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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): October 8, 2020

GI DYNAMICS, INC.

(Exact name of registrant as specified in its charter)

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Delaware  
(State or other jurisdiction  
of incorporation)

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000-55195  
(Commission  
File Number)

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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.

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

***Appointment of Chief Operating Officer***

Effective as of October 8, 2020, the Board of Directors (the “Board”) of GI Dynamics, Inc. (the “Company”) appointed Joseph Virgilio as the Company’s Chief Operating Officer (the “COO”).

Prior to this appointment, Mr. Virgilio, age 46, served as the President and General Manager of Amann Girrbach, AG, an innovator and preferred full-service provider in digital dental prosthetics, from September 2018 until April 2020. From April 2016 until February 2018, Mr. Virgilio served as the Vice President of Sales, The Americas at Surgical Specialties Corp, a manufacturer and distributor of medical products. Prior to Surgical Specialties Corp, Mr. Virgilio served as the Vice President of Sales and Global Marketing of Aptus Endosystems, a medical device company focused on developing advanced technology for endovascular aneurysm repair (EVAR) and thoracic endovascular aneurysm repair, from October 2013 until September 2015 when it was acquired by Medtronic plc. Mr. Virgilio has also held positions with Medtronic, Boston Scientific and Constellation Brands. Mr. Virgilio received a Bachelor of Arts in History from Colgate University.

Other than the Employment Agreement (as defined below), there are no arrangements or understandings between Mr. Virgilio and any other person pursuant to which he was selected as the COO. There are no family relationships between Mr. Virgilio and any director or executive officer of the Company and Mr. Virgilio has no direct or indirect material interest in any transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K under the Securities Exchange Act of 1934, as amended.

***COO Employment Agreement and Severance Agreement***

In connection with his appointment as the COO, the Company entered into an executive employment agreement with Mr. Virgilio (the “Employment Agreement”). Under the terms of the Employment Agreement, Mr. Virgilio’s employment will be on an at-will basis, he will be paid an initial annual base salary of \$350,000, subject to the annual review by the Compensation Committee of the Board, and will be eligible to receive an annual performance bonus at a target amount of 35% of his base salary as approved by the Board, provided he is employed with the Company through the applicable payment date during the first fiscal quarter of each year. For the remainder of calendar year 2020, Mr. Virgilio is guaranteed a minimum bonus of at least \$28,125 to be paid during the first fiscal quarter of 2021. Mr. Virgilio will also receive a one-time sign-on bonus of \$28,125, which is expected to be paid on the first regular pay date following his date of hire; provided, however, that if Mr. Virgilio terminates his employment within one year from the date of his hire, other than for Good Reason (as that term is defined in the Severance Agreement (as defined below)), the sign-on bonus must be repaid in full to the Company at the time of termination. It is expected that Mr. Virgilio’s 2022 base salary will be set at \$400,000 and his annual performance bonus will increase to 50% of his base salary. The Employment Agreement provides that Mr. Virgilio is eligible to participate in the standard benefits programs made available to senior executives of the Company.

The Employment Agreement also provides that the Company will grant Mr. Virgilio equity in the Company equal to 4% of the Company’s issued and outstanding stock in the form of stock options to purchase shares of the Company’s common stock. These stock options will have a term of 10 years and will vest 25% on the first anniversary of the date of the Employment Agreement with the remainder vesting 1/36<sup>th</sup> in equal monthly installments over the 36 months following the first anniversary. In addition, the Company has agreed to issue Mr. Virgilio an equity award based on certain milestones that, if achieved, will adjust his ownership in the Company to be equal to his initial ownership percentage of 4% to the extent the Company issues any securities subsequent to the issuance of his stock options.

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The Employment Agreement provides for the following severance payments depending on the circumstances for separation (collectively, the “Severance Payments”), in accordance with the terms and conditions of the Change of Control and Severance Agreement entered into between the Company and Mr. Virgilio in connection with the Employment Agreement (the “Severance Agreement”):

- Termination by the Company Without Cause (as defined in the Severance Agreement) or by the COO for Good Reason (as defined in the Severance Agreement) and Employed for Fewer than 12 Full Months: Mr. Virgilio will receive a lump sum payment equal to 9 months of his then-current salary, and payment of COBRA premiums for 9 months.
- Termination by the Company Without Cause or by the COO for Good Reason and Employed for 12 Full Months or Longer: Mr. Virgilio will receive a lump sum payment equal to 12 months of his then-current salary, and payment of COBRA premiums for 12 months.
- Change of Control (as defined in the Severance Agreement) and Termination by the Company Without Cause or by the COO for Good Reason: Mr. Virgilio will receive a lump sum payment equal to 12 months of his then-current salary, and payment of COBRA premiums for 12 months.

The Severance Agreement has an initial term of 4 years, which will renew automatically for additional one year terms, unless either party provides the other party with written notice of non-renewal at least 90 days prior to the date of automatic renewal, subject to an automatic 12 month extension following the effective date of a Change of Control. In addition to the Severance Payments, the Severance Agreement also provides that Mr. Virgilio will be entitled to all accrued but unpaid vacation, expense reimbursements, wages and other benefits due to him under any Company-provides plans, policies and arrangements. If the Company terminates Mr. Virgilio’s employment with the Company without Cause, if the Company elects not to renew the term, or if Mr. Virgilio resigns from such employment for Good Reason, and such termination occurs within the period beginning 3 months before, and ending 12 months following, a Change of Control, and Mr. Virgilio signs and does not revoke a release of claims against the Company, then he will receive the applicable Severance Payments and any forfeiture restrictions on all shares of restricted stock as to which such restrictions remain in place will lapse immediately, and any unvested stock options will vest immediately.

The foregoing descriptions of the Employment Agreement and the Severance Agreement do not purport to be complete descriptions of the rights and obligations of the parties thereunder and are qualified in their entirety by reference to the Employment Agreement and the Severance Agreement, copies of which are attached hereto as Exhibits 10.1 and 10.2, respectively, and are incorporated herein by reference.

In addition, Mr. Virgilio will enter into the Company’s standard indemnification agreement, a form of which is attached as Exhibit 10.3 to this Current Report on Form 8-K and is incorporated herein by reference.

### **Forward-Looking Statements**

This Current Report on Form 8-K may contain forward-looking statements. These statements are based on management’s current estimates and expectations of future events as of the date of the Current Report on Form 8-K. Furthermore, the estimates are subject to several risks and uncertainties that could cause actual results to differ materially and adversely from those indicated in or implied by such forward-looking statements.

These risks and uncertainties include, but are not limited to, risks associated with the Company’s ability to raise additional capital, the Company’s ability to continue to operate as a going concern; the ability of the Company, its critical vendors, and key regulatory agencies to resume operational capabilities subsequent to the removal of COVID-19 pandemic restrictions; the Company’s ability to conduct the planned pivotal trial of EndoBarrier in the United States (“STEP-1”); the Company’s ability to execute STEP-1 under the FDA’s Investigational Device Exemption; the Company’s ability to enlist clinical trial sites and enroll patients in accordance with STEP-1; the risk that the FDA stops STEP-1 early as a result of the occurrence of certain safety events or does not approve an expansion of STEP-1; the Company’s ability to enroll patients in accordance with I-STEP; the Company’s ability to secure a CE Mark; obtaining and maintaining regulatory approvals required to market and sell the Company’s products; the possibility that future clinical trials will not be successful or confirm earlier results; the timing and costs of clinical trials; the timing of regulatory submissions; the timing, receipt and maintenance of regulatory approvals; the timing and amount of other expenses; the timing and extent of third-party reimbursement; intellectual-property risk; risks related to excess inventory; risks related to assumptions regarding the size of the available market; the benefits of the Company’s products; product pricing; timing of product launches; future financial results; and other factors, including those described in the Company’s filings with the U.S. Securities and Exchange Commission (the “SEC”).

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Given these uncertainties, one should not place undue reliance on these forward-looking statements. The Company does not assume any obligation to publicly update or revise any forward-looking statements, whether as a result of new information or future events or otherwise, unless it is required to do so by law.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<b>Exhibit No.</b>	<b>Description</b>
10.1+	<a href="#">Employment Agreement, effective as of October 8, 2020, between GI Dynamics, Inc. and Joseph Virgilio.</a>
10.2+	<a href="#">Severance Agreement, effective as of October 8, 2020, between GI Dynamics, Inc. and Joseph Virgilio.</a>
10.3+	<a href="#">Form of Indemnification Agreement (incorporated by reference to Exhibit 10.6 to the Company's Current Report on Form 8-K filed with the SEC on September 10, 2020).</a>

+ Indicates a management contract or compensatory plan.

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**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.

Dated: October 15, 2020

**GI DYNAMICS, INC.**

/s/ Charles Carter

Charles Carter

Chief Financial Officer

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*Via email*

October 8, 2020

Joseph Virgilio

Dear Joe:

On behalf of GI Dynamics, Inc. (the “Company”) I am pleased to offer you employment with the Company on the terms and conditions set forth herein. This offer and your employment are contingent upon completion of a satisfactory background check. In addition, to comply with federal law, the Company requires proof of your eligibility to work in the United States which you will be asked to provide on your start date.

**Salary and position:** Your position will be as the Company’s Chief Operating Officer and your start date will be October 8, 2020, reporting to the Company’s Chief Executive Officer, Scott Schorer. Your base salary will be \$350,000.00 per year, prorated to your date of hire, less applicable deductions and withholdings, to be paid in accordance with the Company’s payroll practices as may be in effect from time to time. Your total compensation will be reviewed annually by the Compensation Committee of the Board (the “Compensation Committee”), and you will be entitled to such increases in base salary during your employment as will be determined by the Compensation Committee in its sole discretion, taking into account your performance and that of the Company, and other factors considered relevant by the Board. Notwithstanding the foregoing, as determined by the achievement of milestones set by the Board, your 2022 base salary is expected to be set at \$400,000 and your performance bonus opportunity (as described below) is expected to increase to 50% of your base salary.

You are eligible to participate in the Company’s performance bonus plan as approved by the Board on an annual basis. Your target bonus opportunity is 35% of your annual base salary.

- For the remainder of calendar year 2020, you will be guaranteed a minimum bonus of at least \$28,125 to be paid during the first fiscal quarter of 2021; and

In all instances, you must be employed with the Company through the applicable payment date during the first fiscal quarter of each year to be eligible to receive your performance bonus.

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**Sign-On Bonus:** In addition, you will receive a one-time sign-on bonus of **\$28,125** (less applicable taxes and withholdings). We expect to pay this sign-on bonus with the first regular pay date following your date of hire. By accepting our offer, you agree that if you voluntarily terminate your employment within 1 (one) year from your date of hire, other than for Good Reason as that term is defined in the Change of Control and Severance Agreement, the sign-on bonus must be repaid in full to the Company at the time of termination (no proration).

**Equity Award:** The Company will grant you equity in the Company equal to four percent (4%) of the Company's issued and outstanding stock in the form of stock options. These options will have a term of 10 years and will vest 25% on the first anniversary of this Agreement with the remainder vesting 1/36<sup>th</sup> in equal monthly installments over the 36 months following the first anniversary.

Additionally, the Company agrees to define a mutually agreeable plan to protect your equity award and position from dilution following the Company's next round of capital raise based on your ability to meet goals related to the fund raising. The Company will establish certain pre-fundraising goals related to valuation, and certain post-fundraising goals. If the goals are met, the Company will, subject to Board approval, issue you an award that returns you to your pre-raise position.

As described in the applicable equity award agreement(s) and subject to the terms and conditions thereof, if there is a Change of Control (as defined in each such agreement) involving the Company, then one hundred percent (100%) of all of your unvested stock units will vest as of the consummation of the Change of Control. To the extent that this paragraph conflicts with any term of an equity award agreement (including but not limited to any term of such equity award agreement that permits or requires that a termination without "Cause" or as a result of a "Good Reason" occur following a Change of Control) then the terms of this paragraph will govern.

**Benefits:** You will be eligible to participate in the Company's standard benefit programs made available to senior executives, subject to the terms and conditions of such plans. The Company may, from time to time, change these benefits in its discretion. Additional information regarding these benefits is available for your review upon request. Additionally, the Company agrees to a one-time reimbursement of reasonable attorney fees up to \$4000.00, related to your negotiation and review of employment documents upon the submission of an invoice describing the services in reasonable detail.

**Vacation:** The Company offers a flexible plan for personal time, whether it is for vacation or sick leave. You will, during each calendar year of your employment, be entitled to four (4) weeks of vacation on a prorated basis for 2020, in addition to nationally recognized holidays.

**Indemnification:** The Company will indemnify you consistent with other officers and directors of the Company and as provided in the Company's bylaws.

**Commuting Expenses:** The Company will reimburse you for reasonable expenses related to commuting from your home in South Carolina to the office in Boston. This reimbursement will be managed under the auspices of the company travel expense policy.

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**At Will Employment:** You understand and acknowledge that your employment with the Company is for an unspecified duration and constitutes “at-will” employment. This means that the Company or you may terminate this employment relationship at any time, with or without cause and with or without notice. The at-will nature of this employment relationship cannot be modified except expressly in a signed writing by the Company’s president.

**Termination; Severance:** You and the Company will enter into a standard Change of Control and Severance Agreement in substantially the form as attached hereto. Subject to the terms therein, the Company agrees to provide the following severance benefits should the Company undergo a change of control (as defined therein) or you are terminated without Cause or you resign for Good Reason (as defined therein):

- Termination by Company Without Cause or you resign for Good Reason & Employed for Fewer Than 12 Full Months: You will receive a lump sum payment equal to 9 months of your then-current salary, and payment of COBRA premiums for 9 months;
- Termination by Company Without Cause or you resign for Good Reason & Employed for 12 Full Months or Longer: You will receive a lump sum payment equal to 12 months of your then-current salary, and payment of COBRA premiums for 12 months; and
- Change of Control & Termination by Company without Cause or by You with Good Reason: You will receive a lump sum payment equal to 12 months of your then-current salary, and payment of COBRA premiums for 12 months.

This offer will remain open until 5:00 p.m. EST on October 5, 2020. We believe that your enthusiasm and experience will be an asset to our Company and that you will have a positive impact on the organization. Please acknowledge your acceptance of this offer by signing below and **emailing this letter to Darren Alch at [dalch@alchlaw.com](mailto:dalch@alchlaw.com)** by the stated deadline. We are looking forward to you joining the GI Dynamics team!

Sincerely,

/s/ Mark Lerdal                      10/9/20  
Mark Lerdal                      Date  
Board Chairman

**Offer Accepted:**

/s/ Joseph Virgilio                      10/9/20  
Joseph Virgilio                      Date

Attachments:

- Change of Control and Severance Agreement
- Nondisclosure, Nonsolicitation & Noncompete Agreement

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**GI DYNAMICS, INC.  
CHANGE OF CONTROL AND SEVERANCE AGREEMENT**

This Change of Control and Severance Agreement (the “Agreement”) is made and entered into by and between Joseph Virgilio (“Employee”) and GI Dynamics, Inc., a Delaware corporation (the “Company”), effective as of date that Employee commences employment with the Company (the “Effective Date”).

**RECITALS**

**WHEREAS**, the Company may from time to time consider the possibility of an acquisition by another company or other change of control, or may terminate Employee’s employment without cause or may cause Employee to resign his or her employment as a result of actions taken by the Company that materially and negatively change Employee’s employment relationship with the Company. The Compensation Committee of the Board of Directors of the Company (the “Committee”) recognizes that the risk of such events occurring can be a distraction to Employee and can cause Employee to consider alternative employment opportunities. The Committee has determined that it is in the best interests of the Company and its stockholders to assure that the Company will have the continued dedication and objectivity of Employee, notwithstanding the possibility that such events may occur;

**WHEREAS**, the Committee believes that it is in the best interests of the Company and its stockholders to provide Employee with an incentive to continue his or her employment;

**WHEREAS**, the Committee believes that it is imperative to provide Employee with certain severance benefits in certain instances upon Employee’s termination of employment. These benefits will provide Employee with enhanced financial security and incentive and encouragement to remain with the Company notwithstanding the possibility that certain events may occur that lead to the termination of Employee’s employment;

**WHEREAS**, certain capitalized terms used in the Agreement are defined in Section 5 below; and

**WHEREAS**, this Agreement supersedes and replaces, in its entirety, any prior agreement between the Company and Employee relating to the subject matter that is contained in this Agreement.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. **Term of Agreement.** This Agreement will have an initial term of **four (4)** years commencing on the Effective Date (the “Initial Term”). On the fourth anniversary of the Effective Date, this Agreement will renew automatically for additional one (1) year terms (each, an “Additional Term”) unless either party provides the other party with written notice of non-renewal at least ninety (90) days prior to the date of automatic renewal. Notwithstanding the foregoing sentence, if a Change of Control occurs at any time during either the Initial Term or an Additional Term, the term of this Agreement will extend automatically through the date that is twelve (12) months following the effective date of the Change of Control. If Employee becomes entitled to benefits under Section 3 during the term of this Agreement, the Agreement will not terminate until all of the obligations of the parties hereto with respect to this Agreement have been satisfied. Furthermore, for purposes of Employee’s eligibility for severance benefits as described in Section 3 below, an election not to renew the Term by the Company shall be treated as a termination of Employee’s employment without Cause, and an election not to renew the Term by the Employee shall be treated as a resignation without Good Reason.
2. **At-Will Employment.** The Company and Employee acknowledge that Employee’s employment is and will continue to be at-will, as defined under applicable law. If Employee’s employment terminates for any reason, including (without limitation) any termination prior to or following a Change of Control as provided herein, Employee will not be entitled to any payments, benefits, damages, awards or compensation other than as provided by this Agreement or as provided in any employment agreement entered into between the Company and Employee, and the payment of accrued but unpaid wages, as required by law, and any unreimbursed reimbursable expenses.

3. Severance Benefits.

(a) **Termination without Cause, Termination upon Company's Election not to renew the Term, or Resignation for Good Reason Not in Connection with a Change of Control.** If the Company terminates Employee's employment with the Company without Cause, if the Company elects not to renew the Term pursuant to Section 1, or if Employee resigns from such employment for Good Reason, and Employee signs and does not revoke a release of claims substantially the same as set forth in Exhibit A, then subject to this Section 3, Employee will receive the following:

(i) Severance Payment. Employee will receive the following:

a. If employed less than one (1) year:

- i. a lump sum payment of (A) seventy five percent (75%) of Employee's annual base salary as in effect immediately prior to Employee's termination date;
- ii. payment of seventy five percent (75%) of Employee's then-current target performance bonus prorated by the number of days employed during the year to be paid within thirty (30) days of the date on which he executes the release of claims;
- iii. all accrued but unpaid vacation, expense reimbursements, wages, and other benefits due to Employee under any Company-provided plans, policies, and arrangements; and
- iv. COBRA. Provided that Employee and/or his or her eligible dependents timely elects to continue their healthcare coverage under the Company's group health plan pursuant to the Consolidated Omnibus Reconciliation Act ("COBRA"), the Company agrees to reimburse Employee for the costs incurred to obtain such continued coverage for himself or herself and his or her eligible dependents for a period of nine (9) months measured from the termination date. In order to obtain reimbursement for such healthcare coverage costs, Employee agrees to submit appropriate evidence to the Company of each periodic payment within thirty (30) days after the payment date, and the Company agrees to, within thirty (30) days after submission of appropriate evidence, reimburse Employee for that payment. During the period such healthcare coverage remains in effect hereunder, the following provisions govern the arrangement: (a) the amount of coverage costs eligible for reimbursement in any one calendar year of such coverage will not affect the amount of coverage costs eligible for reimbursement in any other calendar year for which such reimbursement is to be provided hereunder; (ii) no coverage costs will be reimbursed after the close of the calendar year following the calendar year in which those coverage costs were incurred; and (iii) Employee's right to the reimbursement of such coverage costs cannot be liquidated or exchanged for any other benefit. To the extent the reimbursed coverage costs constitute taxable income to Employee, the Company will report the reimbursement as taxable W-2 wages and collect the applicable withholding taxes, and any remaining tax liability will be Employee's sole responsibility, provided that the reimbursed coverage costs will not be considered as taxable income to Employee if such treatment is permissible under applicable law.

- b. If employed longer than one (1) year:
- i. the sum of (A) one hundred percent (100%) of Employee's annual base salary as in effect immediately prior to Employee's termination date;
  - ii. payment of one hundred percent (100%) of Employee's then-current target performance bonus prorated by the number of days employed during the year to be paid within thirty (30) days of the date on which he executes the release of claims;
  - iii. all accrued but unpaid vacation, expense reimbursements, wages, and other benefits due to Employee under any Company-provided plans, policies, and arrangements; and
  - iv. COBRA. Provided that Employee and/or his or her eligible dependents timely elects to continue their healthcare coverage under the Company's group health plan pursuant to the Consolidated Omnibus Reconciliation Act ("COBRA"), the Company agrees to reimburse Employee for the costs incurred to obtain such continued coverage for himself or herself and his or her eligible dependents for a period of twelve (12) months measured from the termination date. In order to obtain reimbursement for such healthcare coverage costs, Employee agrees to submit appropriate evidence to the Company of each periodic payment within thirty (30) days after the payment date, and the Company agrees to, within thirty (30) days after submission of appropriate evidence, reimburse Employee for that payment. During the period such healthcare coverage remains in effect hereunder, the following provisions govern the arrangement: (a) the amount of coverage costs eligible for reimbursement in any one calendar year of such coverage will not affect the amount of coverage costs eligible for reimbursement in any other calendar year for which such reimbursement is to be provided hereunder; (ii) no coverage costs will be reimbursed after the close of the calendar year following the calendar year in which those coverage costs were incurred; and (iii) Employee's right to the reimbursement of such coverage costs cannot be liquidated or exchanged for any other benefit. To the extent the reimbursed coverage costs constitute taxable income to Employee, the Company will report the reimbursement as taxable W-2 wages and collect the applicable withholding taxes, and any remaining tax liability will be Employee's sole responsibility, provided that the reimbursed coverage costs will not be considered as taxable income to Employee if such treatment is permissible under applicable law.
- (b) Termination without Cause, Termination upon Company's Election not to renew the Term, or Resignation for Good Reason in Connection with a Change of Control. If the Company terminates Employee's employment with the Company without Cause, if the Company elects not to renew the Term pursuant to Section 1, or if Employee resigns from such employment for Good Reason, and such termination occurs within the period beginning three (3) months before, and ending twelve (12) months following, a Change of Control, and Employee signs and does not revoke a release of claims with the Company (in substantially the same form as set forth in Exhibit A) and provided that such release of claims becomes effective no later than the Release Deadline, then subject to this Section 3, Employee will receive the following:
- (i) Severance Payment. Employee will receive the appropriate severance benefits described above in Section 3(a)(i); and
  - (ii) Vesting Acceleration of Equity Awards. The forfeiture restrictions on all shares of restricted stock as to which such restrictions remain in place lapse immediately, and any unvested stock options vest immediately. If Employee is terminated for Cause or due to death or Disability, if the Employee elects not to renew the Term, or if Employee resigns without Good Reason, then the unvested equity awards that are outstanding as of the date of termination shall terminate immediately pursuant to their terms. If a Change of Control does not occur during the three (3) month period following Employee's termination then the unvested equity awards shall terminate at the end of such period. If Employee has been terminated without Cause, by reason of the Company's election not to renew the Term or for Good Reason and a Change of Control occurs during the three (3) month period following such termination, the equity awards that are outstanding as of the date of termination (and are still within their maximum term to expiration) shall accelerate and become fully vested.

(c) Timing of Payments.

- (i) If the release of claims does not become effective by the Release Deadline, Employee will forfeit any rights to severance or benefits under this Agreement. In no event will severance payments or benefits be paid or provided until the release of claims becomes effective and irrevocable.
  - (ii) Unless otherwise required by Section 3(g), the Company will pay any severance payments set forth in Section 3(a)(i) and Section 3(b)(i) in a lump-sum payment payable within thirty (30) days following Employee's termination date; provided, however, that no severance or other benefits, other than the accrued compensation set forth in Section 3(a)(i) and Section 3(b)(i), will be paid or provided until the release of claims discussed in Section 3(a) and Section 3(b) becomes effective and irrevocable, and such severance amounts or benefits otherwise payable between Employee's termination date and the date such release becomes effective and irrevocable will be paid on the date the release becomes effective and irrevocable. If Employee should die before all of the severance amounts have been paid, such unpaid amounts will be paid in a lump-sum payment promptly following such event to Employee's designated beneficiary, if living, or otherwise to the personal representative of Employee's estate.
- (d) Voluntary Resignation; Termination for Cause. If Employee's employment with the Company terminates (i) voluntarily by Employee (other than for Good Reason), (ii) by reason of the Employee's election not to renew the Term, or (iii) for Cause by the Company, then Employee will not be entitled to receive severance or other benefits except for those (if any) as may then be established under the Company's then existing severance and benefits plans and practices or pursuant to other written agreements with the Company.
- (e) Disability; Death. If the Company terminates Employee's employment as a result of Employee's Disability, or Employee's employment terminates due to his or her death, then Employee will not be entitled to receive any other severance or other benefits except for those (if any) as may then be established under the Company's then existing written severance and benefits plans and practices or pursuant to other written agreements with the Company.
- (f) Exclusive Remedy. In the event of a termination of Employee's employment as set forth in Section 3(a) and Section 3(b) of this Agreement, the provisions of this Section 3 are intended to be and are exclusive and in lieu of any other rights or remedies to which Employee or the Company otherwise may be entitled, whether at law, tort or contract, in equity, or under this Agreement (other than the payment of accrued but unpaid wages, as required by law, and any unreimbursed reimbursable expenses). Employee will be entitled to no benefits, compensation or other payments or rights upon a termination of employment prior to or following a Change of Control other than those benefits expressly set forth in Section 3 of this Agreement.

(g) Section 409A.

- i. Notwithstanding anything to the contrary in this Agreement, no severance pay or benefits to be paid or provided to Employee, if any, pursuant to this Agreement that, when considered together with any other severance payments or separation benefits are considered deferred compensation under Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), and the final regulations and any guidance promulgated thereunder (“Section 409A”) (together, the “Deferred Compensation Separation Benefits”) will be paid or otherwise provided until Employee has a “separation from service” within the meaning of Section 409A. Similarly, no severance payable to Employee, if any, pursuant to this Agreement that otherwise would be exempt from Section 409A pursuant to Treasury Regulation Section 1.409A-1(b)(9) will be payable until Employee has a “separation from service” within the meaning of Section 409A.
- ii. Any severance payments or benefits under this Agreement that would be considered Deferred Compensation Severance Benefits will be paid on, or, in the case of installments, will not commence until, the sixtieth (60<sup>th</sup>) day following Employee’s separation from service, or, if later, such time as required by Section 3(g)(iii). Except as required by Section 3(g)(iii), any installment payments that would have been made to Employee during the sixty (60) day period immediately following Employee’s separation from service but for the preceding sentence will be paid to Employee on the sixtieth (60<sup>th</sup>) day following Employee’s separation from service and the remaining payments shall be made as provided in this Agreement.
- iii. Notwithstanding anything to the contrary in this Agreement, if Employee is a “specified employee” within the meaning of Section 409A at the time of Employee’s termination (other than due to death), then the Deferred Compensation Separation Benefits that are payable within the first six (6) months following Employee’s separation from service, will become payable on the first payroll date that occurs on or after the date six (6) months and one (1) day following the date of Employee’s separation from service. All subsequent Deferred Compensation Separation Benefits, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if Employee dies following Employee’s separation from service, but prior to the six (6) month anniversary of the separation from service, then any payments delayed in accordance with this paragraph will be payable in a lump sum as soon as administratively practicable after the date of Employee’s death and all other Deferred Compensation Separation Benefits will be payable in accordance with the payment schedule applicable to each payment or benefit. Each payment, installment and benefit payable under this Agreement is intended to constitute a separate payment for purposes of Section 1.409A-2(b) (2) of the Treasury Regulations.
- iv. Any amount paid under this Agreement that satisfies the requirements of the “short-term deferral” rule set forth in Section 1.409A-1(b) (4) of the Treasury Regulations will not constitute Deferred Compensation Separation Benefits for purposes of clause (i) above. It is the intent of this Agreement that all cash severance payments under Sections 3(a)(i) and 3(b)(i) will satisfy the requirements of the “short-term deferral” rule.
- v. Any amount paid under this Agreement that qualifies as a payment made as a result of an involuntary separation from service pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury Regulations that does not exceed the Section 409A Limit (as defined below) will not constitute Deferred Compensation Separation Benefits for purposes of clause (i) above.

vi. The foregoing provisions are intended to be exempt from or comply with the requirements of Section 409A so that none of the severance payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities or ambiguous terms herein will be interpreted to be exempt or so comply. The Company and Employee agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition prior to actual payment to Employee under Section 409A.

(h) Other Requirements. Employee's receipt of any payments or benefits under this Section 3 will be subject to Employee continuing to comply with the terms of any confidential information agreement executed by Employee in favor of the Company and the provisions of this Agreement.

4. Limitation on Payments. In the event that the severance and other benefits provided for in this Agreement or otherwise payable to Employee (i) constitute "parachute payments" within the meaning of Section 280G of the Code, and (ii) but for this Section 4, would be subject to the excise tax imposed by Section 4999 of the Code, then Employee's benefits under Section 3 will be either:

- a. delivered in full, or
- b. delivered as to such lesser extent which would result in no portion of such benefits being subject to the excise tax under Section 4999 of the Code,

whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the receipt by Employee on an after-tax basis, of the greatest amount of benefits, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. If a reduction in severance and other benefits constituting "parachute payments" is necessary so that benefits are delivered to a lesser extent, reduction will occur in the following order: reduction of cash payments; cancellation of awards granted "contingent on a change in ownership or control" (within the meaning of Code Section 280G), cancellation of accelerated vesting of equity awards; and reduction of employee benefits. In the event that acceleration of vesting of equity award compensation is to be reduced, such acceleration of vesting will be cancelled in the reverse order of the date of grant of Employee's equity awards. In no event shall Employee have any discretion with respect to the ordering of payment reductions.

Unless the Company and Employee otherwise agree in writing, any determination required under this Section 4 will be made in writing by the Company's independent public accountants immediately prior to a Change of Control or such other person or entity to which the parties mutually agree (the "Accountants"), whose determination will be conclusive and binding upon Employee and the Company for all purposes. For purposes of making the calculations required by this Section 4, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and Employee will furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section. The Company will bear all costs the Accountants may reasonably incur in connection with any calculations contemplated by this Section 4.

5. Definition of Terms. The following terms referred to in this Agreement will have the following meanings:

(a) Cause. "Cause" will mean Employee's termination only upon:

- i. Employee's willful failure or refusal to abide in all material respects by lawful directions received from the Board, other than a failure resulting from Employee's complete or partial incapacity due to physical or mental illness or impairment;
- ii. Employee's commission of any act of fraud, embezzlement or any other willful misconduct that has caused or is reasonably expected to result in material injury to the Company;
- iii. Employee's unauthorized use or disclosure of any proprietary information or trade secrets of the Company or any other party to whom you owe an obligation of nondisclosure as a result of your relationship with the Company; or
- iv. Employee's willful breach of any of your material obligations under any written agreement or written covenant with the Company.

Cause will not exist unless the Company gives written notice to you describing with particularity the alleged act(s) at issue. The foregoing definition does not in any way limit the Company's ability to terminate your employment at any time.

(b) Change of Control. "Change of Control" will mean the occurrence of any of the following events:

- i. Change in Ownership of the Company. A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group ("Person"), acquires ownership of the stock of the Company that, together with the stock held by such Person, constitutes more than 50% of the total voting power of the stock of the Company, except that any change in the ownership of the stock of the Company as a result of a private financing of the Company that is approved by the Company's Board of Directors (the "Board") will not be considered a Change of Control; or
- ii. Change in Effective Control of the Company. A change in the effective control of the Company which occurs on the date that a majority of members of the Board is replaced during any twelve (12) month period by directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purposes of this clause (ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change of Control; or
- iii. Change in Ownership of a Substantial Portion of the Company's Assets. A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the twelve (12) month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions. For purposes of this subsection (iii), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For these purposes, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

Notwithstanding the foregoing provisions of this definition, a transaction will not be deemed a Change of Control unless the transaction qualifies as a change in control event within the meaning of Section 409A.

- (c) Disability. “Disability” will mean that Employee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months. Termination resulting from Disability may only be effected after at least thirty (30) days’ written notice by the Company of its intention to terminate Employee’s employment. In the event that Employee resumes the performance of substantially all of his or her duties hereunder before the termination of his or her employment becomes effective, the notice of intent to terminate will automatically be deemed to have been revoked.
- (d) Good Reason. “Good Reason” will mean Employee’s resignation from all positions you then hold with the Company based on an event described below, provided you give written notice of such event within thirty (30) days after the first occurrence of such event and that you assert that grounds for a resignation for Good Reason exist as a result of such event, and provided such event is not corrected within thirty (30) days after the Company (or any successor thereto) receives written notice from you of:
  - i. a material reduction in your base compensation or target annual bonus eligibility (unless you are treated proportionately similarly to all other employees);
  - ii. a change in your position with the Company that materially reduces your title, level of authority, responsibilities and/or duties;
  - iii. A material change in the geographic location at which Employee must perform services (in other words, the relocation of Employee to a facility that is more than fifty (50) miles from Employee’s then-current location); or
  - iv. A material breach of the terms of Employee’s offer letter.
- (e) Section 409A Limit. “Section 409A Limit” will mean the lesser of two (2) times: (i) Employee’s annualized compensation based upon the annual rate of pay paid to Employee during the Employee’s taxable year preceding the Employee’s taxable year of Employee’s separation from service as determined under, and with such adjustments as are set forth in, Treasury Regulation 1.409A-1(b)(9)(iii)(A)(1) and any Internal Revenue Service guidance issued with respect thereto; or (ii) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Code for the year in which Employee’s separation from service occurred.

6. Successors.

- (a) The Company’s Successors. Any successor to the Company (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company’s business and/or assets will assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term “Company” will include any successor to the Company’s business and/or assets which executes and delivers the assumption agreement described in this Section 6(a) or which becomes bound by the terms of this Agreement by operation of law.
- (b) Employee’s Successors. The terms of this Agreement and all rights of Employee hereunder will inure to the benefit of, and be enforceable by, Employee’s personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

7. Arbitration

- (a) To ensure the rapid and economical resolution of disputes that may arise in connection with your employment with the Company, you and the Company agree that any and all disputes, claims, or causes of action, in law or equity, arising from or relating to the enforcement, breach, performance, or interpretation of this Offer Letter, your employment with the Company, or the termination of your employment, will be resolved, to the fullest extent permitted by law, by final, binding and confidential arbitration in Boston, Massachusetts by JAMS, Inc. (“JAMS”) or its successor, under JAMS’ then applicable rules and procedures. You acknowledge that by agreeing to this arbitration procedure, both you and the Company waive the right to resolve any such dispute through a trial by jury or judge or administrative proceeding. You will have the right to be represented by legal counsel at any arbitration proceeding. The arbitrator will: (a) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be permitted by law; and (b) issue a written statement signed by the arbitrator regarding the disposition of each claim and the relief, if any, awarded as to each claim, the reasons for the award, and the arbitrator’s essential findings and conclusions on which the award is based. Each party will bear its own attorneys’ fees and litigation costs, except to the extent the underlying law upon which any claim is based provides for the award of attorneys’ fees, in which case such fees will be recoverable as provided by law. The arbitrator will be authorized to award all relief that you or the Company would be entitled to seek in a court of law, including, but not limited to, allocating in the arbitrator’s discretion, between the parties, all costs of the arbitration, including facility fees and the fees and expenses of the arbitrator and reasonable attorneys’ fees, costs and expert witness fees of the parties, if permitted by applicable law. Nothing in this Offer Letter is intended to prevent either you or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. The parties further agree that this Section 7 may be specifically enforced in court.
- (b) Voluntary Nature of Agreement. Each of the Company and Employee acknowledges and agrees that such party is executing this Agreement voluntarily and without any duress or undue influence by anyone. Employee further acknowledges and agrees that he or she has carefully read this Agreement and has asked any questions needed for him or her to understand the terms, consequences, and binding effect of this Agreement and fully understand it, including that ***Employee is waiving his or her right to a jury trial***. Finally, Employee agrees that he or she has been provided an opportunity to seek the advice of an attorney of his or her choice before signing this Agreement.

8. Notice.

- (a) General. Notices and all other communications contemplated by this Agreement will be in writing and will be deemed to have been duly given when personally delivered when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid or when delivered by a private courier service such as UPS, DHL or Federal Express that has tracking capability. In the case of Employee, mailed notices will be addressed to him or her at the home address which he or she most recently communicated to the Company in writing. In the case of the Company, mailed notices will be addressed to its corporate headquarters, and all notices will be directed to the attention of its President.
- (b) Notice of Termination. Any termination by the Company for Cause or by Employee for Good Reason will be communicated by a notice of termination to the other party hereto given in accordance with Section 8(a) of this Agreement. Such notice will indicate the specific termination provision in this Agreement relied upon, will set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and will specify the termination date (which will be not more than ninety (90) days after the giving of such notice). The failure by Employee to include in the notice any fact or circumstance which contributes to a showing of Good Reason will not waive any right of Employee hereunder or preclude Employee from asserting such fact or circumstance in enforcing his or her rights hereunder.

9. Miscellaneous Provisions.

- (a) No Duty to Mitigate. Employee will not be required to mitigate the amount of any payment contemplated by this Agreement, nor will any such payment be reduced by any earnings that Employee may receive from any other source.
- (b) Non-Competition; Confidentiality. As a condition of your employment, you were required to sign and abide by the Company's standard Nondisclosure, Nonsolicitation and Noncompete Agreement. You expressly reaffirm your obligations under such Nondisclosure, Nonsolicitation and Noncompete Agreement.
- (c) Waiver. No provision of this Agreement will be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by Employee and by an authorized officer of the Company (other than Employee). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party will be considered a waiver of any other condition or provision or of the same condition or provision at another time.
- (d) Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.
- (e) Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto and supersedes in their entirety all prior representations, understandings, undertakings or agreements (whether oral or written and whether expressed or implied) of the parties with respect to the subject matter hereof. No waiver, alteration, or modification of any of the provisions of this Agreement will be binding unless in writing and signed by duly authorized representatives of the parties hereto and which specifically mention this Agreement.
- (f) Choice of Law. The validity, interpretation, construction and performance of this Agreement will be governed by the laws of the Commonwealth of Massachusetts (with the exception of its conflict of laws provisions). Any claims or legal actions by one party against the other arising out of the relationship between the parties contemplated herein (whether or not arising under this Agreement) will be commenced or maintained in any state or federal court located in the jurisdiction where Employee resides, and Employee and the Company hereby submit to the jurisdiction and venue of any such court.
- (g) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement will not affect the validity or enforceability of any other provision hereof, which will remain in full force and effect.
- (h) Withholding. All payments made pursuant to this Agreement will be subject to withholding of applicable income, employment and other taxes.
- (i) Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by its duly authorized officer, as of the day and year set forth below.

**COMPANY:**

GI Dynamics, Inc.

By: /s/ Mark Lerdal

Name: Mark Lerdal

Title: Board Chairman

**EMPLOYEE:**

/s/ Joseph Virgilio

Name: Joseph Virgilio

EXHIBIT A

RELEASE

1. Release of All Claims. In consideration for the benefits to which Employee is entitled pursuant to that certain **CHANGE OF CONTROL AND SEVERANCE AGREEMENT** dated October 5, 2020, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employee, for Employee and Employee's heirs, assigns, and all persons and entities claiming by, through, or under Employee, hereby irrevocably, unconditionally, and completely releases, discharges, and agrees to hold harmless the Company and its Affiliates (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 Employee has, had, or may claim to have against Releasees (hereinafter collectively referred to as "Claim(s)").
2. The release, discharge, and agreement to hold harmless set forth in this Section 1 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 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”) or any equivalent law under the laws of the Commonwealth of Massachusetts, which may entitle employee to 60 days advance notice prior to termination.
3. Employee hereby waives any law that stipulates that a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.
  4. Nothing in this Agreement waives Employee’s rights, if any, to (i) continue 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 Employee may have under any employee pension or welfare benefit plan in which Employee participated as an employee of the Company, and/or (iii) any claims 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.
  5. Exclusion for Certain Claims. Notwithstanding the foregoing, the Company and Employee agree that the releases set forth in Sections 1 and 2 above do not apply to any claims arising after the Employee’s termination date, nor does anything herein prevent Employee or the Company from instituting any action to enforce the terms of this Agreement. The Parties agree and acknowledge that the release and waiver set forth in Sections 1 and 2 above do not prevent 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, Employee agrees that, to the full extent allowed by law, 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 Employee’s benefit arising from or relating to any Claim(s) released by Employee under this Agreement. Employee further specifically acknowledges and agrees that Employee is waiving, on behalf of Employee and Employee’s attorneys, all claims for fees and expenses and court costs.
  6. Full and Complete Release. Employee understands and agrees that Employee is releasing and waiving any Claim(s) that Employee does not know exists or may exist in Employee’s favor at the time Employee signs this Agreement which, if known by Employee, would materially affect Employee’s decision to sign this Agreement. Nonetheless, for the purpose of implementing a full and complete release of all Claim(s), Employee expressly acknowledges that the release set forth in Sections 1 and 2 is intended to include, without limitation, all Claim(s) that Employee does not know or suspect to exist in Employee’s favor and that the release set forth in Sections 1 and 2 includes the release and extinguishment of any such Claim(s). In addition, Employee agrees that Employee will not seek re-employment with the Company at any time in the future and that the provisions of this Section 6 are adequate and legal grounds to (a) reject Employee’s application for re-employment or (b) terminate Employee’s employment should Employee be rehired by the Company in violation of this Section 6.
  7. 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 or her employment with the Company and any of its predecessors or affiliates.
  8. Should any provision of this Agreement be held to be invalid or wholly or partially unenforceable by a final, non-appealable judgment in a court of competent jurisdiction, such holding shall not invalidate or void the remainder of this Agreement, and those portions held to be invalid or unenforceable shall be revised and reduced in scope so as to be valid and enforceable or, if such is not possible, then such portions shall be deemed to have been wholly excluded with the same force and effect as if it had never been included herein.
  9. Employee and his or her representatives, attorneys, and agents will not make any public or private statement with respect to the Company (including, as to Employee, any statement with respect to the directors, officers, employees, representatives, attorneys, and agents of the Company) that is derogatory, disparaging or may tend to injure the Company or such person in its or their business, public or private affairs. The Company (including, directors, officers, employees, representatives, attorneys, and agents of the Company) will not make any public or private statement with respect to Employee that is derogatory, disparaging or may tend to injure Employee in his business, public or private affairs. The foregoing obligations do not apply to information required to be disclosed or requested by any governmental agency, court or stock exchange, or any law, rule or regulation. Any public disclosure related to this Agreement as required by any law, rule or regulation will be negotiated by the Parties in advance, except that the Company has the final, sole discretion as to the content of any such announcement.

10. This Agreement is governed by and construed and enforced, in all respects, in accordance with the laws of the Commonwealth of Massachusetts without regard to conflict of law principles unless preempted by federal law, in which case federal law governs.
11. Review and Revocation. Employee acknowledges and agrees that he or she has 45 days from the date he or she receives this Agreement to consider the terms of and to sign this Agreement. Employee may, at Employee's sole and absolute discretion, sign this Agreement prior to the expiration of the above review period.
12. Employee may revoke this Agreement for a period of up to 7 days after Employee signs it (not counting the day it was signed) and the Agreement shall not become effective or enforceable until the 7-day revocation period has expired. To revoke this Agreement, Employee must give written notice stating that Employee wishes to revoke the Agreement to the Company. Any notice stating that Employee wishes to revoke this Agreement must be emailed (with a reply confirmation from the Company), hand-delivered, or mailed (with confirmation of delivery) to the Company, as set forth in this paragraph, in sufficient time to be received by the Company on or before the expiration of the 7-day revocation period.

AGREED AND ACCEPTED, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_