

## GI DYNAMICS, INC.

### CHARTER OF THE AUDIT COMMITTEE OF THE BOARD OF DIRECTORS

#### I. STATEMENT OF POLICY

This Charter specifies the scope of the responsibilities of the Audit Committee (the “Committee”) of the Board of Directors (the “Board”) of GI Dynamics, Inc. (the “Company”) and the manner in which those responsibilities shall be performed, including its structure, processes and membership requirements.

The primary purpose of the Committee is to oversee the accounting and financial reporting processes of the Company and the audits of the Company’s financial statements. The Committee shall also review the qualifications, independence and performance, and approve the terms of engagement of the Company’s independent auditor, and prepare any reports that may be required of the Committee under rules of the Securities and Exchange Commission (“SEC”) or required by the Corporations Act 2001 (Cth). However, ultimate responsibility for these and any other selection and appointment practices of the Company rests with the Board.

#### II. ORGANIZATION AND MEMBERSHIP REQUIREMENTS

The Committee shall comprise three or more directors selected by the Board, each of whom shall satisfy the independence and experience requirements of the NASDAQ Stock Market (“NASDAQ”), the Australian Securities Exchange (“ASX”) and the independence rules of the SEC, including Rule 10A-3 under the Securities Exchange Act of 1934. In addition, the Committee shall not include any member who:

- has participated in the preparation of the financial statements of the Company or any current subsidiary at any time during the past three (3) years;
- accepts any consulting, advisory, or other compensatory fee, directly or indirectly, from the Company, other than in his or her capacity as a member of the Committee, the Board, or any other committee of the Board; or
- is an affiliate of the Company or any subsidiary of the Company, other than a director who meets the independence requirements of NASDAQ.

Each member of the Committee must be able to read and understand fundamental financial statements, including a balance sheet, income statement and cash flow statement. In addition, at least one member shall be an “audit committee financial expert” as determined by the Board in accordance with the rules of the SEC.

The members of the Committee shall be appointed by the Board on the recommendation of the Nominating and Corporate Governance Committee and shall serve until their successors are duly elected and qualified or their earlier resignation or removal. Any member of the Committee may be replaced, with or without cause, by a majority vote of the Board. Unless a committee chairman is elected by the full Board, the members of the Committee shall designate a chairman by majority vote of the full Committee membership. The chairman of the Committee must not be the chairman of the full Board.

#### III. MEETINGS; REPORTING TO BOARD

The Committee shall meet as often as it determines to be necessary, but not less frequently than quarterly, and may meet with any non-committee members, including management or individual directors at such time or

times as it deems appropriate to discuss any matters before the Committee. A majority of the members shall represent a quorum of the Committee, and, if a quorum is present, any action approved by at least a majority of the disinterested members present shall represent the valid action of the Committee, provided that any decision or determination of the Committee reduced to writing and consented to (including, but not limited to, by means of electronic transmission) by all of the members of the Committee shall be fully as effective as if it had been made at a meeting duly called and held. For the purposes hereof, a member of the Committee shall be considered to be disinterested if he or she has no direct or indirect financial interest in the matters to be considered by the Committee. Meetings of the Committee will be held at such times and places as the Committee determines. Such meetings may be held through any communications equipment if all persons participating can hear each other. As part of its job to foster open communication, the Committee shall (a) meet in separate executive sessions (i) periodically with management and the independent auditors and (ii) periodically with the chief financial officer and (b) have such other direct and independent interaction with such persons from time to time as the members of the Committee deem appropriate. The Committee may request any officer or employee of the Company or the Company's outside counsel or independent auditor to attend a meeting of the Committee or to meet with any members of, or consultants to, the Committee.

The Committee may form and delegate authority to subcommittees, or to one or more members of the Committee, when appropriate, including the authority to grant preapprovals of audit and permitted non-audit services, provided that decisions of such subcommittee to grant preapprovals shall be presented to the full Committee at its next scheduled meeting. The Committee shall maintain written minutes of its meetings, which minutes will be filed with the minutes of the meetings of the Board.

The Committee shall report regularly to the full Board with respect to all matters relevant to the Committee's role and responsibilities, its meetings, and concerning significant developments in the course of performing the duties and responsibilities set forth above or as otherwise requested by the Board.

#### **IV. COMMITTEE AUTHORITY AND RESPONSIBILITIES**

To fulfill its responsibilities and duties, the Committee shall:

##### **A. Oversight of the Company's Independent Auditor**

1. Be directly and solely responsible for the appointment, compensation, retention and oversight of any independent auditor (including resolution of disagreements between management and the independent auditor regarding financial reporting) engaged by the Company for the purpose of preparing or issuing an audit report or related work, with each such auditor reporting directly to the Committee.

2. Periodically review and discuss with the independent auditor (i) the matters required to be discussed by Statement on Auditing Standards No. 61, as amended, and (ii) any formal written statements received from the independent auditor consistent with and in satisfaction of Independence Standards Board Standard No. 1, as amended, including without limitation, descriptions of (x) all relationships between the independent auditor and the Company, (y) any disclosed relationships or services that may impact the independent auditor's objectivity and independence and (z) whether any of the Company's senior finance personnel were recently employed by the independent auditor.

3. Evaluate annually the qualifications, performance and independence of the independent auditor, including a review of whether the independent auditor's quality control procedures are adequate and a review and evaluation of the lead partner of the independent auditor, taking into account the opinions of management, and report to the Board on its conclusions, together with any recommendations for additional action. As part of its evaluation of the independence of the independent auditor, the Committee shall actively engage in dialogue with the independent auditor with respect to any disclosed relationships or services that may impact the auditor's objectivity and independence.

4. Review and discuss with the independent auditor any documentation supplied by the independent auditor as to the nature and scope of any tax services to be approved, as well as the potential effects of

the provision of such services on the auditor's independence. Review and evaluate the lead partner of the independent auditor team, taking into account the opinions of management of the Company.

5. Consult with the independent auditor to assure the rotation of the lead audit partner having primary responsibility for the audit and the audit partner responsible for reviewing the audit every five years, consider issues related to the timing of such rotation and the transition to new lead and reviewing partners, and consider whether, in order to assure continuing auditor independence, there should be regular rotation of the audit firm, and report to the Board on its conclusions.

6. Approve in advance the engagement of the independent auditor for all audit services and non-audit services, based on independence, qualifications and, if applicable, performance, and approve the fees and other terms of any such engagement; provided, however, that (i) the Committee may establish pre-approval policies and procedures for any engagement to render such services, provided that such policies and procedures (x) are detailed as to particular services, (y) do not involve delegation to management of the Committee's responsibilities hereunder and (z) provide that, at its next scheduled meeting, the Committee is informed as to each such service for which the independent auditor is engaged pursuant to such policies and procedures, and (ii) the Committee may delegate to one or more members of the Committee the authority to grant pre-approvals for such services, provided that the decisions of such member(s) to grant any such pre-approval shall be presented to the Committee at its next scheduled meeting.

7. Meet with the independent auditor prior to the audit to discuss the planning and staffing of the audit.

8. Approve as necessary the termination of the engagement of the independent auditor.

9. Establish policies for the hiring of employees or former employees of the independent auditor who participated in any capacity in the audit of the Company, taking into account the impact of such policies on auditor independence.

10. Regularly review with the independent auditor any significant difficulties encountered during the course of the audit, any restrictions on the scope of work or access to required information and any significant disagreement among management and the independent auditor in connection with the preparation of the financial statements. Review with the independent auditor any accounting adjustments that were noted or proposed by the independent auditor but that were "passed" (as immaterial or otherwise), any communications between the audit team and the independent auditor's national office respecting auditing or accounting issues presented by the engagement, any "management" or "internal control" letter or schedule of unadjusted differences issued, or proposed to be issued, by the independent auditor to the Company, or any other material written communication provided by the independent auditor to the Company's management.

11. Review with the independent auditor the critical accounting policies and practices used by the Company, all alternative treatments of financial information within generally accepted accounting principles ("GAAP") that the independent auditor has discussed with management, the ramifications of the use of such alternative disclosures and treatments and the treatment preferred by the independent auditor.

12. Discuss with the independent auditor material issues on which the national office of the independent auditor was consulted with respect to work being performed for the Company.

## **B. Review of Financial Reporting, Policies and Processes**

1. Review and discuss with management and the independent auditor the Company's annual audited financial statements and any certification, report, opinion or review rendered by the independent auditor, and recommend to the Board whether the audited financial statements should be included in the Company's annual reports to shareholders.

2. Review and discuss with management and the independent auditor the Company's quarterly financial statements.
3. Review and discuss with management and the independent auditor the Company's disclosure under "Management's Discussion and Analysis of Financial Condition and Results of Operations" appearing in the Company's periodic reports.
4. Review and discuss with management all press releases regarding the Company's financial results and any other information provided to securities analysts and rating agencies, including any non-GAAP financial information.
5. Periodically meet separately with management and with the independent auditor.
6. Review with management and the independent auditor any significant financial reporting issues and judgments in connection with management's preparation of the financial statements and the view of each as to appropriateness of such judgments.
7. Review with management its assessment of the effectiveness and adequacy of the Company's internal control structure and procedures for financial reporting ("Internal Controls"), review annually with the independent auditor the attestation to and report on the assessment made by management, and consider with management and the independent auditor whether any changes to the Internal Controls are appropriate in light of management's assessment or the independent auditor's attestation. Review any remedial measures proposed by management in response to any identified (a) significant deficiencies or material weaknesses in the design or operation of Internal Controls or material weaknesses therein, or (b) fraud, whether or not material, involving management or other employees who have a significant role in the Company's Internal Controls.
8. Develop, in coordination with the Nominating and Corporate Governance Committee, and implement an annual performance evaluation of the Committee.
9. To the extent required and to ~~the~~ the extent that it deems appropriate, review with management its evaluation of the Company's procedures and controls designed to assure that information required to be disclosed in the Company's periodic public reports is recorded, processed, summarized and reported in such reports within the time periods specified by the SEC for the filing of such reports ("Disclosure Controls"), and consider whether any changes are appropriate in light of management's evaluation of the effectiveness of such Disclosure Controls. Review any remedial measures proposed by management in response to any identified significant deficiency in the adequacy or effectiveness of the Company's Disclosure Controls.
10. Review and discuss with management and the independent auditor any off-balance sheet transactions or structures and their effect on the Company's financial results and operations, as well as the disclosure regarding such transactions and structures in the Company's public filings.
11. Review with management and the independent auditor the effect of regulatory and accounting initiatives on the financial statements. Review any major issues regarding accounting principles and financial statement presentations, including any significant changes in selection of an application of accounting principles. Consider and approve, if appropriate, changes to the Company's auditing and accounting principles and practices as suggested by the independent auditor or management.
12. Review any special audit steps adopted in light of material control deficiencies. Review with the independent auditor and management the extent to which changes or improvements in financial or accounting practices, as approved by the Committee, have been implemented.

**C. Risk Management, Related Party Transactions, Legal Compliance and Ethics**

1. Review with the chief executive officer and chief financial officer of the Company any report on significant deficiencies in the design or operation of the Internal Controls that could adversely affect the

Company's ability to record, process, summarize or report financial data, any material weaknesses in Internal Controls identified to the auditors, and any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's Internal Controls.

2. Review and approve in advance any related-party transactions in accordance with the Company's policies and procedures, after reviewing each such transaction for potential conflicts of interests and other potential improprieties.

3. Establish procedures for the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls or auditing matters, and the confidential, anonymous submission by employees of the Company of concerns regarding questionable accounting or auditing matters. Adopt, as necessary, appropriate remedial measures or actions with respect to such complaints or concerns.

4. Adopt a Code of Ethics for all employees and directors, which meets the requirements of Item 406 of the SEC's Regulation S-K, and provide for and review promptly disclosure to the public of any change in, or waiver of, such Code of Business Conduct and Ethics.

5. As requested by the Board, review and investigate conduct alleged by the Board to be in violation of the Company's Code of Business Conduct and Ethics, and adopt as necessary or appropriate, remedial, disciplinary, or other measures with respect to such conduct.

6. Discuss with management and the independent auditor any correspondence with regulators or governmental agencies that raise material issues regarding the Company's financial statements or accounting policies.

7. Discuss guidelines and policies to govern the process by which risk assessment and management is undertaken and handled, as set forth in further detail in the Company's Risk Management Policy. Discuss with management the Company's major financial and operational risk exposures and the steps management has taken to monitor and control such exposures.

8. Review with the Company's legal counsel and report to the Board on litigation, material government investigations and compliance with applicable legal requirements and the Company's Code of Business Conduct and Ethics.

9. Prepare any report required by the rules of the SEC to be included in the Company's annual proxy statement, as and when required.

10. Discuss with the Company any matters that may have a material impact on the financial statements or the Company's compliance policies and Internal Controls, including corporate securities trading policies.

#### **D. Limitation of Committee's Role**

While the Committee has the responsibilities and powers set forth in this Charter, it is not the duty of the Committee to plan or conduct audits or to determine that the Company's financial statements and disclosures are complete and accurate and are in accordance with generally accepted accounting principles applicable rules and regulations. These are the responsibilities of management and the independent auditor.

#### **V. RESOURCES AND AUTHORITY**

The Company shall provide appropriate funding, as determined by the Committee, to permit the Committee to perform its duties under this Charter, to compensate its advisors and to compensate any registered public accounting firm engaged for the purpose of rendering or issuing an audit report or related work or performing other audit, review or attest services for the Company. The Committee shall have full access to any relevant records of the Company and may request that any officer or other employee of the

Company or the Company's outside counsel meet with any members of, or advisors to, the Committee. The Committee, at its discretion, has the authority to initiate investigations, and hire legal, accounting or other outside advisors or experts to assist the Committee, as it deems necessary to fulfill its duties under this Charter. The Committee may also perform such other activities consistent with this Charter, the Company's Bylaws and governing law, as the Committee or the Board deems necessary or appropriate.

## **VI. ANNUAL REVIEW**

The Committee shall review on at least an annual basis (i) this Charter and the scope of responsibilities of this Committee; and (ii) the Committee's performance of its duties, including its processes and communications with management, the independent auditor and the Board. Any proposed changes to this Charter or the Committee's scope of responsibilities, where indicated, shall be referred to the Board for appropriate action.