Date and will not terminate unless under mutually agreed consent, prior to 31 March 2021 (the “Term”). The Term may be extended upon mutual agreement of Consultant and the Company. The Agreement automatically terminates at the conclusion of the initial Term absent such extension.
    - a) Notwithstanding the above, the Company may terminate this Agreement immediately upon written notice to Consultant at any time during the Term: (i) for “Cause” (as defined below), (ii) upon the death of Consultant, or (iii) following Consultant’s failure to perform the Services due to illness, accident or any other physical or mental incapacity. As used herein, “Cause” includes (a) any breach by Consultant of the terms of this Agreement which is not cured within five (5) days of written notice thereof to Consultant from the Company, including but not limited to, Consultant being unable or unwilling to provide agreed services for the minimum required weekly hours, (b) any breach by Consultant of the terms of this Agreement which, by its nature, is not curable, (c) the willful failure or refusal of Consultant to carry out any Services requested by the Company that continues for five (5) days after written notice is given to Consultant of such failure, (d) Consultant’s acceptance and commencement of full-time employment prior to the fulfillment of the Term, or (e) the commission by Consultant of any act of fraud, embezzlement or deliberate disregard of a rule or policy of the Company.
    - b) Notwithstanding the above, Consultant may terminate this Agreement immediately upon written notice to the Company at any time during the Term for the assignment of roles and responsibilities significantly different than the roles and responsibilities established for the Consultant when the Consultant was employed as Chief Financial Officer, Secretary and Treasurer of the Company, or (b) the non-payment of invoiced amounts due to Consultant by the Company for a period in excess of thirty (30) days after the invoice was delivered by the Consultant to the Company, unless agreed to in writing by the Consultant.
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3. Fees and Reimbursements. In full consideration of the full, prompt and faithful performance of the Services by Consultant, the Company agrees to compensate Consultant at an hourly rate presented in Exhibit A for Company pre-approved Services.
- a) The services are provided on an hourly basis and are not fixed with respect to either maximum hours or total cost per project, deliverable or work product without prior mutual agreement. The Company agrees to pay Consultant for hours of service expended, rounded to the nearest quarter-hour. Consultant agrees to maintain productivity per hour consistent with the productivity experienced when the Consultant was employed as Chief Financial Officer, Secretary and Treasurer of the Company.
  - b) During the Term of this Agreement, the Company will also reimburse Consultant for the reasonable out-of-pocket business and travel expenses incurred by Consultant in performing the Services hereunder upon submission by Consultant of supporting documentation reasonably acceptable to the Company and otherwise pursuant to Company policy regarding third-party expense reimbursement. Any expense in excess of \$200 must be pre-approved by an authorized representative of the Company.
  - c) Consultant will provide a monthly invoice within five (5) business days of the last day of the month being invoiced. The Company agrees to pay invoices via electronic transfer of funds within ten (10) business days of receipt of an invoice. Consultant reserves the right to immediately terminate this Consulting Agreement for non-payment of invoiced amounts due to Consultant by the Company for a period in excess of thirty (30) days after the invoice was delivered by the Consultant to the Company, unless previously agreed to in writing by the Consultant.
4. Confidentiality. Consultant expressly reaffirms Consultant's obligations under Consultant's existing Nondisclosure, Non-solicitation and Noncompete Agreement dated 1 September 2019. Consultant acknowledges and agrees that this Agreement does not impact any continuing obligations under Consultant's existing Nondisclosure, Non-solicitation and Noncompete Agreement, which remains in full force and effect according to its terms. Consultant's obligations under this Section 4 are not affected by any termination of this Agreement, including termination by the Company.
5. Records. Upon termination of Consultant's relationship with the Company, Consultant agrees to deliver to the Company any property of the Company which may be in Consultant's possession including products, materials, memoranda, notes, records, reports, laboratory notebooks, or other documents or photocopies of the same, including, without limitation any of the foregoing, recorded on any computer or any machine readable medium.
6. Independent Contractor Status; No Employment Created. Consultant acknowledges that the relationship of Consultant to the Company is at all times that of an independent contractor and not that of an employee of the Company. This Agreement does not constitute, and may not be construed as constituting, an undertaking by the Company to hire Consultant as an employee of the Company. Consultant is not entitled and will not be entitled to receive any of the benefits provided by the Company to its employees. The Company may not provide Consultant with an office or other space from which to conduct the Services. Consultant agrees to perform the Services free of the direction of the Company, but consistent with the objectives it sets, and bears the benefit/risk of any profit or loss from rendering the Services. The Company will record payments to Consultant on an IRS Form 1099, and will not withhold any federal, state or local employment taxes on Consultant's behalf. Consultant will be solely responsible for the payment of all federal, state and local taxes and contributions imposed or required on income, unemployment insurance, social security and any other law or regulation.

7. Miscellaneous.

- a) No Conflicts. Consultant hereby represents and warrants that (i) Consultant has no commitments or obligations inconsistent with this Agreement, (ii) any services Consultant provides and information or materials Consultant develops for or discloses to the Company will not in any way be based upon any confidential or proprietary information derived from any source other than the Company; and (iii) the performance by Consultant of the Services do not as of the Effective Date and will not at any time during the Term conflict with or otherwise overlap any field in which Consultant is performing services under a consulting or employment agreement. Consultant hereby agrees to indemnify and hold the Company harmless against any claim based upon circumstances alleged to be inconsistent with such representations and/or warranties.
- b) Notices. Any notice or other communication required or permitted hereunder shall be deemed sufficiently given if sent by electronic delivery, facsimile transmission, recognized courier service or certified mail, postage and fees prepaid, addressed to the party to be notified as follows: if to the Company to its address set forth above, and if to Consultant to the address set forth above, or in each case to such other address as either party may from time to time designate in writing to the other. Such notice or communication is deemed to have been given as of the date sent by electronic delivery, facsimile, or delivered to a recognized courier service, or three days following the date deposited with the United States Postal Service.
- c) Governing Law; Arbitration. This Agreement is governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts, without application of the conflicts of law provisions thereof. Any legal action or proceeding with respect to this Agreement must be brought exclusively in the courts of the Commonwealth of Massachusetts or of the United States of America or an appropriate district within the Commonwealth of Massachusetts. By execution and delivery of this Agreement, each of the Company and Consultant hereby accepts, generally and unconditionally, the jurisdiction of the aforesaid courts.
- d) Damages. OTHER THAN FOR BREACHES OF THE CONSULTANT'S OBLIGATIONS UNDER SECTION 4, IN NO EVENT IS EITHER PARTY LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES ARISING OUT OF ANY DEFAULT UNDER THIS AGREEMENT, WHETHER IN CONTRACT OR TORT.
- e) Injunctive Relief. Consultant hereby expressly acknowledges that any breach or threatened breach of any of the terms and/or conditions set forth in Sections 4 of this Agreement may result in substantial, continuing and irreparable injury to the Company. Therefore, Consultant hereby agrees that, in addition to any other remedy that may be available to the Company, the Company is entitled to seek injunctive or other equitable relief by a court of appropriate jurisdiction in the event of any breach or threatened breach of the terms of Sections 4 of this Agreement.

- f) Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not set forth in this Agreement affects, or may be used to interpret, change or restrict, the express terms and provisions of this Agreement.
- g) Assignment. The Company may assign its rights and obligations hereunder to any person or entity that succeeds to all or substantially all of the Company's business or that aspect of the Company's business in which Consultant are principally involved. The rights and obligations of Consultant under this Agreement may not be assigned without the prior written consent of the Company.
- h) Modification and Amendment. This Agreement may not be modified or amended except by an instrument in writing signed by or on behalf of the parties hereto.
- i) Counterparts. This Agreement may be executed in one or more counterparts each of which will be deemed an original, but all of which together shall constitute one and the same instrument.
- j) Interpretation. The parties hereto acknowledge and agree that (i) the rule of construction to the effect that any ambiguities are resolved against the drafting party, and (ii) the terms and provisions of this Agreement, will be construed fairly as to all parties hereto and not in favor of or against a party, regardless of which party was generally responsible for the preparation of this Agreement.

Agreed and Accepted.

**GI DYNAMICS, INC**

By: /s/ Joseph Virgilio  
Name: Joseph Virgilio  
Title: Chief Executive Officer

**CONSULTANT**

By: /s/ Charles R. Carter  
Name: Charles R. Carter



## EXHIBIT A

### Services, minimum availability, and compensation

1. Services. The Services shall include such services as were within the scope and scale of the Consultant's responsibilities when in the employ of the Company as the Chief Financial Officer, Secretary and Treasure ("Prior Responsibilities"). Such Prior Responsibilities include the following:
  - a. Responsibility for (including leadership and individual contribution of work product as appropriate) all facets of operational finance and accounting, budget and forecasting activities, managerial reporting, internal control, financial policy and procedures, risk management, technical accounting, 409(a) valuations, tax, treasury, audit, SEC reporting, and legal compliance. This includes the management of external vendors consistent with Prior Responsibilities.
  - b. Support for investor relations and fundraising as requested/required; and
  - c. Onboarding of additions to the management team (as needed and appropriate); and
  - d. Ongoing IT management
  - e. Participation in and guidance for manufacturing project team

For purposes of work relating to this Agreement, Consultant's principal Company contact is Joe Virgilio, CEO, GI Dynamics, Inc. (jvirgilio@gidynamics.com).

2. Minimum Availability. Consultant agrees to be available to provide Consulting Services for a minimum number of hours per week during the term as follows:

	Monday	Friday	Minimum hours
Week 1	1/4/2021	1/8/2021	24
Week 2	1/11/2021	1/15/2021	24
Week 3	1/18/2021	1/22/2021	24
Week 4	1/25/2021	1/29/2021	24
Week 5	2/1/2021	2/5/2021	16
Week 6	2/8/2021	2/12/2021	16
Week 7	2/15/2021	2/19/2021	16
Week 8	2/22/2021	2/26/2021	16
Week 9	3/1/2021	3/5/2021	8
Week 10	3/8/2021	3/12/2021	8
Week 11	3/15/2021	3/19/2021	8
Week 12	3/22/2021	3/26/2021	8
Week 13	3/29/2021	4/2/2021	8

The above defines the minimum hours per week to be provided by the Consultant. Additional hours may be requested and provided by mutual agreement of the Company and Consultant. Consultant is under no obligation to provide additional hours beyond the minimum hours per week. The Company is under no obligation to engage consultant for the minimum hours and is under no obligation to pay Consultant for hours not engaged. Each weekly total is independent of any others and any hours above the minimum or unutilized by the Company will not be applied to adjust any subsequent weekly minimum without the mutual consent of the Company and Consultant.

3. Hourly Compensation Rate.

Consultant shall be compensated for services at a rate of \$250.00 per hour, to be rounded to the next highest quarter hour.

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**RETENTION BONUS AGREEMENT**

This Retention Bonus Agreement and Amendment (this "Agreement") is effective December 31, 2020 (the "Effective Date") between GI Dynamics, Inc. (the "Company") and Charles Carter ("Terminated Employee" or "Consultant").

WHEREAS, Terminated Employee occupied a key position with the Company, and in order to ensure the continued effective conduct of the Company's business, the Company desires to assure itself of availability of services of Terminated Employee as a Consultant; and

WHEREAS, the Company desires to offer Terminated Employee a retention bonus to incentivize Terminated Employee to remain available as a Consultant to the Company; and,

WHEREAS, the Company and the Consultant are entering into a Consulting Agreement with an Effective Date of 31 December 2020 (the "Consulting Agreement") which will dictate the terms and conditions of the post-termination consulting engagement; and,

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

1. Retention Bonus. In an effort to secure Terminated Employee's continued availability as a Consultant with the Company, and further subject to the terms and conditions described herein, the Company shall pay Terminated Employee \$208,685, paid in one lump sum within seven (7) days following the Effective Date, less any and all applicable federal, state, local, foreign or other withholding taxes and all other authorized payroll deductions (the "Retention Bonus"). The Company and Terminated Employee expressly acknowledge and agree that the sole funding source of the Retention Bonus shall be the "Escrowed Funds," as such term is defined by that certain Escrow Agreement between the Company and Verdolino & Lowey, P.C. The Company and Terminated Employee further acknowledge and agree that they shall work in good faith and take all necessary and reasonable steps under such Escrow Agreement to facilitate the release of such Escrowed Funds for the Retention Bonus due to Terminated Employee hereunder.

The Retention Bonus shall be in lieu of any Severance Benefits (described in Section 4 of this Agreement) that Terminated Employee may be eligible to receive under Section 7 of Terminated Employee's Amended and Restated Offer Letter Agreement dated September 19, 2019 (the "Offer Letter"), and Terminated Employee is knowingly and expressly waiving and releasing Terminated Employee's right to any such Severance Benefits.

The Retention Bonus will be subject to forfeiture by the Terminated Employee during the time periods described below only if the Consulting Agreement is terminated prior to March 31, 2021 for the following reasons:

- (a) By the Company for Cause. As used herein, "Cause" shall include (a) any breach by Consultant of the terms of this Agreement which is not cured within five (5) days of written notice thereof to Consultant from the Company, including but not limited to, Consultant being unable or unwilling to provide agreed services for the minimum required weekly hours, (b) any breach by Consultant of the terms of this Agreement which, by its nature, is not curable, (c) the willful failure or refusal of Consultant to carry out any Services requested by the Company that continues for five (5) days after written notice is given to Consultant of such failure, (d) Consultant's acceptance and commencement of full-time employment, prior to the fulfillment of the Term as defined in that certain Consulting Agreement of even date herewith between the parties, or (e) the commission by Consultant of any act of fraud, embezzlement or deliberate disregard of a rule or policy of the Company.
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- (b) By the Consultant under circumstances that do not constitute Good Reason. As used herein, “Good Reason” shall include (a) the assignment of roles and responsibilities significantly different than the roles and responsibilities established for the Consultant when the Consultant was employed as Chief Financial Officer, Secretary and Treasurer of the Company and which is not mutually agreed to by both parties, or (b) the non-payment of invoiced amounts due to Consultant by the Company for a period in excess of thirty (30) days after the invoice was delivered by the Consultant to the Company, unless agreed to in writing by the Consultant.

Accordingly, in the event that the Consulting Agreement is terminated between the Effective Date and March 31, 2021 (the “Retention Bonus Period”) for any of the above listed reasons, then Terminated Employee shall be required to repay the Retention Bonus pursuant to the following schedule:

- (a) Prior to January 31, 2021: the entire retention bonus (i.e., \$208,685.00).
- (b) Termination between February 1, 2021 and February 28, 2021: 2/3 of Retention Bonus to be repaid (i.e., 139,123.33).
- (c) Termination between March 1, 2021 and March 31, 2021: 1/3 of Retention Bonus to be repaid (i.e., 69,561.66).

Any such amounts due to be repaid as described above shall be paid by Terminated Employee to the Company within ten (10) days following the termination of the Consulting Agreement.

In the event that Terminated Employee’s Consulting Agreement is terminated for any reason after the conclusion of the Retention Bonus Period, or Terminated Employee’s Consulting Agreement is terminated by the Company during the Retention Bonus Period for reasons other than those listed above, then Terminated Employee shall not be required to repay any portion of the Retention Bonus to the Company.

## 2. Consulting Engagement.

- (a) All terms related to the Consulting engagement are defined in the Consulting Agreement between the Company and the Consultant with an effective date of 31 December 2021 (the “Consulting Agreement”).
- (b) *Independent Contractor Status.* During the Consulting Term, Consultant shall act solely as an independent contractor hereunder and conduct Consultant’s operations as an independent contractor, and nothing in this Agreement shall be construed to render Consultant as an Employee of the Company during the Consulting Term. Consultant shall not be considered an Employee for purposes of any Company employment policy or any employment benefit plan, and shall not be entitled to any benefits under any such policy or benefit plan, during the Consulting Term. The Company has no right to control or direct the details, manner or means by which Consultant performs the Consulting Services. Consultant understands and recognizes that during the Consulting Term, Consultant shall not be an agent of the Company or have authority to bind, represent or speak for the Company for any purpose, unless authority is expressly granted by Joe Virgilio to Consultant. The Company shall record Consulting Fee payments to Consultant on, and provide to Consultant, an IRS Form 1099, and the Company shall not withhold any federal, state or local employment taxes on Consultant’s behalf. Consultant agrees to pay all such taxes in a timely manner and as prescribed by law, and accepts exclusive liability for complying with all applicable state and federal laws governing self- employed individuals, including obligations such as payment of taxes, social security, disability and other contributions based on the Consulting Fee paid to Consultant hereunder.
- (c) *Other Work.* Consultant shall be free to provide consulting or employment services to entities or individuals other than the Company during the Consulting Term, provided that Consultant meets Consultant’s service obligations to the Company as described in the Consulting Agreement, and further provided that Consultant may not render services in a manner that violates any applicable agreements with the Company, including but not limited to the Nondisclosure, Non-solicitation and Noncompete Agreement dated 1 September 2019, that was executed between the Terminated Employee and the Company and which shall survive the signing of this Agreement and remain in effect pursuant to its terms.

3. Waiver and Release. Terminated Employee agrees and acknowledges that by signing this Agreement, Terminated Employee is eligible to receive certain benefits to which Terminated Employee would not otherwise be entitled following his separation from the employment relationship, including but not limited to benefits related to the Company's agreement to engage Terminated Employee in a consulting relationship with the Company, as well as payment of the Retention Bonus, and in exchange for the payments and other good and valuable consideration set forth herein, Terminated Employee is knowingly and expressly waiving and releasing Terminated Employee's right to receive:
- (a) Any Performance Bonus described in Section 4 of the Offer Letter for work performed during 2020;
  - (b) Any payments or benefits described in Section 7(b) of the Offer Letter (the "Severance Benefits"), and is further waiving and releasing Terminated Employee's right to assert any form of legal claim against the Company with respect to such Severance Benefits, whether seeking any form of relief, including equitable relief, recovery of damages, or recovery of any other form of monetary recovery related to such payments, including but not limited to any claim for breach of express or implied contract, promissory estoppel, unjust enrichment, breach of the covenant of good faith and fair dealing, or any claim to attorneys' fees under any applicable statute or common law theory of recovery related to the Severance Benefits. Provided, however, that nothing contained herein is intended to release the Company from its obligations under this Agreement or prevent Terminated Employee from asserting a legal claim to enforce the terms of this Agreement;
  - (c) Release of All Claims. Terminated Employee, for Terminated Employee and Terminated Employee's heirs, assigns, and all persons and entities claiming by, through, or under Terminated Employee, hereby irrevocably, unconditionally, and completely releases, discharges, and agrees to hold harmless the Company and its Affiliates, including current and former officers, directors, and employees (hereinafter referred to, both individually and collectively, as "Releasees") of and from any and all claims, liabilities, charges, demands, grievances, lawsuits, and causes of action of any kind or nature whatsoever, including without limitation claims for contribution, subrogation, or indemnification, whether direct or indirect, liquidated or unliquidated, known or unknown, which Terminated Employee has, had, or may claim to have against Releasees (hereinafter collectively referred to as "Claim(s)");
  - (d) The release, discharge, and agreement to hold harmless set forth in Section 3(c) includes, without limitation, any Claim(s) that Employee had, has, or may claim to have against Releasees:
    - a. for wrongful or constructive discharge or termination, negligent or intentional infliction of emotional distress, breach of express or implied contract, breach of the covenant of good faith and fair dealing, violation of public policy, defamation, promissory estoppel, detrimental reliance, retaliation, tortious interference with contract or prospective economic advantage, invasion of privacy, whistleblower protection, hostile work environment, personal injury (whether physical or mental), or any other Claim(s), whether arising in tort or in contract;
    - b. for discrimination, hostile work environment / harassment, retaliation, or otherwise arising under federal, state, or local law, including without limitation Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Equal Pay Act, all claims under Titles 29 and 42 of the United States Code, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, or any other federal, state, or local law prohibiting discrimination, harassment, or retaliation on the basis of race, color, national origin, religion, age, sex, sexual orientation, gender identity, disability, veteran status, or any other protected group status;
    - c. for discrimination, hostile work environment / harassment, retaliation, or otherwise arising under the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act arising on or before the date of this Agreement; and/or
    - d. arising under the Employee Retirement Income Security Act ("ERISA");
    - e. arising under the Family and Medical Leave Act ("FMLA");
    - f. arising under any state or local employment and antidiscrimination law;
    - g. arising under the Dodd-Frank Wall-Street Reform and Consumer Protection Act or other whistleblower protection to the full extent allowed by law;
    - h. for unpaid wages, bonuses, commissions, or other compensation of any type or kind to the full extent allowed by law;
    - i. for attorney's fees and/or costs;
    - j. for any other Claim(s) in any way related to or arising out of Terminated Employee's employment with the Company or the termination of that employment; or
    - k. Arising under the federal Worker Adjustment and Retraining Notification Act (29 U.S. Code Chapter 23) ("WARN Act") and similar Massachusetts state laws.

- (e) Nothing in this Agreement waives Terminated Employee's rights, if any, to (i) continue Terminated Employee's participation in the Company's employee health benefit plan, as allowed by COBRA and the terms, conditions, and limitations of the plan, (ii) any vested rights that Terminated Employee may have under any employee pension or welfare benefit plan in which Terminated Employee participated as an employee of the Company, and/or (iii) any claims Terminated Employee has or may claim to have for worker's compensation or unemployment benefits, and/or (iv) any claims that are non-waivable by law.
- (f) Exclusion for Certain Claims. Notwithstanding the foregoing, the Company and Terminated Employee agree that the releases set forth above do not apply to any claims arising after the Effective Date, nor does anything herein prevent Terminated Employee or the Company from instituting any action to enforce the terms of this Agreement. The Parties agree and acknowledge that the releases and waivers set forth above do not prevent Terminated Employee from filing a charge of discrimination with or from participating or otherwise cooperating in any investigation or proceeding conducted by the Equal Employment Opportunity Commission, or any other comparable federal, state, or local agency relating to any claim or allegation of unlawful discrimination, harassment or retaliation.

Notwithstanding the foregoing, Terminated Employee agrees that, to the full extent allowed by law, Terminated Employee is not entitled to, and hereby waives any right to, recover compensation, damages, or any other form of relief of any type or kind and/or reinstatement to employment that may be awarded or ordered by any court or administrative agency to or for Terminated Employee's benefit arising from or relating to any Claim(s) released by Terminated Employee under this Agreement. Terminated Employee further specifically acknowledges and agrees that Terminated Employee is waiving, on behalf of Terminated Employee and Terminated Employee's attorneys, all claims for fees and expenses and court costs.

- (g) Full and Complete Release. Terminated Employee understands and agrees that Terminated Employee is releasing and waiving any Claim(s) that Terminated Employee does not know exists or may exist in Terminated Employee's favor at the time Terminated Employee signs this Agreement which, if known by Terminated Employee, would materially affect Terminated Employee's decision to sign this Agreement. Nonetheless, for the purpose of implementing a full and complete release of all Claim(s), Terminated Employee expressly acknowledges that the releases set forth herein are intended to include, without limitation, all Claim(s) that Terminated Employee does not know or suspect to exist in Terminated Employee's favor and that the releases set forth herein include the release and extinguishment of any such Claim(s).
4. Terminated Employee agrees and covenants not to sue or prosecute any claim that might now or ever be asserted arising out of, or pertaining to, his employment with the Company and any of its predecessors or affiliates.
5. Other Rights and Agreements. This Agreement, in conjunction with the Consulting Agreement and the Nondisclosure, Non-solicitation and Noncompete Agreement dated 1 September 2019, contains the entire understanding of the Company and Terminated Employee with respect to the subject matter hereof, and supersedes any other agreement, including but not limited to, the Offer Letter, or any statement made to Terminated Employee (written or oral) in this regard.
6. Modification; Waiver. This Agreement may be modified or revised only by written agreement signed by an authorized officer of the Company and Terminated Employee. A waiver of any conditions or provisions of this Agreement in a given instance will not be deemed a waiver of such conditions or provisions at any other time in the future.
7. Binding Effect. This Agreement shall be binding on Terminated Employee and Terminated Employee's executor, administrator and heirs. Terminated Employee may not assign his obligations or payment rights under this Agreement. This Agreement may be transferred or assigned by the Company and shall be binding on the transferee or assignee. This Agreement shall automatically be transferred or assigned to and be binding upon any successor in interest to the Company, whether by merger, consolidation, sale of stock, sale of assets or otherwise.
8. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to the principles of conflict of laws thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**CHARLES R. CARTER**

/s/ Charles R. Carter

Signature

Date: January 8, 2021

**GI DYNAMICS, INC.**

By: /s/ Joseph Virgilio

Name: Joseph Virgilio

Title: Chief Executive Officer

Date: January 11, 2021

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