



Form 10-Q/A Filed with SEC

Boston, United States
Sydney, Australia
20 May 2019 AEST

BOSTON and SYDNEY – 20 May 2019 — GI Dynamics® Inc. (ASX:GID) (Company or GI Dynamics), a medical device company that is developing EndoBarrier® for patients with type 2 diabetes and obesity, today provides the attached Form 10-Q/A, as filed with the U.S. Securities and Exchange Commission on 17 May 2019. The Form 10-Q/A amends the Company's Form 10-Q filed with the U.S. Securities and Exchange Commission on 16 May 2019 and corrects a numerical error that resulted from a publishing software tabulation error which affected the update of the Statement of Cash Flows and a subsequent table within the original Form 10-Q. No other changes were made. The financial statements included in Form 10-Q/A were prepared in accordance with United States Generally Accepted Accounting Principles and are denominated in United States dollars unless otherwise indicated.

About GI Dynamics

GI Dynamics®, Inc. (ASX:GID) is the developer of EndoBarrier®, the first endoscopically-delivered device therapy for the treatment of type 2 diabetes and obesity. EndoBarrier is not approved for sale and is limited by federal law to investigational use only. Founded in 2003, GI Dynamics is headquartered in Boston, Massachusetts. For more information please visit www.gidynamics.com.

Forward-Looking Statements

This announcement may contain forward-looking statements. These statements are based on GI Dynamics management's current estimates and expectations of future events as of the date of this announcement. 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.

Investor Relations

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These risks and uncertainties include, but are not limited to, risks associated with our ability to continue to operate as a going concern; our ability to raise sufficient additional funds to continue operations and to conduct the planned pivotal trial of EndoBarrier in



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the United States (GID 18-1); our ability to execute the GID 18-1 under FDA's Investigational Device Exemption; our ability to enlist clinical trial sites and enroll patients in accordance with the GID 18-1; the risk that the FDA stops the GID 18-1 early as a result of the occurrence of certain safety events or does not approve an expansion of the GID 18-1; our ability to maintain compliance with our obligations under our existing convertible note and warrant agreements executed with Crystal Amber Fund Limited, including our obligations to make payment on the relevant note that is due in July 2019; our ability to restructure the terms of the convertible note with Crystal Amber Fund Limited that is due in July 2019 if we are unable to raise sufficient funds to enable us to fully repay such note when due; obtaining and maintaining regulatory approvals required to market and sell our 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 our products; product pricing; timing of product launches; future financial results; and other factors, including those described in our filings with the U.S. Securities and Exchange Commission.

Given these uncertainties, one should not place undue reliance on these forward-looking statements. We do 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 we are required to do so by law.

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

FORM 10-Q/A

Amendment No. 1

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2019

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from ____ to ____

Commission file number: 000-55195

GI DYNAMICS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

84-1621425
(I.R.S. Employer
Identification Number)

PO Box 51915
Boston, Massachusetts
(Address of Principal Executive Offices)

02205
(Zip Code)

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

Securities registered or to be registered pursuant to Section 12(b) of the Act:

| Title of each class | Trading symbol(s) | Name of each exchange on which registered |
|-----------------------------------|-------------------|---|
| Common Stock, par value \$0.01 | GID.ASX | Australia Securities Exchange |

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days: Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files): Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐
Non-accelerated filer ☐

Accelerated filer ☐
Smaller reporting company ☒
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. ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act): ☐ Yes ☒ No

As of May 10, 2019, there were 19,277,545 shares of common stock outstanding.

Explanatory Note

This amendment No. 1 to the Quarterly Report on Form 10-Q/A (the “Amendment”) of GI Dynamics, Inc. (“the Company”) is being filed to amend the Company’s Quarterly Report on Form 10-Q for the period ended March 31, 2019, which was originally filed with the Securities and Exchange Commission on May 16, 2019 (the “Original Filing”). The Amendment corrects a numerical error that resulted from a publishing software tabulation error in the Statement of Cash Flows on the Debt issuance costs line item and a subsequent rounding effect in a table within the Original Filing. No other changes have been made to the Amendment.

NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements concerning our business, operations, financial performance and condition as well as our plans, objectives and expectations for our business, operations and financial performance and condition. Any statements contained in this Quarterly Report on Form 10-Q that are not of historical facts may be deemed to be forward-looking statements. The forward-looking statements are contained principally in the section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” Forward-looking statements include, but are not limited to, statements about:

- our expectations with respect to our intellectual property position;
- our expectations with respect to our clinical trials;
- our expectations with respect to regulatory submissions and receipt and maintenance of regulatory approvals;
- our ability to commercialize our products;
- our ability to develop and commercialize new products;
- our expectation with regard to product manufacture and inventory; and
- our estimates regarding our capital requirements and our need for additional financing.

In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “could,” “would,” “expects,” “plans,” “anticipates,” “believes,” “estimates,” “projects,” “predicts,” “aims,” “assumes,” “goal,” “intends,” “objective,” “potential,” “positioned,” “target,” “continue,” “seek,” “vision” and similar expressions intended to identify forward-looking statements.

These forward-looking statements are based on current expectations, estimates, forecasts and projections about our business and the industry in which we operate and our management’s beliefs and assumptions. These forward-looking statements are not guarantees of future performance or development and involve known and unknown risks, uncertainties and other factors that are in some cases beyond our control. As a result, any or all of our forward-looking statements in this Quarterly Report on Form 10-Q may later become inaccurate. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements we make. We have included important factors in the cautionary statements included in this Quarterly Report on Form 10-Q, particularly in the “Risk Factors” section (which incorporates by reference to our Annual Report on Form 10-K filed with the Securities and Exchange Commission, or SEC), that could cause actual results or events to differ materially from the forward-looking statements that we make.

You are urged to consider these factors carefully in evaluating the forward-looking statements and are cautioned not to place undue reliance on the forward-looking statements. You should read this Quarterly Report on Form 10-Q and the documents that we have filed as exhibits to our Annual Report on Form 10-K completely and with the understanding that our actual future results may be materially different from what we expect. These forward-looking statements speak only as of the date of this Quarterly Report on Form 10-Q. Unless required by law, we do not intend to publicly update or revise any forward-looking statements to reflect new information or future events or otherwise. You should, however, review the factors and risks we describe in the reports we will file from time to time with the SEC after the date of this Quarterly Report on Form 10-Q.

GI DYNAMICS, INC.
QUARTERLY REPORT ON FORM 10-Q
FOR THE QUARTER ENDED MARCH 31, 2019

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References

Unless the context requires otherwise, references in this Quarterly Report on Form 10-Q to “GI Dynamics,” “the Company,” “we,” “us” and “our” refer to GI Dynamics, Inc. and its consolidated direct and indirect subsidiaries.

Currency

Unless indicated otherwise in this Quarterly Report on Form 10-Q, all references to “\$”, “US\$” or “dollars” refer to United States dollars, the lawful currency of the United States of America. References to “A\$” refer to Australian dollars, the lawful currency of the Commonwealth of Australia. References to “€” or “euros” means euros, the single currency of Participating Member States of the European Union.

Trademarks

EndoBarrier ® and various company logos are the trademarks of the Company, in the United States and other countries. All other trademarks and trade names mentioned in this Quarterly Report on Form 10-Q are the property of their respective owners.

PART I – FINANCIAL INFORMATION

Item 1. Financial Statements

GI Dynamics, Inc. and Subsidiaries

Consolidated Balance Sheets

(In thousands, except share and per share amounts)

| | <u>March 31,</u> <u>2019</u> | <u>December 31,</u> <u>2018</u> |
|---|---------------------------------|------------------------------------|
| Assets | | |
| Current assets: | | |
| Cash and cash equivalents | \$ 1,286 | \$ 3,806 |
| Restricted cash | 30 | 30 |
| Prepaid expenses and other current assets | 556 | 530 |
| Total current assets | 1,872 | 4,366 |
| Property and equipment, net | 60 | 63 |
| Total assets | <u>\$ 1,932</u> | <u>\$ 4,429</u> |
| Liabilities and stockholders' deficit | | |
| Current liabilities: | | |
| Accounts payable | \$ 467 | \$ 1,050 |
| Accrued expenses | 987 | 1,645 |
| Short term debt to related party, net of debt discount | 4,986 | 4,960 |
| Derivative liabilities | 883 | 51 |
| Total current liabilities | 7,323 | 7,706 |
| Long term debt to related party, net of discount | 326 | 168 |
| Total liabilities | 7,649 | 7,874 |
| Commitments (Note 11) | | |
| Stockholders' deficit: | | |
| Preferred stock, \$0.01 par value – 500,000 shares authorized; no shares issued and outstanding at March 31, 2019 and December 31, 2018 | — | — |
| Common stock, \$0.01 par value – 50,000,000 shares authorized at March 31, 2019 and December 31, 2018; and 19,277,545 shares issued and outstanding at March 31, 2019 and December 31, 2018 | 193 | 193 |
| Additional paid-in capital | 263,580 | 263,521 |
| Accumulated deficit | (269,490) | (267,159) |
| Total stockholders' deficit | (5,717) | (3,445) |
| Total liabilities and stockholders' deficit | <u>\$ 1,932</u> | <u>\$ 4,429</u> |

The accompanying notes are an integral part of these consolidated financial statements.

GI Dynamics, Inc. and Subsidiaries
Consolidated Statements of Operations
(In thousands, except share and per share amounts)
(unaudited)

| | Three Months Ended March 31, | |
|--|-------------------------------------|-------------------|
| | 2019 | 2018 |
| Operating expenses: | | |
| Research and development | 810 | 373 |
| Sales and marketing | 16 | 204 |
| General and administrative | 1,344 | 1,185 |
| Total operating expenses | 2,170 | 1,762 |
| Loss from operations | (2,170) | (1,762) |
| Other income (expense): | | |
| Interest income | 3 | 7 |
| Interest expense | (177) | (81) |
| Foreign exchange gain (loss) | (9) | 9 |
| Gain on write-off of accounts payable | 29 | — |
| Re-measurement of derivative liabilities | (1) | 1 |
| Other income (expense), net | (155) | (64) |
| Loss before income tax expense | (2,325) | (1,826) |
| (Benefit from) Provision for income taxes | 6 | (18) |
| Net loss | <u>\$ (2,331)</u> | <u>\$ (1,808)</u> |
| Basic and diluted net loss per common share | \$ (0.12) | \$ (0.15) |
| Weighted-average number of common shares used in basic and diluted net loss per common share | 19,277,545 | 11,803,221 |

The accompanying notes are an integral part of these consolidated financial statements.

GI Dynamics, Inc. and Subsidiaries

Consolidated Statements of Stockholders' Deficit

(In thousands, except share and per share amounts)

(unaudited)

| THREE MONTHS ENDED MARCH 2019 | <u>Common Stock</u> | | <u>Additional Paid-in Capital</u> | <u>Accumulated Deficit</u> | <u>Total Stockholders' Deficit</u> |
|---|---------------------|------------------|---|--------------------------------|--|
| | <u>Shares</u> | <u>Par Value</u> | | | |
| Balance at January 1, 2019 | 19,277,545 | 193 | 263,521 | (267,159) | (3,445) |
| Stock-based compensation expense | — | — | 59 | — | 59 |
| Net loss | — | — | — | (2,331) | (2,331) |
| Balance at March 31, 2019 | <u>19,277,545</u> | <u>\$ 193</u> | <u>\$ 263,580</u> | <u>\$ (269,490)</u> | <u>\$ (5,717)</u> |
| THREE MONTHS ENDED MARCH 2018 | <u>Common Stock</u> | | <u>Additional Paid-in Capital</u> | <u>Accumulated Deficit</u> | <u>Total Stockholders' Deficit</u> |
| | <u>Shares</u> | <u>Par Value</u> | | | |
| Balance at January 1, 2018 | 11,157,489 | 112 | 255,294 | (259,121) | (3,715) |
| Issuance of shares upon private placement, net of issuance costs | 1,175,612 | 12 | 1,491 | — | 1,503 |
| Stock-based compensation expense | — | — | 29 | — | 29 |
| Net loss | — | — | — | (1,808) | (1,808) |
| Balance at March 31, 2018 | <u>12,333,101</u> | <u>\$ 124</u> | <u>\$ 256,814</u> | <u>\$ (260,929)</u> | <u>\$ (3,991)</u> |

GI Dynamics, Inc. and Subsidiaries
Consolidated Statements of Cash Flows
(In thousands)
(unaudited)

| | Three Months Ended March 31, | |
|---|-------------------------------------|-----------------|
| | 2019 | 2018 |
| Operating activities: | | |
| Net loss | \$ (2,331) | \$ (1,808) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Depreciation and amortization | 8 | 11 |
| Amortization of debt issuance costs non-cash interest expense | — | 18 |
| Non-cash interest expense | 110 | 198 |
| Accretion of debt discount | 65 | — |
| Stock-based compensation expense | 59 | 29 |
| Re-measurement of derivative liabilities | 1 | (1) |
| Changes in operating assets and liabilities: | | |
| Accounts receivable | — | 40 |
| Prepaid expenses and other current assets | (26) | (29) |
| Accounts payable | (583) | (353) |
| Accrued expenses | (768) | (79) |
| Net cash used in operating activities | (3,465) | (1,974) |
| Investing activities | | |
| Purchases of property and equipment | (5) | — |
| Net cash used in investing activities | (5) | — |
| Financing activities | | |
| Proceeds from issuance of common stock, net of issuance costs | — | 1,503 |
| Debt issuance costs | (50) | — |
| Proceeds from long term debt, related party | 1,000 | — |
| Net cash provided by financing activities | 950 | 1,503 |
| Net decrease in cash and cash equivalents | (2,520) | (471) |
| Cash, cash equivalents and restricted cash at beginning of period | 3,836 | 3,064 |
| Cash, cash equivalents and restricted cash at end of period | <u>\$ 1,316</u> | <u>\$ 2,593</u> |
| Supplemental cash flow disclosures | | |
| Income taxes paid | 6 | 11 |
| Interest paid | 394 | — |

The accompanying notes are an integral part of these consolidated financial statements.

GI Dynamics, Inc. and Subsidiaries**Notes to Consolidated Financial Statements****(unaudited)****1. Nature of Business**

GI Dynamics® is a clinical stage medical device company focused on the development and commercialization of EndoBarrier, a medical device intended for treatment of patients with type 2 diabetes and obesity.

Diabetes mellitus type 2 (also known as type 2 diabetes) is a long-term progressive metabolic disorder characterized by high blood sugar, insulin resistance, and reduced insulin production. According to the Centers for Disease Control and Prevention (CDC), people with type 2 diabetes represent 90% of the worldwide diabetes population, whereas 10% of this population is diagnosed with type 1 diabetes (a form of diabetes mellitus in which not enough insulin is produced).

Being overweight is a condition where the patient's body mass index (BMI) is greater than 25 (kg/m²); obesity is a condition where the patient's BMI is greater than 30, according to the CDC. Obesity and its comorbidities contribute to the progression of type 2 diabetes. Many experts believe obesity contributes to higher levels of insulin resistance, which creates a feedback loop that increases the severity of type 2 diabetes.

When considering treatment for type 2 diabetes, it is optimal to address obesity concurrently with diabetes.

EndoBarrier® is intended for the treatment of type 2 diabetes and obesity in a minimally invasive and reversible manner.

The current treatment paradigm for type 2 diabetes is lifestyle therapy combined with pharmacological treatment, whereby treating clinicians prescribe a treatment regimen of one to four concurrent medications that could include insulin for patients with higher levels of blood sugar. Insulin carries a significant risk of increased mortality and may contribute to weight gain, which in turn may lead to higher levels of insulin resistance and increased levels of blood sugar. Fewer than 50% of patients treated pharmacologically for type 2 diabetes are adequately managed, meaning that medication does not lower blood sugar adequately and does not halt the progressive nature of diabetes of these patients.

The current pharmacological treatment algorithms for type 2 diabetes fall short of ideal, creating a large and unfilled treatment gap.

Our vision is to make EndoBarrier the essential nonpharmacological and non-anatomy-altering treatment for patients with type 2 diabetes and obesity. We intend to achieve this vision by providing a safe and effective device, focusing on optimal patient care, supporting treating clinicians, adding to the extensive body of clinical evidence around EndoBarrier, gaining appropriate regulatory approvals, continuing to improve our products and systems, operating the company in a lean fashion, and maximizing shareholder value.

EndoBarrier® is intended for the treatment of type 2 diabetes and obesity in a minimally invasive and reversible manner and is designed to mimic the mechanism of action of duodenal-jejunal exclusion created by gastric bypass surgery.

Since incorporation, the Company has devoted substantially all of its efforts to product commercialization, research and development, business planning, recruiting management and technical staff, acquiring operating assets, and raising capital. The Company currently operates in one reportable business segment.

EndoBarrier History

In 2011, the Company began commercial sales of its product, EndoBarrier, which was approved and commercially available in multiple countries outside the U.S. at the time.

In 2013, the Company received approval from the U.S. Food and Drug Administration ("FDA") to commence its initial pivotal trial of EndoBarrier (the "ENDO Trial"). The Company announced its decision to stop the ENDO Trial in the second half of fiscal year 2015 and thereafter announced that it was reducing headcount by approximately 46% as part of its efforts to restructure its business and expenses and to ensure sufficient cash remained available for it to establish new priorities, continue limited market development and research, and to evaluate strategic options.

In the second and third quarters of fiscal year 2016, the Company took additional actions that it thought necessary to allow the opportunity to evolve its strategic options. These actions resulted in non-recurring charges totaling approximately \$1.1 million, including \$0.4 million related to restructuring charges in our second quarter, \$0.6 million related to employee departures in both our second and third quarters and \$0.1 million related to abandonment of our former headquarters in Lexington, MA.

In October 2016, the Company received final cancellation notification from the Therapeutic Goods Administration ("TGA") for the listing of EndoBarrier on the Australian Register of Therapeutic Goods ("ARTG").

In May 2017, the Company received notification from its notified body, SGS United Kingdom Limited (“SGS”), that the CE Mark for EndoBarrier had been suspended pending closure of non-conformances related to its quality management system required under International Organization for Standardization (“ISO”) regulations.

On November 10, 2017, the Company received notification from SGS that SGS was withdrawing the Certificate of Conformance for EndoBarrier, ending the CE Marking of EndoBarrier in Europe and select Middle East countries.

In December 2017, the Company received notification from the Medicines and Healthcare Products Regulatory Agency (“MHRA”) that all EndoBarrier delivery systems (liners) in inventory needed to be returned to the Company.

In August 2018, the Company received approval of an investigational device exemption (“IDE”) from the FDA to begin enrollment in a pivotal trial evaluating the safety and efficacy of EndoBarrier in the United States pending Institutional Review Board (“IRB”) approval, which was received in February 2019.

Financing History

From its inception in 2003 to its initial public offering (“IPO”) in 2011, the Company was financed by a series of preferred stock financings. In September 2011, the Company completed its IPO of common stock in the form of CHES Depositary Interests (“CDIs”) in Australia. As a result of the IPO and simultaneous private placement in the U.S., the Company raised a total of approximately \$72.5 million in proceeds, net of expenses and repayment of \$6.0 million of the Company’s convertible term promissory notes. Additionally, in July and August 2013, the Company issued CDIs on the Australian Securities Exchange (“ASX”) through a private placement and share purchase plan, which raised a total of approximately \$52.5 million, net of expenses. In May 2014, the Company raised an additional total of approximately \$30.8 million, net of expenses, when it issued CDIs on the ASX through a private placement.

On December 20, 2016, the Company completed a private placement issue of 69,865,000 CDIs (1,397,300 shares) at an issue price of A\$0.022 per CDI raising approximately \$1.0 million, net of issuance costs. In January 2017, the Company completed the issue of 12,481,600 CDIs (249,632 shares) to eligible investors under a Security Purchase Plan for approximately \$0.83 per share of common stock (A\$0.022 per CDI) resulting in net proceeds after issuance costs of approximately \$0.2 million.

In June 2017, the Company completed a Convertible Term Promissory Note (the “2017 Note”) secured financing with its largest shareholder Crystal Amber Fund Limited (“Crystal Amber”) for a gross amount of \$5.0 million. The 2017 Note accrues interest at 5% per annum compounded annually. Crystal Amber is deemed a Related Party of the Company for ASX purposes due to the size of its ownership position. The 2017 Note was originally due on December 31, 2018 and contains provisions for conversion during its term and is also subject to security arrangements in favor of Crystal Amber (See Note 10 of the Consolidated Financial Statements for a more complete description of the terms and conditions of the financing).

In January and March 2018, the Company raised approximately \$1.6 million in an offering of its CDIs to sophisticated and professional investors, including certain existing investors in Australia, the United States and the United Kingdom.

In May 2018, the Company completed a Convertible Term Promissory Note (the “2018 Note”) and Warrant (the “2018 Warrant”) financing with its largest shareholder Crystal Amber for a gross amount of \$1.75 million. The 2018 Note accrues interest at 10% per annum compounded annually. The 2018 Note matures and the 2018 Warrant expires on May 30, 2023. Crystal Amber is deemed a Related Party of the Company for ASX purposes due to the size of its ownership position. (See Note 10 of the Consolidated Financial Statements for a more complete description of the terms and conditions of the financing).

In September 2018, the Company received commitments for a private placement of approximately \$5 million in an offering of its CDIs to sophisticated and professional investors, including certain existing investors in Australia, the United States and the United Kingdom. The first tranche of \$2.2 million closed and cash was received in September 2018. The second and final tranche of \$2.8 million was contingent upon shareholder approval, which was obtained in October 2018. Cash proceeds were received in November 2018.

In December 2018, the maturity date of the 2017 Note was extended from December 31, 2018 to March 31, 2019 in exchange for payment of \$394 thousand, the total accrued interest on the 2017 Note at December 31, 2018.

In March 2019, the Company completed a Convertible Term Promissory Note (the “March 2019 Note”) and Warrant (the “March 2019 Warrant”) financing with its largest shareholder, Crystal Amber, for a gross amount of \$1.0 million. The March 2019 Note accrues interest at 10% per annum compounded annually. Certain specific terms associated with the conversion of the March 2019 Note and issuance of the March 2019 Warrant require shareholder approval, which will be sought in a vote of the stockholders of the Company during the Annual Meeting of Stockholders anticipated to be held in May or June 2019. The March 2019 Note matures on March 15, 2024 and the March 2019 Warrant, if issued, will expire on the fifth anniversary of the date of issuance. Crystal Amber is deemed a Related Party of the Company for ASX purposes due to the size of its ownership position. (See Note 10 of the Consolidated Financial Statements for a more complete description of the terms and conditions of the financing).

In March 2019, the maturity date of the 2017 Note was extended to May 1, 2019. In April 2019, the maturity date of the 2017 Note was extended to July 1, 2019.

In May 2019, the Company completed a Convertible Term Promissory Note (the “May 2019 Note”) and Warrant (the “May 2019 Warrant”) financing with its largest shareholder, Crystal Amber, for a gross amount of up to \$3.0 million. The May 2019 Note accrues interest at 10% per annum, computed daily until the date upon which full funding under the May 2019 Note is anticipated to be received, regardless of whether full funding is made on such date (the “Full Funding Date”) and compounded annually beginning on the Full Funding Date. The \$3.0 million payment will be made in several tranches. Certain specific terms associated with the conversion of the May 2019 Note and issuance of the May 2019 Warrant require shareholder approval, which will be sought in a vote of the stockholders of the Company during the Annual Meeting of Stockholders anticipated to be held in May or June 2019. The May 2019 Note matures and the May 2019 Warrant, if issued, will expire on the fifth anniversary of the Full Funding Date. Crystal Amber is deemed a Related Party of the Company for ASX purposes due to the size of its ownership position. (See Note 10 of the Consolidated Financial Statements for a more complete description of the terms and conditions of the financing).

Going Concern

As of March 31, 2019, the Company’s primary source of liquidity is its cash and cash equivalents balances. The Company continues to evaluate which markets are appropriate to pursue regulatory approvals, continue pursuing reimbursement, market awareness and general market development and selling efforts. The Company continues to restructure its business and costs, establish new priorities, and evaluate strategic options. As a result, if the Company remains in business, it expects to incur significant operating losses for the next several years.

The Company has incurred operating losses since inception and at March 31, 2019 had an accumulated deficit of approximately \$270 million, a working capital deficit of approximately \$5.5 million, cash used in operating activities of approximately \$3.5 million and cash and cash equivalents of approximately \$1.3 million. Cash provided by these activities will be used predominantly to prepare for the Company’s clinical trial, which will result in increased expenses. The Company does not expect its current cash balances will be sufficient to operate beyond July 1, 2019 if cash is required to settle the 2017 Note on that date. Both parties to the 2017 Note are aware that if the Company is required to make this payment on the due date of July 1, 2019, the Company will be required either to renegotiate the due date of the loan or potentially cease operations. Crystal Amber and the Company are in discussions to extend of the due date of the 2017 Note, but there can be no assurance that any extension will occur. If the Company is able to amend the terms of the 2017 Note, it believes its cash and cash equivalents will be sufficient to fund operations to the end of August 2019, or until the modified due date of the note. The Company will need to raise additional funds through any combination of collaborative arrangements, strategic alliances, and additional equity and debt financings or from other sources.

The Company has no guaranteed source of capital that will sustain operations beyond August 2019. There can be no assurance that other potential financing opportunities will be available on acceptable terms, if at all. As such, if access to capital is not achieved to satisfy cash needs in the near term, the Company’s business, financial condition and results of operations will be materially harmed or the Company may be required to cease operations. These factors raise substantial doubt about the Company’s ability to continue as a going concern within one year after the date that the financial statements are issued.

The accompanying consolidated financial statements have been prepared assuming the Company will continue as a going concern, which contemplates the realization of assets and liabilities and commitments in the normal course of business. The consolidated financial statements as of March 31, 2019 and December 31, 2018 and the three months ended March 31, 2019 and 2018 do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from uncertainty related to the Company’s ability to continue as a going concern within one year after the date that the financial statements are issued.

2. Summary of Significant Accounting Policies and Basis of Presentation

The accompanying interim consolidated financial statements and related disclosures as of March 31, 2019, and for the three months ended March 31, 2019 and 2018, are unaudited and have been prepared in accordance with accounting principles generally accepted in the U.S. (“GAAP”) and the applicable rules and regulations of the Securities and Exchange Commission (“SEC”) for interim financial information. Accordingly, they do not include all of the information and notes required by GAAP for complete financial statements. These interim consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto contained in the Company’s Annual Report on Form 10-K (“Form 10-K”), filed with the SEC on March 13, 2019. The December 31, 2018 consolidated balance sheet included herein was derived from the audited financial statements as of that date but does not include all disclosures including notes required by GAAP for complete financial statements.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of GI Dynamics, Inc. and its wholly owned subsidiaries. All intercompany transactions and balances are eliminated in consolidation.

Use of Estimates

The preparation of consolidated financial statements in accordance with GAAP requires the Company’s management to make estimates and judgments that may affect the reported amounts of assets, liabilities, revenues and expenses, and the related disclosure of contingent assets and liabilities. On an ongoing basis, the Company’s management evaluates its estimates, including those related to impairment of long-lived assets, income taxes including the valuation allowance for deferred tax assets, research and development, contingencies, valuation of derivative liabilities, estimates used to assess its ability to continue as a going concern and stock-based compensation. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results may differ from these estimates under different assumptions or conditions. Changes in estimates are reflected in reported results in the period in which they become known.

Cash and Cash Equivalents

The Company considers all highly liquid investment instruments with an original maturity when purchased of three months or less to be cash equivalents. Investments qualifying as cash equivalents primarily consist of money market funds and have a carrying amount that approximates fair value. The amount of cash equivalents included in cash and cash equivalents was approximately \$4 thousand at March 31, 2019 and \$1.1 million at December 31, 2018.

The Company has \$30 thousand in restricted cash used to secure a corporate credit card account.

Inventory

When the Company resumes commercial activity, the Company will state inventory at the lower of first-in, first-out cost or net realizable value. When capitalizing inventory, the Company will consider factors such as status of regulatory approval, alternative use of inventory, and anticipated commercial use of the product. At March 31, 2019 and December 31, 2018, there was no inventory or reserves against inventory on the balance sheet.

Property and Equipment

Property and equipment, including leasehold improvements, are recorded at cost and are depreciated when placed in service using the straight-line method based on their estimated useful lives.

Included in property and equipment are certain costs of software obtained for internal use. Costs incurred during the preliminary project stage are expensed as incurred, while costs incurred during the application development stage are capitalized and amortized over the estimated useful life of the software. The Company also capitalizes costs related to specific upgrades and enhancements when it is probable the expenditures will result in additional functionality. Maintenance and training costs related to software obtained for internal use are expensed as incurred.

Leasehold improvements are amortized over the shorter of the estimated useful life of the asset or the remaining lease term. Costs for capital assets not yet placed into service have been capitalized as construction in progress and will be depreciated in accordance with the above guidelines once placed into service. Maintenance and repair costs are expensed as incurred.

Research and Development Costs

Research and development costs are expensed when incurred. Research and development costs include costs of all basic research activities as well as other research, engineering, and technical effort required to develop a new product or service or make significant improvement to an existing product or manufacturing process. Research and development costs also include preapproval regulatory and clinical trial expenses.

Patent Costs

The Company expenses as incurred all costs, including legal expenses, associated with obtaining patents until the patented technology becomes feasible. All costs incurred after the patented technology is feasible will be capitalized as an intangible asset. As of March 31, 2019, and December 31, 2018, no such costs had been capitalized. The Company expensed no patent costs within general and administrative expenses in the consolidated statements of operations for each quarter ended March 31, 2019 and 2018, respectively.

Stock-Based Compensation

We account for stock-based compensation in accordance with the Financial Accounting Standards Board, or FASB, Accounting Standards Codification, or ASC, 718, *Stock Compensation*, or ASC 718, which requires that stock-based compensation be measured and recognized as an expense in the financial statements and that such expense be measured at the grant date fair value.

For awards that vest based on service conditions, we use the straight-line method to allocate compensation expense to reporting periods. The grant date fair value of options granted is calculated using the Black-Scholes option pricing model, which requires the use of subjective assumptions including volatility, expected term and the fair value of the underlying Common Stock, among others.

The assumptions used in determining the fair value of stock-based awards represent management's best estimates, but these estimates involve inherent uncertainties and the application of management judgment. As a result, if factors change, and we use different assumptions, our stock-based compensation could be materially different in the future. The risk-free interest rate used for each grant is based on a zero-coupon U.S. Treasury instrument with a remaining term similar to the expected term of the stock-based award. Because we do not have a sufficient history to estimate the expected term, we use the simplified method for estimating the expected term. The simplified method is based on the average of the vesting tranches and the contractual life of each grant. We estimate our expected stock volatility based on our to-date historical price volatility. We have not paid and do not anticipate paying cash dividends on our shares of Common Stock; therefore, the expected dividend yield is assumed to be zero. In 2017, the Company elected to use an actual occurrence method of recording award forfeitures rather than the prior standard of estimating forfeitures as of the grant date.

We periodically issue performance-based awards. For these awards, vesting will occur upon the achievement of certain milestones. When achievement of the milestone is deemed probable, we expense the compensation of the stock award over the implicit service period.

Stock awards to non-employees are accounted for in accordance with ASC 505-50, *Equity-Based Payments to Non-Employees* ("ASC 505-50"). The measurement date for non-employee awards is generally the date performance of services required from the non-employee is complete. For non-employee

awards that vest based on service conditions, the Company expenses the value of the awards over the related service period, provided they expect the service condition to be met. The Company records the expense of services rendered by non-employees based on the estimated fair value of the stock option using the Black-Scholes option pricing model over the contractual term of the non-employee. The fair value of unvested non-employee awards is remeasured at each reporting period and expensed over the vesting term of the underlying stock options on a straight-line basis.

Impairment of Long-Lived Assets

The Company regularly reviews the carrying amount of its long-lived assets to determine whether indicators of impairment may exist that warrant adjustments to carrying values or estimated useful lives. If indications of impairment exist, projected future undiscounted cash flows associated with the asset are compared to the carrying amount to determine whether the asset's value is recoverable. If the carrying value of the asset exceeds such projected undiscounted cash flows, the asset will be written down to its estimated fair value.

Loss Contingencies

In accordance with ASC 450, *Contingencies*, the Company accrues anticipated costs of settlement, damages, and losses for loss contingencies based on historical experience or to the extent specific losses are probable and estimable. Otherwise, the Company expenses these costs as incurred. If the estimate of a probable loss is a range, and no amount within the range is more likely, the Company accrues the minimum amount of the range.

Income Taxes

The Company provides for income taxes under the liability method. The Company records deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the Company's financial reporting and the tax bases of assets and liabilities measured using the enacted tax rates expected to be in effect in the years in which the differences are expected to reverse. Deferred tax assets are reduced by a valuation allowance to reflect the uncertainty associated with their ultimate realization.

The Company accounts for uncertain tax positions recognized in the consolidated financial statements by applying a more-likely-than-not threshold for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return.

Guarantees

The Company has identified the guarantees described below as disclosable, in accordance with ASC 460, *Guarantees*.

As permitted under Delaware law, the Company indemnifies its officers and directors for certain events or occurrences while the officer or director is, or was, serving at the Company's request in such capacity. The maximum potential amount of future payments the Company could be required to make is unlimited; however, the Company has directors' and officers' insurance coverage that should limit its exposure and enable it to recover a portion of any future amounts paid.

The Company is a party to a number of agreements entered into in the ordinary course of business that contain typical provisions that obligate the Company to indemnify the other parties to such agreements upon the occurrence of certain events. Such indemnification obligations are usually in effect from the date of execution of the applicable agreement for a period equal to the applicable statute of limitations. The aggregate maximum potential future liability of the Company under such indemnification provisions is uncertain.

For the three months ended March 31, 2019 and 2018, the Company had not experienced any material losses related to these indemnification obligations, and no material claims with respect thereto were outstanding. The Company does not expect significant claims related to these indemnification obligations and, consequently, concluded that the fair value of these obligations is negligible. As a result, no related reserves have been established.

Issuance Costs Related to Equity and Debt

The Company allocates issuance costs between the individual freestanding instruments identified on the same basis as proceeds were allocated. Issuance costs associated with the issuance of stock or equity contracts (i.e., equity-classified warrants and convertible preferred stock) are recorded as a charge against the gross proceeds of the offering. Any issuance costs associated with the issuance of liability-classified warrants are expensed as incurred. Issuance costs associated with the issuance of debt (i.e., convertible debt) is recorded as a direct reduction of the carrying amount of the debt liability but limited to the notional value of the debt. The Company accounts for debt as liabilities measured at amortized cost and amortizes the resulting debt discount to interest expense using the effective interest method over the expected term of the notes pursuant to ASC 835, *Interest* ("ASC 835"). To the extent that the reduction from issuance costs of the carrying amount of the debt liability would reduce the carrying amount below zero, such excess is recorded as interest expense.

Embedded Conversion Features

The Company evaluates embedded conversion features within convertible debt under ASC 815 "Derivatives and Hedging" to determine whether the embedded conversion feature(s) should be bifurcated from the host instrument and accounted for as a derivative at fair value with changes in fair value recorded in earnings. If the conversion feature does not require derivative treatment under ASC 815, the instrument is evaluated under ASC 470-20 "Debt with Conversion and Other Options." Under the ASC 470-20, an entity must separately account for the liability and equity components of the convertible debt instruments that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer's economic interest

cost. The effect of ASC 470-20 on the accounting for our convertible debt instruments is that the equity component is required to be included in the additional paid-in capital section of stockholders' equity on the consolidated balance sheets and the value of the equity component is treated as original issue discount for purposes of accounting for the debt component of the notes. As a result, we are required to record non-cash interest expense as a result of the amortization of the discounted carrying value of the convertible debt to their face amount over the term of the convertible debt. We report higher interest expense in our financial results because ASC 470-20 requires interest to include both the current period's amortization of the debt discount and the instrument's coupon interest.

For conventional convertible debt where the rate of conversion is below market value, the Company records a "beneficial conversion feature" ("BCF") and related debt discount. When the Company records a BCF, the relative fair value of the BCF is recorded as a debt discount against the face amount of the respective debt instrument (offset to additional paid in capital) and amortized to interest expense over the life of the debt.

Subsequent Events

The Company evaluates events occurring after the date of its consolidated balance sheet for potential recognition or disclosure in its consolidated financial statements. Other than the following, there have been no material subsequent events that occurred through the date the Company issued its consolidated financial statements that require disclosure in or adjustment to its consolidated financial statements.

On April 22, 2019, the Company entered into a right of use lease (see Note 11).

On April 30, 2019, the Company entered into an amendment to its 2017 Note and Warrant Purchase Agreement and its 2017 Senior Secured Convertible Promissory Note (see Note 10).

On May 8, 2019, the Company entered into a Note and Warrant Purchase Agreement and issued a Senior Unsecured Convertible Promissory Note (see Notes 4 and 10).

New Accounting Pronouncements

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*, or ASU 2016-02. ASU 2016-02 requires that lessees recognize in the statement of financial position for all leases (with the exception of short-term leases) a lease liability, which is a lessee's obligation to make lease payments arising from a lease, measured on a discounted basis, and a right-of-use asset, which is an asset representing the lessee's right to use the underlying asset for the lease term. ASU 2016-02 is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years, with early adoption permitted. Lessees must apply a modified retrospective transition approach for leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements. The modified retrospective approach would not require any transition accounting for leases that expired before the earliest comparative period presented. Lessees may not apply a full retrospective transition approach. We have elected not to apply the guidance to short-term leases and the adoption of ASU 2016-02 has no impact on our consolidated financial statements as of December 31, 2018 and March 31, 2019 and for the three months ended March 31, 2019 and 2018.

In September 2017, the FASB issued ASU No. 2017-13, *Revenue Recognition (Topic 605), Revenue from Contracts with Customers (Topic 606), Leases (Topic 840), and Leases (Topic 842) - Amendments to SEC Paragraphs Pursuant to the Staff Announcement at the July 20, 2017 EITF Meeting and Rescission of Prior SEC Staff Announcements and Observer Comments*. This new standard allows for an extension to certain public business entities to adopt the series of ASU's defining revenue recognition and ASU 2016-02 regarding *Leases*. We qualify as a Public Business Entity and do not qualify for the extensions.

In June 2018, the FASB issued ASU No. 2018-07, *Compensation – Stock Compensation (Topic 718)*, or ASU 2018-07, which provides measurement provisions and clarifications for the accounting for Non-employee Share-Based Payments ("NESBP"). Changes within the amendments include grant-date fair value measurement of awards, probability adjustment of satisfying performance requirements for payment, and the elimination of the need to reclass awards on vesting. Additionally, ASU 2018-07 amends guidance specific to non-public entities, which do not apply given our status as a public entity. ASU 2018-07 is effective for public business entities for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years, with early adoption permitted but not in advance of adoption of Topic 606. Remeasurement should only be performed on liability classified awards that have not been settled as of the date of adoption or which have no established measurement date. Remeasurement will result in an adjustment to retained earnings as of the beginning of the fiscal year of adoption. Upon transition, those open awards are remeasured as of the date of adoption. The Company had no unvested or unearned NESBPs outstanding as of March 31, 2019.

In July 2018, the FASB issued ASU No. 2018-09, *Codification Improvements*, or ASU 2018-09, which affects a wide variety of topics, including the following: Amendments to Subtopic 220-10, *Income Statement—Reporting Comprehensive Income—Overall* relates to income taxes not payable in cash; Amendments to Subtopic 470-50, *Debt—Modifications and Extinguishments* relates to debt extinguishment and requires that the net carrying amount of extinguished fair value elected debt equals its fair value at reacquisition and related gains or losses in other comprehensive income must be included in net income upon extinguishment of the debt; Amendments to Subtopic 480-10, *Distinguishing Liabilities from Equity—Overall* relates to combinations of freestanding financial instruments with non-controlling interests; Amendments to Subtopic 718-740, *Compensation—Stock Compensation—Income Taxes* relate to recognition timing clarification for excess tax benefits or deficiencies for compensation expense; Amendments to Subtopic 805-740, *Business Combinations—Income Taxes* relate to allocating tax provisions to an acquired entity; Amendments to Subtopic 815-10, *Derivatives and Hedging—Overall* relate to accounting for offsetting derivatives; Amendments to Subtopic 820-10, *Fair Value Measurement—Overall* relate to the wording with respect to how transfer restrictions effect the fair value of an asset and adds explicit wording to allow entities to measure fair value on a net basis for those portfolios in which financial assets and financial liabilities and nonfinancial instruments are managed and

valued together; Amendments to Subtopic 940-405, *Financial Services—Brokers and Dealers—Liabilities* relate to guidance about offsetting on the balance sheet; and Amendments to Subtopic 962-325, *Plan Accounting—Defined Contribution Pension Plans—Investments—Other* relate to plan evaluation of whether a readily determinable fair value exists to determine whether those investments may qualify for the practical expedient to measure at net asset value in accordance with Topic 820. The transition and selection of an effective date is based on the facts and circumstances of each amendment, but many of the amendments have transition guidance with effective dates for annual periods beginning after December 15, 2018, for public business entities. The Company is currently evaluating the relevance of each component and potential impact of ASU 2018-09 components on its consolidated financial statements.

In July 2018, the FASB issued ASU No. 2018-11, *Leases (Topic 842), Targeted Improvements*, or ASU 2018-11, which primarily provides the ability to elect not to implement a modified retrospective presentation in the financial statements during transition periods and provides guidance to lessors on contract component separation. The Company declines the election and doing so has no impact on its consolidated financial statements.

In August 2018, the FASB issued ASU No. 2018-13, *Fair Value Measurement (Topic 820), Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement*, or ASU 2018-13, which provides guidance focused on the disclosure requirements for disclosing fair value estimates, assumptions, and methodology. Removed requirements to disclose details around amount and reasoning for level 1 to level 2 transfers, timing policies for transfer between levels, and the valuation processes for level 3 fair value measurements. Modified requirements include details regarding net asset redemption restrictions and timing related to uncertainty disclosures. Added requirements to include disclosures of changes in unrealized gains and losses for recurring level 3 measurements held as of the reporting date and disclosures around the range and weighted average of significant inputs used to develop level 3 fair value measurements. These amendments are effective for all entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. The amendments on changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and the narrative description of measurement uncertainty should be applied prospectively for only the most recent interim or annual period presented in the initial fiscal year of adoption. All other amendments should be applied retrospectively to all periods presented upon their effective date. Early adoption is permitted upon issuance of this Update. An entity is permitted to early adopt any removed or modified disclosures upon issuance of this Update and delay adoption of the additional disclosures until their effective date. The Company is currently evaluating the individual components and as these are disclosure refinements, expects no impact to its consolidated financial statements on adoption.

In March 2019, the FASB issued ASU No. 2019-01, *Leases (Topic 842), Codification Improvements*, or ASU 2019-01, which provides guidance focused on lessor accounting which is not applicable to us as we provide no leases to other parties, and also includes an explicit exception to a disclosure requirement for interim periods within the year of adoption. ASU 2019-01 has no impact on the Company's quarterly consolidated financial statements.

3. Net Loss per Common Share

Basic net loss per common share is computed by dividing net loss by the weighted-average number of common shares outstanding during the period. Potential common stock equivalents are determined using the treasury stock method. For diluted net loss per share purposes, the Company excludes stock options and other stock-based awards, including shares issued as a result of option exercises but which are subject to repurchase by the Company, whose effect would be anti-dilutive from the calculation. During the three months ended March 31, 2019 and 2018, common stock equivalents were excluded from the calculation of diluted net loss per common share, as their effect was anti-dilutive due to the net loss incurred. Therefore, basic and diluted net loss per share was the same in all periods presented.

The following potentially dilutive securities have been excluded from the computation of diluted weighted-average shares outstanding as of March 31, 2019 and 2018, as they would be anti-dilutive:

| | Three Months Ended March 31, | |
|---|------------------------------|------------------|
| | 2019 | 2018 |
| Warrants to purchase common stock | 3,552,672 | 28,532 |
| Options to purchase common stock and other stock-based awards | 1,545,719 | 1,668,219 |
| Total | 5,098,391 | 1,696,751 |

4. Warrants to Purchase Common Stock and CDIs

On May 4, 2016, the Company entered into a consulting agreement pursuant to which a consulting firm provides strategic advisory, finance, accounting, human resources and administrative functions, including chief financial officer services, to the Company. In connection with the consulting agreement, the Company granted the consulting firm a warrant ("Consultant Warrant") to purchase up to 28,532 shares of the Company's common stock at an exercise price per share equal to \$0.64. The Consultant Warrant is fully vested and expires on May 4, 2021. The Company has reserved 28,532 shares of common stock related to the Consultant Warrant. As of March 31, 2019, the Consultant Warrants had not been exercised.

On May 30, 2018, the Company entered into a Note and Warrant Purchase agreement that included a warrant to purchase 97,222,200 CDIs (representing 1,944,444 shares of common stock). The exercise price is US\$0.018 per CDI and the warrant can be exercised with cash or as a net exercise. The warrant is immediately exercisable on issuance and expires on May 30, 2023.

On March 15, 2019, the Company entered into a Note and Warrant Purchase agreement that included a form of warrant to purchase 78,984,823 CDIs (representing 1,579,696 shares of common stock). The issuance of the warrant requires shareholder approval, which will be sought in a vote of the stockholders of the Company during the Annual Meeting of Stockholders anticipated to be held in May or June 2019. If issued, the warrant's exercise price is US\$0.0127 per CDI, and the warrant can be exercised with cash or as a net exercise. The warrant is immediately exercisable on issuance and will expire (if issued) on the fifth anniversary of the date of issuance.

On May 8, 2019, the Company entered into a Note and Warrant Purchase agreement that included a form of warrant to purchase 236,220,472 CDIs (representing 4,724,409 shares of common stock), or a lesser number of CDIs proportion to the amount finally funded under the simultaneously issued \$3 million note. The issuance of the warrant requires shareholder approval, which will be sought in a vote of the stockholders of the Company during the Annual Meeting of Stockholders anticipated to be held in May or June 2019. If issued, the warrant's exercise price is US\$0.0127 per CDI, and the warrant can be exercised with cash or as a net exercise. The warrant is immediately exercisable on issuance and will expire on the fifth anniversary of the Full Funding Date (as defined in Note 1 to these Consolidated Financial Statements).

5. Fair Value of Financial Instruments

The tables below present information about the Company's assets and liabilities that are measured at fair value on a recurring basis as of March 31, 2019 and December 31, 2018 and indicates the fair value hierarchy of the valuation techniques the Company used to determine such fair value. In general, fair values determined by Level 1 inputs utilize observable inputs such as quoted prices in active markets for identical assets or liabilities. Fair values determined by Level 2 inputs utilize data points that are either directly or indirectly observable, such as quoted prices, interest rates and yield curves. Fair values determined by Level 3 inputs utilize unobservable data points in which there is little or no market data, requiring the Company to develop its own assumptions for the asset or liability.

The following tables present the assets and liabilities the Company has measured at fair value on a recurring basis (in thousands):

| Description | March 31, 2019 | Fair Value Measurements at Reporting Date Using | | |
|--|-------------------|---|--|--|
| | | Quoted Prices in Active Markets for Identical Assets (Level 1) | Significant Other Observable Inputs (Level 2) | Significant Unobservable Inputs (Level 3) |
| | | | | |
| | | | | |
| Assets | | | | |
| Money market funds (included in cash and cash equivalents) | \$ 4 | \$ 4 | \$ — | \$ — |
| Total assets | <u>\$ 4</u> | <u>\$ 4</u> | <u>\$ —</u> | <u>\$ —</u> |
| Liabilities | | | | |
| Derivative liability | \$ 883 | \$ — | \$ — | \$ 883 |
| Total liabilities | <u>\$ 883</u> | <u>\$ —</u> | <u>\$ —</u> | <u>\$ 883</u> |

| Description | December 31, 2018 | Fair Value Measurements at Reporting Date Using | | |
|--|-------------------|---|--|--|
| | | Quoted Prices in Active Markets for Identical Assets (Level 1) | Significant Other Observable Inputs (Level 2) | Significant Unobservable Inputs (Level 3) |
| | | | | |
| | | | | |
| Assets | | | | |
| Money market funds (included in cash and cash equivalents) | \$ 1,097 | \$ 1,097 | \$ — | \$ — |
| Total assets | <u>\$ 1,097</u> | <u>\$ 1,097</u> | <u>\$ —</u> | <u>\$ —</u> |
| Liabilities | | | | |
| Derivative liability | \$ 51 | \$ — | \$ — | \$ 51 |
| Total liabilities | <u>\$ 51</u> | <u>\$ —</u> | <u>\$ —</u> | <u>\$ 51</u> |

The assumptions used in the Black-Scholes option pricing model to determine the fair value of the common stock warrants as of March 31, 2019, and December 31, 2018 were as follows:

| | March 31, 2019 | December 31, 2018 |
|---|-------------------|----------------------|
| Exercise price (A\$55.00 at the then current exchange rate) | \$ 0.64 | \$ 0.64 |
| Fair value of common stock | \$ 0.67 | \$ 0.57 |
| Expected volatility | 179.0% | 134.0% |
| Expected term (in years) | 2.11 | 2.35 |
| Risk-free interest rate | 2.3% | 2.5% |
| Expected dividend yield | —% | —% |

The following table rolls forward the fair value of the Derivative Liabilities, where fair value is determined by Level 3 inputs (in thousands):

| | |
|--|--------|
| Balance at December 31, 2018 | \$ 51 |
| Increase in fair value of warrants upon re-measurement | 1 |
| Amortization of conversion rights | (40) |
| Fair value of warrants issued with 2019 Note | 871 |
| Balance at March 31, 2019 | \$ 883 |

Cash, cash equivalents, restricted cash, prepaid expenses and other current assets, accounts payable, accrued expenses and short-term debt to Crystal Amber Fund Limited, a related party, at March 31, 2019 and December 31, 2018 are carried at amounts that approximate fair value due to their short-term maturities and highly liquid nature of these instruments. The carrying value of the Company's long-term debt to Crystal Amber Fund Limited, a related party, at March 31, 2019 and December 31, 2018 approximates fair value based on commonly applied estimation methodologies and industry studies obtained by the Company.

6. Concentrations of Credit Risk and Related Valuation Accounts

Financial instruments that subject the Company to credit risk primarily consist of cash and cash equivalents and restricted cash. The Company maintains its cash and cash equivalent balances with high quality financial institutions, and consequently, the Company believes that such funds are subject to minimal credit risk. The Company's short-term investments potentially subject the Company to concentrations of credit risk. The Company has adopted an investment policy that limits the amounts the Company may invest in any one type of investment and requires all investments held by the Company to hold at least an A rating from a recognized credit rating agency, thereby reducing credit risk concentration.

The Company grants credit to customers in the normal course of business but generally does not require collateral or any other security to support its receivables. The Company makes judgments as to its ability to collect outstanding receivables and provides an allowance for receivables when collection becomes doubtful. Provisions are made based upon a specific review of all significant outstanding invoices and the overall quality and age of those invoices not individually reviewed. In certain circumstances, the Company allows customers to return defective or nonconforming products for credit or replacement products. Defective or nonconforming products typically include those products that resulted in an unsuccessful implant procedure. The Company records an estimate for product returns based upon historical trends. The associated reserve for product returns is recorded as a reduction of the Company's accounts receivable. Amounts determined to be uncollectible are written off against the total reserve. The Company recorded write-offs of uncollectible accounts receivable of \$38 thousand in the three months ended March 31, 2018. As of March 31, 2019 and December 31, 2018, the Company had no accounts receivable and no reserves for uncollectible accounts receivable.

The following is a rollforward of the Company's allowance for doubtful accounts (in thousands):

| | Three Months Ended March 31, 2019 | 2018 |
|---------------------------|--------------------------------------|-------|
| Beginning balance | \$ — | \$ 42 |
| Net charges to expenses | — | 38 |
| Utilization of allowances | — | (2) |
| Ending balance | \$ — | \$ 78 |

7. Inventory

The Company states inventory at the lower of first-in, first-out cost or net realizable value. The Company records a provision for excess, expired, and obsolete inventory based primarily on estimates of forecasted revenues. When capitalizing inventory, the Company considers factors such as status of regulatory approval, alternative use of inventory, and anticipated commercial use of the product.

A significant change in the timing or level of demand for products as compared to forecasted amounts may result in recording additional provisions for excess, expired, and obsolete inventory in the future. Currently, the determination of obsolete or excess inventory requires the Company to estimate regulatory approval probability and timing and subsequent demand for its products within approved markets. The estimated future demand

is compared to inventory levels to determine the amount, if any, of obsolete and excess inventory. Given the probability and timing of regulatory approval and appropriate inventory life span, we fully reserved our inventory as of December 31, 2017 and subsequently wrote off all inventory and reserves in 2018 as the materials on hand were not expected to be usable for future sales. There is no inventory or reserves against inventory on the balance sheet at March 31, 2019 and December 31, 2018, respectively.

8. Property and Equipment

Property and equipment consisted of the following (in thousands):

| | <u>March 31,</u> <u>2019</u> | <u>December 31,</u> <u>2018</u> |
|--|---------------------------------|------------------------------------|
| Laboratory and manufacturing equipment | \$ 591 | \$ 591 |
| Computer equipment and software | 1,187 | 1,182 |
| Office furniture and equipment | 183 | 183 |
| | 1,961 | 1,956 |
| Less accumulated depreciation and amortization | (1,901) | (1,893) |
| Total | <u>\$ 60</u> | <u>\$ 63</u> |

Depreciation and amortization expense of property and equipment totaled approximately \$8 and \$11 thousand for the three months ended March 31, 2019 and 2018, respectively.

At March 31, 2019 and December 31, 2018, the Company had no assets under capital lease.

9. Accrued Expenses

Accrued expenses consisted of the following (in thousands):

| | <u>March 31,</u> <u>2019</u> | <u>December 31,</u> <u>2018</u> |
|---------------------------------|---------------------------------|------------------------------------|
| Payroll and related liabilities | \$ 167 | \$ 386 |
| Professional fees | 434 | 573 |
| Credit refunds | 167 | 186 |
| Interest | 211 | 494 |
| Other | 8 | 6 |
| Total | <u>\$ 987</u> | <u>\$ 1,645</u> |

10. Notes Payable

2017 Convertible Note Financing

On June 15, 2017, the Company entered into a Note Purchase Agreement by and between the Company, as borrower, and Crystal Amber Fund Limited, as purchaser (the “Purchaser”). Pursuant to the Note Purchase Agreement, the Company issued and sold to the Purchaser a Senior Secured Convertible Promissory Note in an aggregate original principal amount of \$5.0 million (the “2017 Note”). The Purchaser is a related party for ASX purposes and is the Company’s largest shareholder.

The 2017 Note accrues interest at a rate equal to 5% per annum, compounded annually, other than during the continuance of an event of default, when the 2017 Note accrues interest at a rate of 8% per annum. The entire outstanding principal balance and all unpaid accrued interest thereon was initially due on the original maturity date, December 31, 2018 but was extended to March 31, 2019 in December 2018 and further extended to May 1, 2019 in March 2019 and July 1, 2019 in April 2019.

The 2017 Note is secured by a first priority security interest in substantially all tangible and intangible assets of the Company, including intellectual property (the “Collateral”). In the event of an uncured default, the Purchaser is authorized to sell, transfer, assign or otherwise deal in or with the Collateral or the proceeds thereof or any related goods securing the Collateral, as fully and effectually as if the Purchaser were the absolute owner thereof.

The ASX provided the Company with a waiver to allow all asset liens (the “Security”) to be granted to the Purchaser without the normal requirement of having to obtain shareholder approval for the grant of a security to a related party of the Company (which the Purchaser is for ASX purposes). As a result of the waiver, the Security contains a provision that provides that if an event of default occurs and the Purchaser exercises its rights under the Security, neither the Purchaser nor any of its associates can acquire any legal or beneficial interest in an asset of the Company or its subsidiaries in full or partial satisfaction of the Company’s obligations under the Security, or otherwise deal with the assets of the Company or its subsidiaries, without the Company first having complied with any applicable ASX Listing Rules, including ASX Listing Rule 10.1, other than as required by law or through a receiver, or receiver or manager (or analogous person) appointed by the Purchaser exercising its power of sale under the Security and selling the assets to an unrelated third party on arm’s length commercial terms and conditions and distributing the cash proceeds to the Purchaser or any of its associates in accordance with their legal entitlements.

The entire outstanding principal balance under the 2017 Note and all unpaid accrued interest thereon is convertible into CHES Depositary Interests (“CDIs”), each representing 1/50th of a share of the Company’s common stock, (i) prior to the maturity date, at the option of the Purchaser at a conversion price calculated based on the five-day volume weighted average price of the Company’s CDIs on the ASX (“Optional Conversion Price”), or (ii) automatically upon the occurrence of an equity financing in which the Company raises at least \$10 million (a “Qualified Financing”) at the price per CDI of the CDIs issued and sold in such financing.

In the event that the Borrower issues additional CDIs in a subsequent equity financing at a price per CDI that is less than the then-effective optional conversion price (based on the five-day volume weighted average price on the ASX), the Purchaser has a 30-day option to convert at an adjusted conversion price reflecting, on a weighted average basis, the lower price per CDI. The number of CDIs that the Purchaser may acquire upon conversion of the 2017 Note at this adjusted conversion price is limited to the number that maintains the Purchaser’s fully-diluted ownership percentage of the Company at the same level as existed immediately preceding the applicable subsequent equity financing.

In addition, upon a change of control of the Company (other than a change of control resulting from a Qualified Financing) in which the Company’s stockholders receive cash consideration, the Company is obligated to prepay all accrued and unpaid interest plus 110% of the remaining outstanding unconverted principal balance. If the consideration received for such change of control is a non-cash consideration, the Purchaser may convert the entire outstanding principal balance under the 2017 Note and all unpaid accrued interest thereon into CDIs at the abovementioned Optional Conversion Price. Other than as described above, the Company may not prepay the 2017 Note without the consent of the Purchaser.

The 2017 Note Purchase Agreement contains customary events of default including a failure to perform obligations under the 2017 Note Purchase Agreement, bankruptcy, a decision by the board of directors of the Company to wind up the Company, or if the Company otherwise ceases to carry on its ongoing business operations. If a default occurs and is not cured within the applicable cure period or is not waived, any outstanding obligations under the 2017 Note may be accelerated. The 2017 Note Purchase Agreement and related 2017 Note documents also contain additional representations and warranties, covenants and conditions, in each case customary for transactions of this type.

The Company recorded the \$5 million 2017 Note, net of debt issuance costs of \$115 thousand and amortized the debt issuance costs over the life of the 2017 Note. For the year ended December 31, 2017, the Company accrued \$136 thousand of interest expense and \$44 thousand in amortization of debt issuance costs related to the 2017 Note. For comparative purposes, an adjustment was made to separate the short-term debt balance and the 2017 Note derivative liability related to the value of certain conversion rights. Additionally, for comparative purposes, the 2017 interest accrual was shown separately from the change in accrued expenses in the Statement of Cash Flows in order to conform to 2018 presentation.

Due to the timing of the finalization of the 2017 Note financing in 2017, the 2017 Note was issued without stockholder approval. As a consequence, while the 2017 Note contains conversion provisions, the Purchaser had, for a period of time, no right to exercise those rights until such rights of exercise were approved by the stockholders of the Company. Stockholder approval of the Purchaser’s right to convert the 2017 Note was obtained at the Company’s Annual Meeting on May 24, 2018.

In December 2018, the maturity date of the 2017 Note was extended to March 31, 2019 in exchange for payment of \$394 thousand which was the total accrued interest on the 2017 Note at December 31, 2018. Payment of this amount was made in January 2019. The modification extended the conversion rights and resulted in an additional \$40 thousand of debt discount liability being recorded.

For the three months ended March 31, 2019, the Company accrued \$62 thousand of interest expense and recorded an additional \$40 thousand of interest expense related to the amortized derivative liability recorded for the 2017 Note. For the three months ended March 31, 2018, the Company accrued interest expense of \$62 thousand and amortization of debt issuance costs of \$18 thousand related to the 2017 Note.

In March 2019, the maturity date of the 2017 Note was extended to May 1, 2019. The modification extended the beneficial conversion rights and resulted in an additional \$14 thousand of debt discount liability being recorded. In April 2019, the maturity date of the 2017 Note was further extended to July 1, 2019.

2018 Convertible Note and Warrant Financing

On May 30, 2018, the Company entered into a Note Purchase Agreement by and between the Company, as borrower, and Crystal Amber Fund Limited, as purchaser (the “Purchaser”). Pursuant to the Note Purchase Agreement, the Company issued and sold to the Purchaser a Senior Unsecured Convertible Promissory Note in an aggregate original principal amount of \$1.75 million (the “2018 Note”). The Purchaser is a related party and is the Company’s largest shareholder.

The 2018 Note accrues interest at a rate equal to 10% per annum, compounded annually, other than during the continuance of an event of default, when the 2018 Note accrues interest at a rate of 16% per annum. The entire outstanding principal balance and all unpaid accrued interest thereon is due on the maturity date, May 30, 2023.

The entire outstanding principal balance under the 2018 Note and all unpaid accrued interest thereon is convertible into CHES Depositary Interests (“CDIs”), each representing 1/50th of a share of the Company’s common stock, at the option of the Purchaser at a conversion price of US\$0.018 per CDI. In the event that the Borrower issues additional CDIs in a subsequent equity financing at a price per CDI that is less than US\$0.018, the conversion price of the 2018 Note will adjust to the lower CDI conversion price. In addition, upon a change of control of the Company, the Purchaser may demand prepayment of accrued and unpaid interest plus 110% of the remaining outstanding unconverted principal balance of the 2018 Note.

The 2018 Note contains customary events of default including a failure to perform obligations under the 2018 Note Purchase Agreement, bankruptcy, a decision by the board of directors of the Company to wind up the Company, or if the Company otherwise ceases to carry on its ongoing business operations. If a default occurs and is not cured within the applicable cure period or is not waived, any outstanding obligations under the 2018 Note may be accelerated. The 2018 Note Purchase Agreement and related 2018 Note documents also contain additional representations and warranties, covenants and conditions, in each case customary for transactions of this type.

In connection with the issuance of the 2018 Note, the Company also issued to the Purchaser a warrant to purchase 97,222,200 CDIs at an initial exercise price of US\$0.018 per CDI, subject to adjustment as described in the warrant, which warrant expires on May 30, 2023 (the “2018 Warrant”). The 2018 Warrant may be exercised at any time on a cash or cashless basis. The 2018 Warrant includes a price protection clause. If the Company issues securities in a subsequent financing at a per CDI price of less than US\$0.018, the exercise price of the 2018 Warrant will be reduced to the lowest such price per CDI (or the equivalent for shares of common stock) at which the newly issued securities were sold.

The Company has evaluated the guidance ASC 480-10 *Distinguishing Liabilities from Equity*, ASC 815-40 *Contracts in an Entity's Own Equity* and ASC 470-20 *Debt with Conversion and Other Options* to determine the appropriate classification of the 2018 Note and 2018 Warrant. The 2018 Warrant was determined to be a freestanding instrument meeting the requirements for equity classification. Accordingly, the relative fair value estimated for the 2018 Warrant, totaling approximately \$743 thousand, has been recorded as a discount to the debt with the offset to additional paid-in capital. The 2018 Note was also evaluated for beneficial conversion feature (“BCF”) subsequent to the allocation of proceeds among the 2018 Note and 2018 Warrant. Based upon the effective conversion price of the 2018 Note after considering the stock price at the date of issuance and the allocation of estimated fair value to the 2018 Warrant, it was determined that the 2018 Note contained a BCF. The value of the BCF was computed to be approximately \$1.2 million but has been capped at approximately \$1.0 million so as to not exceed the total proceeds from the 2018 Note after deducting the value allocated to the 2018 Note and 2018 Warrant. The effective interest rate on the note after the discounts is 26.4%.

The Company recorded the 2018 Note, net of the total debt discount of \$1.75 million and will amortize the debt discount over the life of the 2018 Note. For the three months ended March 31, 2019, the Company recognized interest expense of \$44 thousand and debt discount amortization of \$72 thousand.

March 2019 Convertible Note and Warrant Financing

On March 15, 2019, the Company entered into a Note Purchase Agreement by and between the Company, as borrower, and Crystal Amber Fund Limited, as purchaser (the “Purchaser”). Pursuant to the Note Purchase Agreement, the Company issued and sold to the Purchaser a Senior Unsecured Convertible Promissory Note in an aggregate original principal amount of \$1 million (the “March 2019 Note”). The Purchaser is a related party and is the Company’s largest shareholder.

The March 2019 Note accrues interest at a rate equal to 10% per annum, compounded annually, other than during the continuance of an event of default, when the March 2019 Note accrues interest at a rate of 16% per annum. The entire outstanding principal balance and all unpaid accrued interest thereon is due on the maturity date, March 15, 2024.

The entire outstanding principal balance under the March 2019 Note and all unpaid accrued interest thereon is convertible into CHES Depositary Interests (“CDIs”), each representing 1/50th of a share of the Company’s common stock, at the option of the Purchaser at a conversion price of US\$0.0127 per CDI. In the event that the Borrower issues additional CDIs in a subsequent equity financing at a price per CDI that is less than US\$0.0127, the conversion price of the March 2019 Note will adjust to the lower CDI conversion price. In addition, upon a change of control of the Company, the Purchaser may demand prepayment of accrued and unpaid interest plus 110% of the remaining outstanding unconverted principal balance of the March 2019 Note.

The March 2019 Note contains customary events of default including a failure to perform obligations under the March 2019 Note Purchase Agreement, bankruptcy, a decision by the board of directors of the Company to wind up the Company, or if the Company otherwise ceases to carry on its ongoing business operations. If a default occurs and is not cured within the applicable cure period or is not waived, any outstanding obligations under the March 2019 Note may be accelerated. The March 2019 Note Purchase Agreement and related March 2019 Note documents also contain additional representations and warranties, covenants and conditions, in each case customary for transactions of this type.

In connection with the issuance of the March 2019 Note, the Company has, subject to obtaining shareholder approval, agreed to issue to the Purchaser a warrant to purchase 78,984,823 CDIs at an initial exercise price of US\$0.0127 per CDI, subject to adjustment as described in the warrant, which warrant expires on the fifth anniversary of the date of issuance (the “March 2019 Warrant”). Upon issuance, the March 2019 Warrant may be exercised at any time on a cash or cashless basis. The March 2019 Warrant includes a price protection clause. If the Company issues securities in a subsequent financing at a per CDI price of less than US\$0.0127, the exercise price of the March 2019 Warrant will be reduced to the lowest such price per CDI (or the equivalent for shares of common stock) at which the newly issued securities were sold.

The Company has evaluated the guidance ASC 480-10 *Distinguishing Liabilities from Equity*, ASC 815-40 *Contracts in an Entity's Own Equity* and ASC 470-20 *Debt with Conversion and Other Options* to determine the appropriate classification of the March 2019 Note and March 2019 Warrant. The March 2019 Warrant was determined to be a freestanding instrument meeting the requirements for liability classification. Accordingly, the relative fair value estimated for the March 2019 Warrant, totaling approximately \$871 thousand, has been recorded as a discount to the debt with the offset to derivative liabilities. The Company recorded the March 2019 Note, net of the total debt discounts related to the warrants of \$871 thousand and issuance costs of \$50 thousand and will amortize the debt discount over the life of the March 2019 Note. The effective interest rate on the 2019 note after the discounts is 29.4%.

May 2019 Convertible Note and Warrant Financing

In May 2019, the Company completed a Convertible Term Promissory Note (the “May 2019 Note”) and Warrant (the “May 2019 Warrant”) financing with its largest shareholder, Crystal Amber, for a gross amount of up to \$3.0 million. The May 2019 Note accrues interest at 10% per annum, computed daily until the date upon which full funding under the May 2019 Note is anticipated to be received, regardless of whether full funding is made on such date (the “Full Funding Date”) and compounded annually beginning on the Full Funding Date. The \$3.0 million payment will be made in several tranches. Certain specific terms associated with the conversion of the May 2019 Note and issuance of the May 2019 Warrant require shareholder approval, which will be sought in a vote of the stockholders of the Company during the Annual Meeting of Stockholders anticipated to be held in May or June 2019. The May 2019 Note matures and the May 2019 Warrant, if issued, will expire on the fifth anniversary of the Full Funding Date. Crystal Amber is deemed a Related Party of the Company for ASX purposes due to the size of its ownership position.

11. Commitments and Contingencies

Lease Commitments

In June 2016, the Company entered into a non-cancelable agreement to lease approximately 4,200 square feet of office space in Boston, Massachusetts. The lease commenced in June 2016 and expired in April 2018. Rent during the term was \$12 thousand per month.

In December 2018, the Company entered into a membership agreement with WeWork for 985 square feet of office space located in Boston, Massachusetts. The committed lease term expires in May 2019 and contains a two-month cancellation provision.

Future minimum lease payments under all short-term lease arrangements at March 31, 2019 are \$36 thousand.

Rent expense on non-cancelable operating leases was approximately \$56 and \$37 thousand for the three months ended March 31, 2019 and 2018, respectively.

On May 1, 2019, the Company entered into a right of use lease commencing May 1, 2019 for 3,520 square feet of office space in Boston, Massachusetts. The lease expires May 31, 2022 and the Company will record a fair value right to use asset and a related operating lease liability of \$643 thousand, the asset to be depreciated and the liability to be amortized over the term of the lease. Additional pro-rata building operating expenses, property taxes and utilities will all be expensed in the period incurred

12. Stockholders’ Equity (Deficit)

On May 22, 2017, the Stockholders of the Company approved an increase of its authorized shares of Common Stock from 13,000,000 to 50,000,000 and to eliminate Class B shares of Common Stock of the Company. As of March 31, 2019, the authorized capital stock of the Company consists of 50,500,000 shares, of which 50,000,000 shares are designated as Common Stock and 500,000 shares are designated as Preferred Stock.

In 2018, the Company received commitments for two private placements to sophisticated and professional investors in Australia, the United States and the United Kingdom, consisting of U.S. and non-U.S. persons (as defined in Regulation S (“Regulation S”) of the Securities Act of 1933 (the “Securities Act”)) to raise up to approximately \$6.61 million (the “2018 Placements”). The first placement (“First Quarter 2018 Placement”) consisted of a total of 406,002,869 fully paid CDIs of the Company (representing 8,120,057 shares of common stock) at an issue price of A\$0.035 per CDI. The issue of CDIs under the First Quarter 2018 Placement occurred in two tranches. The first tranche closed on January 22, 2018 (US Eastern time), pursuant to which the Company issued 28,467,063 CDIs (representing 569,341 shares of common stock) resulting in gross proceeds of approximately \$781 thousand and related issuance costs of \$63 thousand. The closing of the second tranche of the First Quarter 2018 Placement resulted in the raising of \$824 thousand and related issuance costs of \$39 thousand by the issue of 30,313,556 CDIs (606,271 shares) following stockholder approval granted on February 27, 2018. There were two participants in the First Quarter 2018 Placement second tranche; Crystal Amber Fund, a related party, purchased 27,391,756 CDIs. A Board member of the Company purchased 2,921,800 CDIs.

The second placement (“Autumn 2018 Placement”) consisted of a total of 347,222,250 fully paid CDIs of the Company (representing 6,944,445 shares of common stock) at an issue price of A\$0.020 per CDI. The investors in the Autumn 2018 Placement included certain existing investors. The issue of these CDIs occurred in two tranches. The first tranche closed on September 20, 2018 (US Eastern time), pursuant to which the Company issued 150,000,000 CDIs (representing 3,000,000 shares of common stock) resulting in gross proceeds of approximately \$2.2 million and related issuance costs of \$56 thousand. The closing of the second tranche resulted in the raising of \$2.8 million by the issue of 197,222,250 CDIs (representing 3,944,445 shares of common stock) following stockholder approval at the adjourned Special Meeting of stockholders on October 29, 2018. There were three participants in the second tranche; Crystal Amber Fund, a related party, purchased 168,194,450 CDIs. Existing investors in the United States and Australia also purchased 23,819,450 and 5,208,350 CDIs, respectively. All second tranche CDIs were allotted to investors in November 2018.

13. Share-Based Compensation

The Company has two stock-based compensation plans. In May 2003, the Board of Directors adopted the 2003 Omnibus Stock Plan (the “2003 Plan”), which provides for the grant of qualified incentive stock options and nonqualified stock options or other awards to the Company’s employees, officers, directors, advisors, and outside consultants to purchase up to an aggregate of 922,086 shares of the Company’s common stock.

In August 2011, the Board of Directors adopted the 2011 Employee, Director and Consultant Equity Incentive Plan (the “2011 Plan”, together with the 2003 Plan, the “Plans”) as the successor to the 2003 Plan. Under the 2011 Plan, the Company may grant incentive stock options, nonqualified stock options, restricted and unrestricted stock awards and other stock-based awards. The Company had initially reserved 450,000 shares of its common stock for issue under the 2011 Plan. Awards that are returned to the Company’s 2003 Plan as a result of their forfeiture, expiration or cancellation without delivery of common stock shares or that result in the forfeiture of shares back to the Company on or after August 1, 2011, the date

the 2011 Plan became effective, are automatically made available for issuance under the 2011 Plan. At August 1, 2011, 80,235 shares available for grant under the 2003 Plan were transferred to the 2011 Plan. At March 31, 2019, there were 1,748,812 shares available for future grant under the 2011 Plan.

In addition, the 2011 Plan allows for an annual increase in the number of shares available for issue under the 2011 Plan commencing on the first day of each fiscal year during the period beginning in fiscal year 2012 and ending in fiscal year 2020. The annual increase in the number of shares shall be equal to the lowest of:

- 500,000 shares;
- 4% of the number of common shares outstanding as of such date; and
- an amount determined by the Board of Directors or the Company's compensation committee.

Accordingly, in the first quarter of fiscal 2019, 500,000 options available for future grant were added to the 2011 Plan.

Stock-Based Compensation

Stock-based compensation is reflected in the consolidated statements of operations as follows for the three months ended March 31, 2019 and 2018 (in thousands):

| | Three Months Ended March 31, | |
|----------------------------|------------------------------|--------------|
| | 2019 | 2018 |
| Research and development | \$ 16 | \$ 5 |
| Sales and marketing | — | 6 |
| General and administrative | 43 | 18 |
| | <u>\$ 59</u> | <u>\$ 29</u> |

The stock options granted under the Plans generally vest over a four-year period and expire ten years from the date of grant. From time to time, the Company grants stock options to purchase common stock subject to performance-based milestones. The vesting of these stock options will occur upon the achievement of certain milestones. When achievement of the milestone is deemed probable, the Company expenses the compensation of the respective stock option over the implicit service period.

In calculating stock-based compensation costs, the Company estimates the fair value of stock options using the Black-Scholes option-pricing model. The Black-Scholes option-pricing model was developed for use in estimating the fair value of short-lived, exchange-traded options that have no vesting restrictions and are fully transferable. Such costs are then recognized over the requisite service period of the awards on a straight-line basis.

Determining the fair value of stock-based awards using the Black-Scholes option-pricing model requires the use of highly subjective assumptions, including the expected term of the award and expected stock price volatility. The weighted-average assumptions used to estimate the fair value of employee stock options using the Black-Scholes option-pricing model were as follows for the three months ended March 31, 2019 and 2018:

| | Three Months Ended March 31, | |
|--------------------------|------------------------------|--------|
| | 2019 | 2018 |
| Expected volatility | 122.0% | 114.9% |
| Expected term (in years) | 6.05 | 6.05 |
| Risk-free interest rate | 2.3% | 2.6% |
| Expected dividend yield | 0% | 0% |

Stock Options

The following table summarizes share-based activity under the Company's stock option plans for the three months ended March 31, 2019:

| | Shares of Common Stock Attributable to Options | Weighted- Average Exercise Price | Weighted- Average Contractual Life <i>(in years)</i> | Aggregate Intrinsic Value <i>(in thousands)</i> |
|--|--|---|--|--|
| Outstanding at December 31, 2018 | 985,224 | \$ 2.24 | 8.48 | \$ — |
| Granted | 160,000 | | | \$ — |
| Exercised | — | | | \$ — |
| Cancelled | — | | | \$ — |
| Outstanding at March 31, 2019 | <u>1,145,224</u> | <u>\$ 2.24</u> | <u>8.24</u> | <u>\$ 1</u> |
| Vested or expected to vest at March 31, 2019 | <u>1,145,224</u> | <u>\$ 2.24</u> | <u>8.24</u> | <u>\$ 1</u> |
| Exercisable at March 31, 2019 | <u>451,805</u> | <u>\$ 4.87</u> | <u>6.87</u> | <u>\$ —</u> |

As of March 31, 2019, there was approximately \$637 thousand of unrecognized stock-based compensation related to unvested stock option grants having service-based vesting under the Plans which is expected to be recognized over a weighted-average period of 2.3 years. The intrinsic value in the table above represents the difference between the fair value of the Company's common stock on the measurement date and the exercise price of the stock option.

The stock-based compensation plans provide that grantees may have the right to exercise an option prior to vesting. Shares purchased upon the exercise of unvested options will be subject to the same vesting schedule as the underlying options and are subject to repurchase at the original exercise price by the Company should the grantee discontinue providing services to the Company for any reason, prior to becoming fully vested in such shares.

Restricted Stock Units & Performance Stock Units

Each restricted stock unit and performance stock unit ("RSU & PSU") issued under the Company Plans represents a contingent right to receive one share of the Company's common stock. The RSUs & PSUs outstanding at March 31, 2019 vest upon the achievement of certain product revenue, regulatory and reimbursement milestones. There is no consideration payable on the vesting of RSUs & PSUs issued. Upon vesting, RSUs and PSUs are exercised automatically and settled in shares of the Company's common stock.

The following table summarizes information related to RSU & PSU activity for the three months ended March 31, 2019:

| | Number of Units | Weighted- Average Contractual Life <i>(in years)</i> | Aggregate Intrinsic Value <i>(in thousands)</i> |
|---|--------------------|--|--|
| Outstanding at December 31, 2018 | 250,000 | 7.23 | \$ 141 |
| Granted | — | | |
| Exercised | — | | |
| Cancelled | — | | |
| Outstanding at March 31, 2019 | <u>250,000</u> | <u>6.98</u> | <u>\$ 186</u> |

The aggregate intrinsic value at March 31, 2019 and December 31, 2018 noted in the table above represents the closing price of the Company's common stock multiplied by the number of RSUs and PSUs outstanding. The fair value of each RSU and PSU award equals the closing price of the Company's common stock on the date of grant.

At March 31, 2019, all RSUs and PSUs outstanding are subject to performance-based vesting criteria as described in the applicable award agreement. For these awards, vesting will occur upon the achievement of certain product revenue, regulatory and reimbursement milestones. When achievement of the milestone is deemed probable, the Company expenses the compensation of the respective stock award over the implicit service period.

At March 31, 2019 and 2018, no RSUs and PSUs that have performance-based vesting criteria are considered probable of achievement. For the three months ended March 31, 2019 and 2018, the Company did not recognize any stock-based compensation for RSUs and PSUs subject to performance-based vesting criteria.

As of March 31, 2019, there remains approximately \$140 thousand of unrecognized stock-based compensation.

14. Segment Reporting

Operating segments are components of an enterprise for which separate financial information is available and is evaluated regularly by the Company's chief operating decision-maker in deciding how to allocate resources and in assessing performance. The Company has one reportable segment which designs, develops, manufactures and markets medical devices for non-surgical approaches to treating type 2 diabetes and obesity.

Geographic Reporting

The Company has historically reported various geographic segments, but at March 31, 2019, long-lived assets, comprised of property and equipment, of approximately \$60 thousand are all held in the U.S. and the Company did not have revenue for the three months ended March 31, 2019 and 2018, respectively.

Major Customers

The Company did not recognize any revenue for the three months ended March 31, 2019 and 2018, respectively.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Forward-Looking Information

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and related notes to those financial statements appearing elsewhere in this Quarterly Report on Form 10-Q and the audited consolidated financial statements and notes thereto and management's discussion and analysis of financial condition and results of operations for the year ended December 31, 2018 included in our Annual Report on Form 10-K. This discussion and analysis contains forward-looking statements that involve significant risks, uncertainties and assumptions. As a result of many factors, such as those set forth under "Risk Factors" Item 1A. of our Annual Report on Form 10-K, which are incorporated herein by reference, our actual results may differ materially from the results described in or implied by the forward-looking statements described in the following discussion and analysis.

Overview

We are a clinical stage medical device company located in Boston, Massachusetts. We have developed EndoBarrier, a medical device intended for treatment of patients with type 2 diabetes and obesity, and we are taking the steps necessary to obtain the regulatory approvals required to market this product. In order to market EndoBarrier in the U.S., we must obtain approval from the FDA. In order to market EndoBarrier outside of the U.S., we are required to comply with various regulations imposed by the countries in which we seek to sell the product.

In 2010, EndoBarrier received CE Marking for sale in the European Union and in 2011, EndoBarrier was listed on the Australian Register of Therapeutic Goods. As a result, during 2013 and 2014, we received approximately \$2.8 million and \$2.25 million in revenue from the sale of EndoBarrier in Europe, South America and the Asia Pacific region. In the U.S. in 2013, we began enrollment of patients in the initial pivotal trial of EndoBarrier, which we refer to as the ENDO Trial.

In the third quarter of 2015, we announced our decision to discontinue the ENDO Trial because patients were experiencing a higher than previously observed level of hepatic (liver) abscesses. In the fourth quarter of 2016, we received formal notification from the Therapeutic Goods Administration of the Australian government of the cancellation of EndoBarrier's inclusion on the Australian Register of Therapeutic Goods. In the fourth quarter of 2017 we received formal notification of CE mark withdrawal from our notified body in Europe, preventing the sale of EndoBarrier in Europe and select Middle Eastern countries. We undertook comprehensive cost-cutting measures throughout 2015 and 2016, including significantly reducing the number of our employees.

Following our decision to discontinue the ENDO Trial, we undertook significant investigational and scientific analysis with the goal of reducing the incidence rate and severity of hepatic abscess that present concurrently with the EndoBarrier treatment. This investigational work focused on understanding the root cause of hepatic abscess and how to reduce the rate of occurrence. This included: DNA analysis of normal EndoBarrier removals as well as hepatic abscess EndoBarrier removals, numerous meta-analyses and responder cohort analyses, investigation into the contributing factors represented by proton pump inhibitors (PPIs), leaky gut syndrome and microbiome analyses, among other research. This allowed the company to modify the medications utilized with EndoBarrier, most notably discontinuation of chronic double-dose PPI usage during EndoBarrier implant.

In July 2018, we submitted to the FDA an application for investigational device exemption, or IDE, to commence a new pivotal trial evaluating the safety and efficacy of EndoBarrier in the United States pending Institutional Review Board, or IRB, approval. In August 2018, we received approval of an IDE from the FDA to begin enrollment in this pivotal trial, and IRB approval was granted in February 2019. In this report, we refer to this pivotal trial as the GID 18-1 clinical trial.

For financial reporting purposes, we have one reportable segment, which designs, manufactures and plans to market EndoBarrier.

To date, we have devoted substantially all our efforts to research and development, business planning, clinical research, clinical study management, reimbursement development, product commercialization, acquiring operating assets and raising capital. We have incurred significant operating losses since our inception in 2003. As of March 31, 2019, we had an accumulated deficit of approximately \$270 million. We expect to incur net losses for the next several years while we continue to evaluate which markets are appropriate to continue pursuing regulatory approval, reimbursement, market awareness and general market development efforts, and continue to restructure our business and costs, establish new priorities, continue limited research, and evaluate strategic options.

To date, the Company has raised net proceeds of approximately \$270 million through the issuance of convertible debt and sales of our equity. See Note 1 of the Consolidated Financial Statements (Nature of Business — Financing History) for a detailed description of the Company's financing history.

Our corporate headquarters are in Boston, Massachusetts. The Company has executed a three-year lease commencing May 1, 2019, allowing us to terminate the Company's existing short-term lease and exit our current office space as of May 31, 2019.

Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements prepared in accordance with generally accepted accounting principles in the U.S. The preparation of these financial statements requires us to make certain estimates and assumptions that may affect the reported amounts of assets and liabilities, and the reported amounts of revenues and expenses during the reported periods and related disclosures. These estimates and assumptions, including those related to income taxes including the valuation allowance for deferred tax assets, research and development expenses, contingencies, stock-based compensation, going concern considerations, and derivative valuations are monitored and analyzed by us for changes in facts and circumstances, and material changes in these estimates could occur in the future. We base our estimates on our historical experience and various other assumptions that are believed to be reasonable under the circumstances. Actual results may differ from our estimates under different assumptions or conditions. See Note 2 of the Consolidated Financial Statements (Summary of Significant Accounting Policies and Basis of Presentation — New Accounting Pronouncements) for a detailed discussion of new accounting pronouncements, their adoption by the Company, and their impact (if any) on the Company's financial statements.

Results of Operations

The following is a description of significant components of our operations, including significant trends and uncertainties that we believe are important to an understanding of our business and results of operations (in thousands).

| | Three Months Ended March 31, | |
|--|------------------------------|-------------------|
| | 2019 | 2018 |
| | (in thousands) | |
| Operating expenses: | | |
| Research and development | 810 | 373 |
| Sales and marketing | 16 | 204 |
| General and administrative | 1,344 | 1,185 |
| Total operating expenses | 2,170 | 1,762 |
| Loss from operations | (2,170) | (1,762) |
| Other income (expense): | | |
| Interest income | 3 | 7 |
| Interest expense | (177) | (81) |
| Foreign exchange gain (loss) | (9) | 9 |
| Gain on write-off of accounts payable | 29 | — |
| Re-measurement of derivative liabilities | (1) | 1 |
| Other income (expense), net | (155) | (64) |
| Loss before income tax expense | (2,325) | (1,826) |
| (Benefit from) Provision for income taxes | 6 | (18) |
| Net loss | <u>\$ (2,331)</u> | <u>\$ (1,808)</u> |
| Basic and diluted net loss per common share | (0.12) | \$ (0.15) |
| Weighted-average number of common shares used in basic and diluted net loss per common share | 19,277,545 | 11,803,221 |

Three months ended March 31, 2019 compared to three months ended March 31, 2018

Revenue. The Company did not record any revenues or associated cost of revenue during the three months ended March 31, 2019 and 2018, respectively.

Operating expenses

| | Three Months Ended March 31, | | Change | |
|----------------------------|------------------------------|-----------------|---------------|---------|
| | 2019 | 2018 | \$ | % |
| | (dollars in thousands) | | | |
| Research and development | \$ 810 | \$ 373 | \$ 437 | 117.2% |
| Sales and marketing | 16 | 204 | (188) | (92.2)% |
| General and administrative | 1,344 | 1,185 | 159 | 13.4% |
| Total operating expenses | <u>\$ 2,170</u> | <u>\$ 1,762</u> | <u>\$ 408</u> | 23.2% |

Research and Development Expense. The increase in research and development expense for the three months ended March 31, 2019 compared to the three months ended March 31, 2018 was primarily due to an increase in salary and employee-related costs caused by increased headcount and increased consulting fees. The Company has been accelerating its efforts to prepare for the GID 18-1 clinical trial.

Sales and Marketing Expense. The decrease in sales and marketing expense for the three months ended March 31, 2019 compared to the three months ended March 31, 2018 was primarily due to a decrease in overall sales and marketing activities and a reclassification of existing overseas employee efforts to research and development.

General and Administrative Expense. The increase in general and administrative expense for the three months ended March 31, 2019 compared to the three months ended March 31, 2018 was primarily a result of market research costs including a health economics analysis and a research summary provided to potential investors.

We continue to look for ways to realize a more efficient cost structure in order to extend our cash runway. We may not be able to achieve cost reductions in all instances as we look to prepare to initiate clinical development in support of eventual commercial regulatory approval. We expected operating expenses for the first quarter of 2019 to approximate those of the fourth quarter of 2018. We expect operating expenses for the second quarter of 2019 to be substantially higher than those of the first quarter of 2019 predominantly due to expenses related to the initiation of the GID 18-1 clinical trial.

| | Three Months Ended March 31, | | Change | |
|--|---------------------------------|----------------|----------------|----------|
| | 2019 | 2018 | \$ | % |
| | (dollars in thousands) | | | |
| Other income (expense): | | | | |
| Interest income | \$ 3 | \$ 7 | \$ (4) | (57.1)% |
| Interest expense | (177) | (81) | (96) | 118.5% |
| Foreign exchange gain (loss) | (9) | 9 | (18) | (200.0)% |
| Gain on write-off of accounts payable | 29 | — | 29 | 0.0% |
| Re-measurement of derivative liabilities | (1) | 1 | (2) | (200.0)% |
| Total other income (expense), net | <u>\$ (155)</u> | <u>\$ (64)</u> | <u>\$ (91)</u> | 142.2% |

Other income (expense). The change to other income (expense), net, for the three months ended March 31, 2019 compared to the three months ended March 31, 2018 is primarily due to interest expense related to the Company's 2018 Convertible Note and Warrant Financing offset by a gain on the write-off of prior period accounts payable.

Liquidity and Capital Resources

The Company has incurred losses since our inception in March 2003 and as of March 31, 2019, we had an accumulated deficit of approximately \$270 million. We have financed our operations from a combination of sales of equity securities and issuances of convertible term notes. As of March 31, 2019, we had approximately \$1.3 million of cash and cash equivalents.

In June 2017, the Company completed a Convertible Term Promissory Note (the "2017 Note") secured financing with its largest shareholder, Crystal Amber Fund Limited ("Crystal Amber"), for a gross amount of \$5.0 million. The 2017 Note accrues interest at 5% per annum compounded annually. Crystal Amber is deemed a Related Party of the Company for ASX purposes due to the size of its ownership position. The 2017 Note was originally due on December 31, 2018 and contains provisions for conversion during its term and is also subject to security arrangements in favor Crystal Amber (See Note 10 of the Consolidated Financial Statements for a more complete description of the terms and conditions of the financing).

The 2017 Note accrues interest at a rate equal to 5% per annum, compounded annually, other than during the continuance of an event of default, when the 2017 Note accrues interest at a rate of 8% per annum. The entire outstanding principal balance and all unpaid accrued interest thereon was initially due on the original maturity date, December 31, 2018 but was extended to March 31, 2019 in December 2018 (in exchange for payment of \$394 thousand, the total accrued interest on the 2017 Note at December 31, 2018) and further extended to May 1, 2019 in March 2019 and July 1, 2019 in April 2019.

The 2017 Note is secured by a first priority security interest in substantially all tangible and intangible assets of the Company, including intellectual property (the "Collateral"). In the event of an uncured default, Crystal Amber is authorized to sell, transfer, assign or otherwise deal in or with the Collateral or the proceeds thereof or any related goods securing the Collateral, as fully and effectually as if Crystal Amber were the absolute owner thereof.

In May 2018, the Company completed a Convertible Term Promissory Note (the "2018 Note") and Warrant (the "2018 Warrant") financing with its largest shareholder Crystal Amber for a gross amount of \$1.75 million. The 2018 Note accrues interest at 10% per annum compounded annually. The 2018 Note matures and the 2018 Warrant expires on May 30, 2023. Crystal Amber is deemed a Related Party of the Company for ASX purposes due to the size of its ownership position. (See Note 10 of the Consolidated Financial Statements for a more complete description of the terms and conditions of the financing).

In 2018, the Company received commitments for two private placements to sophisticated and professional investors in Australia, the United States and the United Kingdom, consisting of U.S. and non-U.S. persons (as defined in Regulation S (“Regulation S”) of the Securities Act of 1933 (the “Securities Act”)) to raise up to approximately \$6.61 million (the “2018 Placements”). The first placement (“First Quarter 2018 Placement”) consisted of a total of 406,002,869 fully paid CDIs of the Company (representing 8,120,057 shares of common stock) at an issue price of A\$0.035 per CDI. The issue of CDIs under the First Quarter 2018 Placement occurred in two tranches. The first tranche closed on January 22, 2018 (US Eastern time), pursuant to which the Company issued 28,467,063 CDIs (representing 569,341 shares of common stock) resulting in gross proceeds of approximately \$781 thousand and related issuance costs of \$63 thousand. The closing of the second tranche of the First Quarter 2018 Placement resulted in the raising of \$824 thousand and related issuance costs of \$39 thousand by the issue of 30,313,556 CDIs (606,271 shares) following stockholder approval granted on February 27, 2018. There were two participants in the First Quarter 2018 Placement second tranche; Crystal Amber, a related party, purchased 27,391,756 CDIs. A Board member of the Company purchased 2,921,800 CDIs.

The second placement (“Autumn 2018 Placement”) consisted of a total of 347,222,250 fully paid CDIs of the Company (representing 6,944,445 shares of common stock) at an issue price of A\$0.020 per CDI. The investors in the Autumn 2018 Placement included certain existing investors. The issue of these CDIs occurred in two tranches. The first tranche closed on September 20, 2018 (US Eastern time), pursuant to which the Company issued 150,000,000 CDIs (representing 3,000,000 shares of common stock) resulting in gross proceeds of approximately \$2.2 million and related issuance costs of \$56 thousand. The closing of the second tranche resulted in the raising of \$2.8 million by the issue of 197,222,250 CDIs (representing 3,944,445 shares of common stock) following stockholder approval at the adjourned Special Meeting of Stockholders on October 29, 2018. There were three participants in the second tranche; Crystal Amber, a related party, purchased 168,194,450 CDIs. Existing investors in the United States and Australia also purchased 23,819,450 and 5,208,350 CDIs, respectively. All second tranche CDIs were allotted to investors in November 2018.

In March 2019, the Company completed a Convertible Term Promissory Note (the “March 2019 Note”) and Warrant (the “March 2019 Warrant”) financing with its largest shareholder, Crystal Amber, for a gross amount of \$1.0 million. The March 2019 Note accrues interest at 10% per annum compounded annually. Certain specific terms associated with the conversion of the March 2019 Note and issuance of the March 2019 Warrant require shareholder approval, which will be sought in a vote of the stockholders of the Company during the Annual Meeting of Stockholders anticipated to be held in May or June 2019. The March 2019 Note matures on March 15, 2024 and the March 2019 Warrant, if issued, will expire on the fifth anniversary of the date of issuance. Crystal Amber is deemed a Related Party of the Company for ASX purposes due to the size of its ownership position. (See Note 10 of the Consolidated Financial Statements for a more complete description of the terms and conditions of the financing).

In May 2019, the Company completed a Convertible Term Promissory Note (the “May 2019 Note”) and Warrant (the “May 2019 Warrant”) financing with its largest shareholder, Crystal Amber, for a gross amount of up to \$3.0 million. The May 2019 Note accrues interest at 10% per annum, computed daily until the date upon which full funding under the May 2019 Note is anticipated to be received, regardless of whether full funding is made on such date (the “Full Funding Date”) and compounded annually beginning on the Full Funding Date. The \$3.0 million payment will be made in several tranches. Certain specific terms associated with the conversion of the May 2019 Note and issuance of the May 2019 Warrant require shareholder approval, which will be sought in a vote of the stockholders of the Company during the Annual Meeting of Stockholders anticipated to be held in May or June 2019. The May 2019 Note matures and the May 2019 Warrant, if issued, will expire on the fifth anniversary of the Full Funding Date. Crystal Amber is deemed a Related Party of the Company for ASX purposes due to the size of its ownership position. (See Note 10 of the Consolidated Financial Statements for a more complete description of the terms and conditions of the financing).

During the three months ended March 31, 2019, our cash and cash equivalents balance decreased as a result of funds utilized to support our operations offset by proceeds from financing activities.

The following table sets forth the major sources and uses of cash for each of the periods set forth below:

| | Three Months Ended March 31, | |
|--|-------------------------------------|-----------------|
| | 2019 | 2018 |
| | (in thousands) | |
| Net cash (used in) provided by: | | |
| Operating activities | \$ (3,465) | \$ (1,974) |
| Investing activities | (5) | — |
| Financing activities | 950 | 1,503 |
| Net increase (decrease) in cash and cash equivalents | <u>\$ (2,520)</u> | <u>\$ (471)</u> |

Cash Flows From Operating Activities

The primary uses of cash used in operating activities for the three months ended March 31, 2019 were:

- to fund our net loss of approximately \$2.4 million and;
- a net negative adjustment to cash flow from changes in working capital of approximately \$1.2 million resulting primarily from decreases in accounts payable and accrued expenses.

The primary uses of cash used in operating activities for the three months ended March 31, 2018 were:

- to fund our net loss of approximately \$1.8 million and;

- a net negative adjustment to cash flow from changes in working capital of approximately \$0.2 million resulting primarily from decreases in accounts payable and accrued expenses.

Cash Flows From Investing Activities

Cash used in investing activities for the three months ended March 31, 2019 was approximately \$5 thousand. No cash was used in investing activities for the three months ended March 31, 2018.

Cash Flows From Financing Activities

Cash provided by financing activities for the three months ended March 31, 2019 totaled approximately \$950 thousand and primarily resulted from proceeds received in March 2019 from the March 2019 Note payable to a related party.

Cash provided by financing activities for the three months ended March 31, 2018 totaled approximately \$1.5 million and primarily resulted from net proceeds from our private placement of CDIs offset by related issuance costs.

Funding Requirements

As of March 31, 2019, our primary source of liquidity was our cash and cash equivalents balances of approximately \$1.3 million. We have subsequently begun to receive proceeds of approximately \$3 million under the May 2019 Note.

As a result of our focus on a new pivotal clinical trial in the United States, and due to the lack of regulatory approval in the EU and other jurisdictions, we are focused on the generation of clinical data and regulatory approvals and are not currently focused on revenue-generating operations. As a result, we expect to incur significant operating losses for the next several years. We do not expect our current cash balances will be sufficient to enable us to conduct an additional clinical trial in the U.S. for the purpose of seeking regulatory approval from the FDA. The Company does not expect its current cash balances will be sufficient to operate beyond the end of August 2019, or beyond July 1, 2019 if the Company is required to make payment to Crystal Amber under the 2017 Note on the due date of July 1, 2019. If the 2017 Note reaches maturity, the Company will be required either to renegotiate the due date of the loan or to potentially cease operations. Crystal Amber and the Company are in discussion to further extend the due date of the 2017 Note, but there can be no assurance that any extension will occur. If the Company is able to amend the terms of the 2017 Note, it believes its cash and cash equivalents will be sufficient to fund operations to the end of August 2019, or until the modified due date of the note. The Company will need to raise additional funds through any combination of collaborative arrangements, strategic alliances, and additional equity and debt financings or from other sources.

Our forecast of the period of time through which our financial resources will be adequate to support our operations are forward-looking statements and involve risks and uncertainties, and actual results could vary materially and negatively as a result of a number of factors, including the factors discussed in the “Risk Factors” in Item 1A. of our Annual Report on Form 10-K, which is incorporated by reference herein. We have based these estimates on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we currently expect.

Due to the numerous risks and uncertainties associated with securing regulatory approval for EndoBarrier, at this time we are unable to estimate precisely the amounts of capital outlays and operating expenditures necessary to complete the task of obtaining regulatory approval for EndoBarrier. Our funding requirements will depend on many factors, including, but not limited to, the following:

- the rate of enrollment of patients in our clinical trial and the completion of our trial in a timely fashion;
- the rate of progress and cost of our commercialization activities;
- the expenses we may incur in marketing and selling EndoBarrier subject to future regulatory approvals;
- the timing and decisions of payer organizations related to reimbursement;
- the revenue generated by sales of EndoBarrier;
- the product performance from a safety and efficacy standpoint in addressing diabetes and obesity;
- the success of our investment in our manufacturing and supply chain infrastructure;
- the time and costs involved in obtaining regulatory approvals for EndoBarrier in new markets;
- the success of our research and development efforts;
- the costs associated with any additional clinical trial(s) required in the U.S. and other countries on a case by case basis;
- the ability to ship CE marked products;
- the emergence of competing or complementary developments; and
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights.

We will continue to manage our capital structure and to consider all financing opportunities, whenever they may occur, that could strengthen our long-term liquidity profile. Any such capital transactions may or may not be similar to transactions in which we have engaged in the past and the ownership interests of our existing stockholders may be materially diluted. There can be no assurance that any such financing opportunities will be available on acceptable terms, if at all. In addition, the Company could be required to cease operations if it is unable to raise capital when needed.

Off-Balance Sheet Arrangements

We do not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, that would have been established for the purpose of facilitating off-balance sheet arrangements (as that term is defined in Item 303(a)(4)(ii) of Regulation S-K) or other contractually narrow or limited purposes. As such, we are not exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in those types of relationships. We enter into guarantees in the ordinary course of business related to the guarantee of our own performance and the performance of our subsidiaries.

Contractual Obligations and Commitments

The disclosure of our contractual obligations and commitments is set forth under the heading “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Contractual Obligations and Commitments” in our Annual Report on Form 10-K.

There have been no material changes from the contractual commitments and obligations previously disclosed in our Annual Report on Form 10-K.

Recent Accounting Pronouncements

For a discussion of recent accounting pronouncements please refer to Note 2, “Summary of Significant Accounting Policies and Basis of Presentation,” to our consolidated financial statements included in this Quarterly Report on Form 10-Q.

Item 3. *Quantitative and Qualitative Disclosures About Market Risk*

We conduct business in foreign countries and our cash flows are exposed to market risk from changes in currency exchange and interest rates.

Interest Rate Sensitivity

Our cash and cash equivalents of approximately \$1.3 million at March 31, 2019, consisted of cash and money market funds, all of which will be used for working capital purposes. We do not enter into investments for trading or speculative purposes. The goals of our investment policy are preservation of capital, fulfillment of liquidity needs and fiduciary control of cash and investments. We also seek to maximize income from our investments without assuming significant risk. Our primary exposure to market risk is interest income sensitivity, which is affected by changes in the general level of interest rates in the U.S. and Australia. Because of the short-term nature of our cash and cash equivalents, we do not believe that we have any material exposure to changes in their fair values as a result of changes in interest rates. The continuation of historically low interest rates in the U.S. will limit our earnings on investments held in U.S. dollars.

Foreign Currency Risk

We conduct business in foreign countries. For U.S. reporting purposes, we translate all assets and liabilities of our non-U.S. entities at the period-end exchange rate and revenue and expenses at the average exchange rates in effect during the periods. The net effect of these translation adjustments is shown in the accompanying consolidated financial statements as a component of net loss.

Fluctuations in the exchange rate of the U.S. dollar against major foreign currencies, including the euro, British Pound and Australian dollar, can result in foreign currency exchange gains and losses that may significantly impact our financial results. These foreign currency transaction and translation gains and losses are presented as a separate line item in our consolidated statements of operations. Continued fluctuation of these exchange rates could result in financial results that are not comparable from quarter to quarter. We do not currently utilize foreign currency contracts to mitigate the gains and losses generated by the re-measurement of non-functional currency assets and liabilities but do hold cash reserves in currencies in which those reserves are anticipated to be expended.

All proceeds from our 2011, 2013, 2014, and 2016 offerings, along with a portion of our 2017 and 2018 offerings, were denominated in Australian dollars and as of March 31, 2019, we held the equivalent of approximately US \$22 thousand denominated in Australian dollars and approximately US \$1 thousand denominated in euros. Accordingly, we have had and will continue to have exposure to foreign currency exchange rate fluctuations. A change of 10% or more in foreign currency exchange rates of the Australian dollar or the euro would not have a material impact on our financial position and results of operations.

Effects of Inflation

We do not believe that inflation and changing prices over the three months ended March 31, 2019 and 2018 had a significant impact on our results of operations.

Item 4. Controls and Procedures**Evaluation of Disclosure Controls and Procedures**

As required by Rule 13a-15(b) of the Securities Exchange Act of 1934, or the Exchange Act, our management, including our principal executive officer and our principal financial and accounting officer, conducted an evaluation as of the end of the period covered by this Quarterly Report on Form 10-Q of the effectiveness of the design and operation of our disclosure controls and procedures. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and such information required to be disclosed by us in the reports we file under the Exchange Act is accumulated and communicated to our management, including our principal executive officer and principal financial and accounting officer, as appropriate to allow timely decisions regarding required disclosure. Our principal executive officer and principal financial and accounting officer have concluded that, based on and as of the time of such evaluation, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control

As required by Rule 13a-15(d) of the Exchange Act, our management, including our principal executive officer and our principal financial and accounting officer, conducted an evaluation of the internal control over financial reporting and concluded that there have not been any changes during the quarter ended March 31, 2019 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Controls and Procedures

Our management, including our principal executive officer and principal financial and accounting officer, does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all error and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. Thus, misstatements due to error or fraud may occur and not be detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of controls.

PART II – OTHER INFORMATION**Item 1A. Risk Factors:**

In addition to the other information contained elsewhere in this Quarterly Report on Form 10-Q, you should carefully consider the factors discussed in “Item 1A. Risk Factors” in our Annual Report on Form 10-K, which could materially affect our business, financial condition or future results. The risks described in our Annual Report on Form 10-K are not the only risks we face. Additional risks that we do not presently know or that we currently believe are immaterial could also materially and adversely affect any of our business, financial condition or future results. The trading price of our CDIs may decline due to these risks.

Item 2. Unregistered Sales of Equity Securities:

On May 30, 2018, the Company entered into a convertible note and warrant financing with its major shareholder, Crystal Amber Fund Limited (“Crystal Amber”), in which the Company issued to Crystal Amber a Senior Unsecured Convertible Promissory Note in the aggregate principal amount of \$1.75 million (the “2018 Note”). In connection with the issuance of the 2018 Note, the Company also issued to Crystal Amber a warrant to purchase 97,222,200 CDIs at an initial exercise price of \$0.018 per CDI, subject to adjustment as described in the warrant, which warrant expires on May 30, 2023 (the “2018 Warrant”). The 2018 Warrant may be exercised at any time on a cash or cashless basis. If the Company issues securities in a subsequent financing at a per CDI price of less than \$0.018, the exercise price of the 2018 Warrant will be reduced to the lowest such price per CDI (or the equivalent for shares of common stock) at which the newly issued securities were sold. The 2018 Warrant was issued in reliance on an exemption from registration under Section 4(a)(2) of the Securities Act of 1933, as amended.

In September 2018, the Company received commitments for a private placement of 347,222,250 fully paid CDIs of the Company (representing 6,944,445 shares of common stock) at an issue price of A\$0.020 per CDI to sophisticated and professional investors, including certain existing investors in Australia, the United States and the United Kingdom consisting of U.S. and non-U.S. persons (as defined in Regulation S (“Regulation S”) of the Securities Act of 1933, as amended (the “Securities Act”). The issue of these CDIs under this placement occurred in two tranches. The first tranche closed on September 20, 2018 (US Eastern time), pursuant to which the Company issued 150,000,000 CDIs (representing 3,000,000 shares of common stock) resulting in gross proceeds of approximately \$2.2 million. The closing of the second tranche resulted in the raising of \$2.8 million by the issue of 197,222,250 CDIs (representing 3,944,445 shares of common stock) following stockholder approval at the adjourned Special Meeting of stockholders on October 29, 2018. There were three participants in the second tranche; Crystal Amber, a related party, purchased 168,194,450 CDIs. All second tranche CDIs were allotted to investors in November 2018. Existing investors in the United States and Australia also purchased 23,819,450 and 5,208,350 CDIs, respectively. The securities sold in this private placement were issued in reliance on an exemption from the registration requirements of the Securities Act afforded by Rule 506 of Regulation D under the Securities Act with respect to purchasers who are U.S.-persons and Regulation S with respect to purchasers who are non-U.S. purchasers.

On March 15, 2019, the Company entered into a convertible note and warrant financing with Crystal Amber, in which the Company issued to Crystal Amber a Senior Unsecured Convertible Promissory Note in the aggregate principal amount of \$1 million (the “March 2019 Note”). In connection with the issuance of the March 2019 Note, the Company also agreed to issue to Crystal Amber a warrant to purchase 78,984,823 CDIs at an initial exercise price of \$0.0127 per CDI, subject to adjustment as described in the warrant, which warrant will expire on the fifth anniversary of the date of issuance (the “March 2019 Warrant”). Upon issuance, the March 2019 Warrant may be exercised at any time on a cash or cashless basis. If the Company issues securities in a subsequent financing at a per CDI price of less than \$0.0127, the exercise price of the March 2019 Warrant will be reduced to the lowest such price per CDI (or the equivalent for shares of common stock) at which the newly issued securities were sold. The March 2019 Warrant, if and when issued, is expected to be issued in reliance on an exemption from registration under Section 4(a)(2) of the Securities Act of 1933, as amended.

Item 6. Exhibits

See the Exhibit Index following the signature page to this Quarterly Report on Form 10-Q, which is incorporated by reference herein.

EXHIBIT INDEX

| Exhibit No: | Description |
|--------------------|---|
| 10.1* | Note and Warrant Purchase Agreement, dated March 15, 2019, between the Company and Crystal Amber Fund Limited. |
| 10.2* | Senior Unsecured Convertible Promissory Note, dated March 15, 2019, issued by the Company to Crystal Amber Fund Limited. |
| 10.3* | Second Amendment to Note Purchase Agreement, dated June 15, 2017, by and between GI Dynamics, Inc. and Crystal Amber Fund Limited, as purchaser, dated March 29, 2019. |
| 10.4* | Second Amendment to Senior Secured Convertible Promissory Note, dated June 15, 2017, by and between GI Dynamics, Inc., as payor, and Crystal Amber Fund Limited, as holder, dated March 29, 2019. |
| 31.1* | Certification of principal executive officer pursuant to Rules 13a-14 or 15d-14 of the Exchange Act |
| 31.2* | Certification of principal financial officer pursuant to Rules 13a-14 or 15d-14 of the Exchange Act |
| 32.1‡ | Certification of principal executive officer pursuant to Rules 13a-14(b) or 15d-14(b) of the Exchange Act and 18 U.S.C. Section 1350 |

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32.2† [Certification of principal financial officer pursuant to Rules 13a-14\(b\) or 15d-14\(b\) of the Exchange Act and 18 U.S.C. Section 1350](#)

101.INS XBRL Instance Document

101.SCH XBRL Taxonomy Extension Schema Document

101.CAL XBRL Taxonomy Extension Calculation Linkbase Document

101.LAB XBRL Taxonomy Extension Label Linkbase Database

101.PRE XBRL Taxonomy Extension Presentation Linkbase Document

101.DEF XBRL Taxonomy Extension Definition Linkbase Document

* Filed herewith.

‡ Furnished herewith.

† Management contract or compensatory plan or arrangement.

SIGNATURES

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

GI Dynamics, Inc.

Date: May 17, 2019

By: /s/ SCOTT W. SCHORER
Scott W. Schorer
President and Chief Executive Officer
(*principal executive officer*)

Date: May 17, 2019

By: /s/ CHARLES R. CARTER
Charles R. Carter
Chief Financial Officer, Secretary
(*principal financial and accounting officer*)

GI DYNAMICS, INC.

NOTE AND WARRANT PURCHASE AGREEMENT

THIS NOTE AND WARRANT PURCHASE AGREEMENT (this “*Agreement*”) is made as of the 15th day of March, 2019 (the “*Effective Date*”) by and among **GI DYNAMICS, INC.**, a Delaware corporation (the “*Company*”), and **CRYSTAL AMBER FUND LIMITED** (the “*Purchaser*”). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Note (as defined below).

The parties hereby agree as follows:

1. TERMS OF THE LOAN AND THE WARRANT

1.1 The Loan. Subject to the terms of this Agreement, the Purchaser agrees to purchase from the Company, and the Company agrees to issue and sell to the Purchaser, a senior unsecured convertible promissory note in the aggregate principal amount of One Million dollars (US\$1,000,000) (the “*Loan Amount*”) and in substantially the form attached hereto as *Exhibit A* (the “*Note*”). The Note may be converted into Chess Depositary Interests (“*CDIs*”) (with each CDI representing 1/50th of a share of the Company’s common stock, \$0.01 par value per share (the “*Common Stock*”)) or Common Stock as provided in such Note.

1.2 The Warrant. In order to induce the Purchaser to enter into this Agreement, to purchase the Note and to make the loan evidenced thereby, the Company agrees to issue to the Purchaser a warrant to purchase CDIs or Common Stock as provided in such warrant and in substantially the form attached hereto as *Exhibit B* (the “*Warrant*”). The Warrant shall only be issuable on the date of the Company’s receipt of stockholder approval to issue the Warrant in accordance with the same stockholder approval process described in Section 2(c) of the Note, and if stockholder approval is obtained, shall have a term that expires on the fifth (5th) anniversary of the date of issuance of the Warrant. If stockholder approval for issuance of the Warrant is not obtained, the Warrant will not be capable of being issued and the Purchaser shall be entitled to the remedy described in Section 2(c) of the Note in accordance with the procedures described therein, in full satisfaction of all obligations under the Note and in lieu of issuance of the Warrant.

2. THE CLOSING

2.1 Closing Date. The closing of the purchase and sale of the Note (the “*Closing*”) shall be held on the Effective Date or at such other time as the Company and the Purchaser shall agree (the “*Closing Date*”).

2.2 Delivery of Note. At the Closing (i) the Purchaser will deliver to the Company a check or wire transfer funds in an amount equal to the Loan Amount; (ii) the Company shall issue and deliver to the Purchaser the Note; and (iii) the Company shall execute and deliver such other documents as the Purchaser shall reasonably require.

2.3 Issuance and Delivery of Warrant. The Company shall issue and deliver the Warrant to the Purchaser within five business days of the date of the Company's receipt of stockholder approval of the issue of the Warrant in accordance with the same stockholder approval process described in Section 2(c) of the Note.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY

The Company hereby represents and warrants to the Purchaser, as of the date hereof and as of the Closing Date, as follows:

3.1 Organization; Good Standing and Qualification. The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own its property and carry on its business as now conducted. The Company is duly qualified to transact business and is in good standing in the Commonwealth of Massachusetts and in each jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary.

3.2 Corporate Power. The Company has all requisite corporate power to execute and deliver this Agreement, the Note and subject to the abovementioned stockholder approval, the Warrant in favor of the Purchaser and any other document provided for herein or by any of the foregoing (collectively, as the same may from time to time be amended, modified, supplemented or restated, the "**Loan Documents**") and to carry out and perform its obligations under the terms of the Loan Documents and to, subject to the abovementioned stockholder approval, issue CDIs in accordance with the terms thereof.

(a) **Authorization.** The execution and delivery of each of the Loan Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Note, the issuance of the Warrant, the reservation of the Common Stock underlying the CDIs issuable upon conversion of the Note (the "**Conversion CDIs**"), the reservation of the Common Stock underlying the CDIs issuable upon exercise of the Warrant (the "**Warrant CDIs**" and, together with the Note, the Warrant, the Conversion CDIs and the Common Stock, "**Securities**") and the issuance of the Conversion CDIs and the Warrant CDIs, was duly authorized by the Company's board of directors. Other than those consents and authorizations obtained by the Company prior to the date hereof that are in full force and effect on the Closing Date and except for any required stockholder approval of the Company as set forth in Section 2(c) of the Note and in this Agreement, no further consent or authorization is required by the Company, its board of directors or its stockholders. Each of the Loan Documents has been (or in the case of the Warrant, will be) duly executed and delivered by the Company, and constitutes the legal, valid and binding obligations of the Company enforceable in accordance with its terms, subject to laws of general application relating to equitable principles, bankruptcy, insolvency and the relief of debtors. Upon conversion of the Note into Conversion CDIs in accordance with the provisions of this Agreement and the Note, the Conversion CDIs will be validly issued, fully paid and nonassessable and free of any liens or encumbrances (other than as set out in Section 2(f) of the Note). Upon the exercise of the Warrant in accordance with the provisions of this Agreement and the Warrant, the Warrant CDIs will be validly issued, fully paid and nonassessable and free of any liens or encumbrances (other than as set out in Section 5(b) of the Warrant). The issuance

of the Note (and the Conversion CDIs) and the Warrant (and the Warrant CDIs) pursuant to the provisions of this Agreement will not give rise to any preemptive rights or rights of first refusal granted by the Company, and the Note (and the Conversion CDIs) and the Warrant (and the Warrant CDIs) will be issued in compliance with all applicable federal and state securities laws, and will be free of any liens or encumbrances; *provided, however*, that the Note and the Warrant (and the underlying securities) may be subject to restrictions on transfer as set out in the Loan Documents or under state and/or federal securities laws as set forth herein or as otherwise required by such laws at the time the transfer is proposed. The issuance and sale of the Note (and the Conversion CDIs) and the Warrant (and the Warrant CDIs) do not and will not cause any dilution adjustment in any existing securities of the Company, and the Purchaser hereby waives any dilution adjustment that might otherwise result from the issuance and sale of the Note (and the Conversion CDIs) or the Warrant (and the Warrant CDIs) pursuant to the terms of any existing security held by the Purchaser.

3.3 Governmental Consents. All consents, approvals, orders, or authorizations of, or registrations, qualifications, designations, declarations, or filings with, any governmental authority, required on the part of the Company in connection with the valid execution and delivery of the Loan Documents, the offer, sale or issuance of the Note, the Conversion CDIs, the Warrant and the Warrant CDIs, or the consummation of any other transaction contemplated hereby shall have been obtained and will be effective at the Closing, except for (i) any stockholder approval described by Section 2(c) of the Note and this Agreement and (ii) any notices required or permitted to be filed with certain foreign, state and/or federal securities commissions or stock exchanges, which notices will be filed on a timely basis.

3.4 No Conflicts. The execution, delivery and performance of the Loan Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Note and the Warrant and the reservation for issuance and issuance of the Conversion CDIs and the Warrant CDIs) will not (i) result in a violation of the certificate of incorporation or by-laws of the Company or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any material agreement, indenture or instrument to which the Company is a party or by which the Company is bound, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree including federal and state securities laws and regulations applicable to the Company or by which any property or asset of the Company is bound or affected. For the avoidance of doubt, the Purchaser agrees that the execution, delivery and performance of the Loan Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby shall not conflict with or constitute a default under (x) the Note Purchase Agreement, dated as of June 15, 2017, between the Company and the Purchaser, including, without limitation, the restriction on additional indebtedness set forth in Section 3.14 thereof, or (y) the Note and Warrant Purchase Agreement, dated May 30, 2018, between the Company and the Purchaser.

3.5 Offering. Assuming the accuracy of the representations and warranties of the Purchaser contained in Section 4 hereof, the offer, issue, and sale of the Note and the Warrant is and will be exempt from the registration and prospectus delivery requirements of the Securities Act of 1933, as amended (the “*Act*”), and has been registered or qualified (or is exempt from

registration and qualification) under the registration, permit, or qualification requirements of all applicable state securities laws.

3.6 Use of Proceeds. The Company shall use the proceeds of the sale and issuance of the Note for general corporate purposes.

3.7 Delivery of SEC Filings. The Company has provided the Purchaser with copies of the Company's most recent Annual Report on Form 10-K for the fiscal year ended December 31, 2018, and all other reports filed by the Company pursuant to the Securities Exchange Act of 1934, as amended (the “**1934 Act**”) since the filing of the Annual Report on Form 10-K and prior to the date hereof (collectively, the “**SEC Filings**”); which reports represent all filings required of the Company pursuant to the 1934 Act for such period. During the two (2) years prior to the date hereof, the Company has filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of 1934 Act (all of the foregoing filed prior to the date hereof or prior to the date of the Closing, and all exhibits included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the “**SEC Documents**”). As of their respective filing dates, or, if amended or superseded by a subsequent filing, as of the date of the last such amendment or superseding filing, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed or, if amended or superseded by a subsequent filing, as of the date of the last such amendment or superseding filing, with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective filing dates, or, if amended or superseded by a subsequent filing, as of the date of the last such amendment or superseding filing, the financial statements of the Company included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments).

3.8 Conduct of Business; Regulatory Permits. To the knowledge of the Company, the Company is not in violation of any term of, or in default under, its Certificate of Incorporation, as amended and as in effect on the date hereof, or any certificate of designation of an outstanding series of stock of the Company or Bylaws, as amended and as in effect on the date hereof. The Company is not in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company, and the Company does not and will not conduct its business in violation of any of the foregoing, except for possible violations which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Company. Without limiting the generality of the foregoing, the Company is not in violation of any of the rules, regulations or requirements of the ASX (defined below) and,

assuming the Note and Warrant are issued, has no knowledge of any facts or circumstances that would reasonably lead to delisting or suspension of its securities by the ASX in the foreseeable future. Except as set forth in its SEC Filings, the Company possesses all certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct its business, and the Company has not received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

3.9 Absence of Litigation. There is no action, suit, proceeding, inquiry or investigation before or by the SEC, the ASX, any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its subsidiaries or affiliates, the Securities or any of the Company's or its subsidiaries' officers or directors, whether of a civil or criminal nature or otherwise, which, if adversely determined, would have a material adverse effect on the Company's business or financial condition.

3.10 Securities Laws. The Company shall timely make all filings and reports relating to the issuance of the Securities required under applicable securities laws, including filing any notice of sale of securities required by applicable law or regulation and complying with any applicable "blue sky" laws of the states of the United States. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 3.10. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any "security" (as defined in the Act) that could be integrated with the issuance of the Note or the Warrant in a manner that could require the registration of the Note or the Warrant under the Act.

3.11 Efforts to Obtain Stockholder Approval. The Company shall use its commercially reasonable efforts to obtain any stockholder approval described in Section 2(c) of the Note in respect of the Note and the same form of approval in respect of the Warrant. The Company covenants that its proposal to stockholders in respect of approval of the Warrant issuance will be interconditional with its proposal to stockholders in respect of approval of issuance of CDIs upon conversion of the Note, such that if either proposal is not approved, then neither proposal may be approved.

4. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to the Company as follows:

4.1 Purchase for Own Account. The Purchaser understands that the Securities have not been registered under the Act and the Purchaser is acquiring the Securities for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted from registration. The Purchaser represents that, if it is permitted to acquire any Securities under the Note or the Warrant, it is acquiring the Securities solely for its own account and beneficial interest for investment and not for sale or with a view to distribution of the Securities or any part thereof, has no present intention of selling (in connection with a distribution or otherwise), granting any participation in, or otherwise distributing the same.

4.2 Information and Sophistication. Without lessening or obviating the representations and warranties of the Company set forth in Section 3, the Purchaser hereby: (i) acknowledges that it has received all the information it has requested from the Company including, but not limited to, the SEC Filings, (ii) represents that it has had an opportunity to ask questions and receive answers from the Company regarding the Company, its business and the terms and conditions of the offering of the Securities and (iii) further represents that it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risk of this investment.

4.3 Ability to Bear Economic Risk. The Purchaser acknowledges that investment in the Securities involves a high degree of risk, and represents that it is able, without materially impairing its financial condition, to hold the Securities for an indefinite period of time and to suffer a complete loss of its investment.

4.4 Rule 144. The Purchaser is aware that none of the Securities may be sold pursuant to Rule 144 adopted under the Act unless certain conditions are met, including, among other things, the existence of a public market for the shares, the availability of certain current public information about the Company, the resale following the required holding period under Rule 144 and the number of shares being sold during any three month period not exceeding specified limitations.

4.5 Accredited Investor Status. The Purchaser is an “*accredited investor*” as such term is defined in Rule 501 under the Act.

4.6 Regulation S. In issuing and selling the Securities, the Company may be relying upon the “safe harbor” provided by Regulation S and/or on Section 4(2) under the Act; it is a condition to the availability of the Regulation S “safe harbor” that the Securities not be offered or sold in the United States or to a U.S. person until the expiration of a one-year “distribution compliance period” (or a six-month “distribution compliance period,” if the issuer is a “reporting issuer,” as defined in Regulation S) following the closing; and notwithstanding the foregoing, prior to the expiration of the one-year “distribution compliance period” (or six-month “distribution compliance period,” if the issuer is a “reporting issuer,” as defined in Regulation S) after the closing (the “*Restricted Period*”), the Note, the Warrant and the underlying securities may, subject to any restrictions contained in the Note or the Warrant, as applicable, be offered and sold by the holder thereof only if such offer and sale is made in compliance with the terms of this Agreement and the Note or the Warrant, as applicable, and either: (A) if the offer or sale is within the United States or to or for the account of a U.S. person (as such terms are defined in Regulation S), the securities are offered and sold pursuant to an effective registration statement or pursuant to Rule 144 under the Act or pursuant to an exemption from the registration requirements of the Act; or (B) the offer and sale is outside the United States and to other than a U.S. person. If the Purchaser is not a United States person, the Purchaser hereby represents that the Purchaser is satisfied as to the full observance of the laws of the Purchaser’s jurisdiction applicable to the Purchaser in connection with any invitation to subscribe for the Securities, including (i) the legal requirements within the Purchaser’s jurisdiction for the purchase of the Securities, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any governmental or other consents that may need to be obtained and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or

transfer of such Securities. The Purchaser's subscription and payment for, and the Purchaser's continued beneficial ownership of the Securities, will not violate any applicable securities or other laws of the Purchaser's jurisdiction that are applicable to the Purchaser.

4.7 Rule 506(d). If the Purchaser beneficially owns twenty percent (20%) or more of the outstanding voting securities of the Company, calculated in accordance with Rule 506(d) of Regulation D of the Act, or may designate a director of the Company, the Purchaser hereby represents and warrants to the Company that the Purchaser has not been convicted of any of the felonies or misdemeanors or been subject to any of the orders, judgments, decrees or other conditions set forth in Rule 506(d) of Regulation D of the Act.

4.8 Further Limitations on Disposition. Without in any way limiting the representations set forth above and subject to any restrictions contained in the Note and the Warrant, as applicable, the Purchaser further agrees not to make any disposition of all or any portion of the Securities unless and until:

(a) There is then in effect a Registration Statement under the Act covering such proposed disposition and such disposition is made in accordance with such Registration Statement; or

(b) The Purchaser shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and if reasonably requested by the Company, the Purchaser shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration under the Act or any applicable state securities laws.

(c) Notwithstanding the provisions of paragraphs (a) and (b) above, but subject to the terms of the Note and the Warrant, as applicable, no such registration statement or opinion of counsel shall be necessary for a transfer by the Purchaser to (i) any shareholder, partner, retired partner, member or former member of the Purchaser for no additional consideration or (ii) any affiliate, including affiliated funds, for no additional consideration, in each case if all transferees agree in writing to be subject to the terms hereof to the same extent as if they were the Purchaser hereunder.

(d) Notwithstanding the provisions of paragraphs (a) and (b) above, the Company acknowledges and agrees that the Securities may be pledged by the Purchaser, and its successors and assigns, in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities, provided that any pledge of those Securities does not constitute an offer of those Securities for sale within 12 months after their issue such that it would require disclosure under section 707(3) of the *Corporations Act 2001* (Cth). The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Person effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Loan Document. The Company hereby agrees to execute and deliver such documentation as a pledgee of the Securities may reasonably request, at the

Purchaser's expense, in connection with a pledge of the Securities to such pledgee by the Purchaser and any successor or assignee.

4.9 Legends. The Purchaser understands that any securities issued upon conversion of the Note or exercise of the Warrant, may bear one or all of the following legends:

(a) "THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SALE OR DISTRIBUTION OF SUCH SHARES MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY OR OTHER EVIDENCE REASONABLY SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT."

(b) Any legend set forth in or required by another section of this Agreement, the Note or the Warrant, as applicable.

(c) Any legend required by the securities laws of any state or country to the extent such laws are applicable to the securities represented by the certificate so legended.

4.10 Market Standoff. The Purchaser agrees not to sell any of the Securities during a period specified by the representative of the underwriters of Common Stock (not to exceed one hundred eighty (180) days) following the effective date of the initial registration statement of the Company filed under the Act, so long as all officers, directors, and 1% stockholders have executed similar agreements and are similarly restricted from selling the Company's stock.

4.11 Foreign Ownership Restrictions. The Purchaser acknowledges and agrees that in order to ensure that US persons do not purchase any CDIs that may be issued to it, a number of procedures governing the trading and clearing of CDIs, while the Company is listed on the ASX, will be implemented, including the application to any CDIs issued to it of the status of Foreign Ownership Restrictions securities under the ASX Settlement Operating Rules and the addition of the notation "FORUS" to the CDI description on ASX trading screens and elsewhere, which will inform the market of the prohibition of US persons acquiring CDIs.

5. EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. Each of the following shall constitute an event of default (each, an "*Event of Default*") under this Agreement and the other Loan Documents:

(a) Any default in the payment, when the same becomes due and payable, of principal under or interest in respect of the Note or other amount due and payable under any other Loan Document including, but not limited to, the failure by the Company to pay on the Maturity Date, upon a Change of Control pursuant to Section 2(b) of the Note or to the extent due and payable under Section 2(c) of the Note, any and all unpaid principal, accrued interest and all other amounts owing under any Loan Document;

(b) The Company files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law or any other law for the relief of, or relating to, debtors, now or hereafter in effect, or makes any general assignment for the benefit of creditors or takes any corporate action in furtherance of any of the foregoing;

(c) An involuntary petition is filed against the Company (unless such petition is dismissed or discharged within sixty (60) days) under any bankruptcy statute now or hereafter in effect, or a custodian, receiver, trustee, assignee for the benefit of creditors (or other similar official) is appointed to take possession, custody or control of any property of the Company;

(d) The Company's stockholders (other than the Purchaser) or board of directors affirmatively vote to liquidate, dissolve, or wind up the Company or the Company otherwise ceases to carry on its ongoing business operations;

(e) If (i) a material portion of the Company's assets is attached, seized, levied on, or comes into possession of a trustee or receiver and the attachment, seizure or levy is not removed in thirty (30) days, (ii) the Company is enjoined, restrained, or prevented by a court order or other order of a governmental body from conducting its business, or (iii) notice of lien, levy, or assessment is filed against any material portion of the Company's assets by any court order or other order of any governmental body and it is not paid within sixty (60) days after the Company received notice thereof; or

(f) The Company shall fail in any material respect to observe or perform any covenant, obligation, condition or agreement contained in this Agreement or any other Loan Document (other than a failure to pay as specified in Section 5.1(a) hereof) and such failure shall continue for thirty (30) days after the Company's receipt of written notice thereof.

5.2 Remedies. Upon the occurrence or existence of any Event of Default (other than an Event of Default referred to in Sections 5.1(b) or 5.1(c) hereof) and at any time thereafter during the continuance of such Event of Default, the Purchaser or any holder of the Note may, by written notice to the Company, declare all outstanding obligations payable by the Company under the Note and the other Loan Documents to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary notwithstanding. Upon the occurrence or existence of any Event of Default described in Sections 5.1(b) or 5.1(c) hereof, immediately and without notice, all outstanding obligations payable by the Company hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary notwithstanding. In the event of any Event of Default, the Company shall pay all reasonable attorneys' fees and costs incurred by the Purchaser in enforcing and collecting the Note and the other Loan Documents. No right or remedy conferred upon or reserved to the Purchaser under this Agreement is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now and hereafter existing under applicable law.

6. CONDITIONS TO CLOSING

6.1 Conditions to Purchaser's Obligations at the Closing. The obligations of the Purchaser under the Loan Documents are subject to the fulfillment on or before the Closing of each of the following conditions, which may be waived in writing by the Purchaser:

(a) **Representations and Warranties.** The representations and warranties of the Company contained in Section 3 shall be true on and as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specified date).

(b) **Performance.** The Company shall have performed and complied with all agreements, obligations, and conditions contained in the Loan Documents that are required to be performed or complied with by it on or before the Closing.

(c) **Qualifications.** All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Note, the Conversion CDIs, the Warrant and the Warrant CDIs shall be duly obtained and effective as of the Closing.

(d) **Proceedings and Documents.** All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents incident thereto shall be reasonably satisfactory in form and substance to the Purchaser's counsel, which shall have received all such counterpart original and certified copies of such documents as it may reasonably request.

6.2 Conditions to Company's Obligations at the Closing. The obligations of the Company under the Loan Documents are subject to the fulfillment on or before the Closing of each of the following conditions, which may be waived in writing by the Company:

(a) **Representations and Warranties.** The representations and warranties made by the Purchaser in Section 4 hereof shall be true and correct on the Closing Date.

(b) **Purchase Price.** The Purchaser shall have delivered to the Company, in immediately available funds, the Loan Amount.

7. MISCELLANEOUS

7.1 Binding Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, expressed or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

7.2 Governing Law. This Agreement shall be governed by and construed under the laws of the State of New York.

7.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7.4 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

7.5 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the address set forth in this Section 7.5 or at such other address as the Company or the Purchaser may designate by ten (10) days advance written notice to the other parties hereto.

If to the Purchaser:

CRYSTAL AMBER FUND LIMITED
Heritage Hall
PO Box 225
Le Marchant Street
St. Peter Port
Guernsey
GY1 4HY

With a copy (that shall not constitute notice) to:

Estera - GG - Crystal Amber Team
CrystalAmberTeam@estera.com

If to the Company:

GI DYNAMICS, INC.
P.O. Box 51915
Boston, MA 02205
Attention: Chief Executive Officer

7.6 Amendment; Modification; Waiver. No amendment, modification or waiver of any provision of this Agreement or consent to departure therefrom shall be effective unless in writing and approved by the Company and the Purchaser provided that, while the Company is admitted to the Official List of the ASX, any proposed amendment, modification or waiver of any provision of this Agreement must not contravene the ASX Listing Rules.

7.7 Entire Agreement. This Agreement, the Exhibits hereto, and the Loan Documents constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable or bound to any other party in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein and therein.

IN WITNESS WHEREOF, the parties have executed this **NOTE AND WARRANT PURCHASE AGREEMENT** as of the date first written above.

COMPANY:

GI DYNAMICS, INC.

By: /s/ Scott Schorer

Name: Scott Schorer

Title: Chief Executive Officer

PURCHASER:

CRYSTAL AMBER FUND LIMITED

By: /s/ Kevin Smith

Name: Kevin Smith

Title: Alternate Director

Crystal Amber Asset Management (Guernsey)
Ltd

EXHIBIT A

FORM OF SENIOR UNSECURED CONVERTIBLE PROMISSORY NOTE

[See Exhibit 10.2 to this Quarterly Report on Form 10-Q.]

EXHIBIT B

FORM OF WARRANT

THIS WARRANT AND THE SECURITIES ISSUABLE UPON THE EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF REGULATION S PROMULGATED UNDER THE SECURITIES ACT, PURSUANT TO REGISTRATION UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION. HEDGING TRANSACTIONS INVOLVING THE SECURITIES REPRESENTED HEREBY MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE SECURITIES ACT. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR LAWS OF ANY OTHER RELEVANT COUNTRY.

WARRANT TO PURCHASE CHESSE DEPOSITARY INTERESTS

Issue Date: [_____], 2019

This Warrant to Purchase CHESSE Depositary Interests (the “*Warrant*”) certifies that, for good and valuable consideration, **CRYSTAL AMBER FUND LIMITED** (along with its permitted assignees, the “*Holder*”) is entitled to, and **GI DYNAMICS, INC.**, a Delaware corporation (the “*Company*”), hereby grants the Holder the right to, purchase, as of the date of issuance set forth above (the “*Issue Date*”), up to such number of fully paid and non-assessable CHESSE Depositary Interests (with each CDI representing 1/50th of a share of the Company’s common stock, par value \$0.01 per share (the “*Common Stock*”)) (the “*CDIs*”) as determined pursuant to Section 1(a) below, at a price per CDI equal to the Exercise Price (as defined below), subject to the provisions and upon the terms and conditions set forth in this Warrant. This Warrant is issued pursuant to the Note and Warrant Purchase Agreement (the “*Purchase Agreement*”) dated as of March 15, 2019 by and between the Company and the Holder.

1. Number of CDIs; Exercise Price

(a) Number of CDIs. With effect from the Issue Date, this Warrant automatically shall become exercisable for 78,984,823 CDIs (representing 1,579,696 shares of Common Stock). All CDIs for which this Warrant becomes exercisable from time to time pursuant to this Paragraph 1(a), and as may be adjusted from time to time in accordance with the provisions of this Warrant, are referred to herein cumulatively and collectively as the “*Warrant CDIs*.”

(b) Exercise Price. With respect to each Warrant CDI for which this Warrant becomes exercisable pursuant to Paragraph 1(a) above, the purchase price therefor (the “*Exercise Price*”) shall be US\$0.0127.

2. Exercise; Payment.

(a) Method of Exercise. This Warrant may be exercised by the Holder at any time during the term (as set forth in Section 8) and in compliance with the provisions of this Warrant for all or any part of the Warrant CDIs, by the surrender of this Warrant together with the duly executed notice of exercise form attached hereto as Exhibit A (the “**Notice of Exercise**”) at the principal office address of the Company. If this Warrant shall have been exercised in part, the Company shall, at the time of delivery of the Holding Statement or the book entry notice pursuant to Section 2(e), deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the then unpurchased Warrant CDIs, which new Warrant shall in all other respects be identical to this Warrant, or at the request of the Holder, appropriate notation may be made on this Warrant and the same returned to the Holder.

(b) Cash Exercise. Upon exercise of this Warrant, the Holder shall pay the Company an amount (“**Exercise Payment**”) equal to the product of the Exercise Price multiplied by the total number of Warrant CDIs purchased pursuant to such exercise of this Warrant, by wire transfer of immediately available funds or check payable to the order of the Company. In the manner set out in Paragraph (e) below, the Holder shall be deemed to have become the holder of record of, and shall be treated for all purposes as the record holder of, the Warrant CDIs represented by such exercise (and such Warrant CDIs shall be deemed to have been issued) immediately prior to the close of business on the date upon which the Exercise Payment is paid to the Company.

(c) Net Exercise. The Exercise Payment also may be paid at the Holder’s election by surrender of all or a portion of the Warrant for the Warrant CDIs to be exercised under this Warrant (“**Net Exercise**”). If the Holder elects the Net Exercise method, the Company will issue Warrant CDIs in accordance with the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where:

X = the number of Warrant CDIs to be issued upon the Net Exercise of the Warrant

Y = the number of Warrant CDIs to be surrendered

A = the fair market value of one (1) CDI on the date of exercise of this Warrant

B = the Exercise Price

For purposes of the above calculation, fair market value of CDIs shall mean the following (“**Fair Market Value**”):

(i) if CDIs are then quoted on the Australian Securities Exchange (“ASX”), then the Fair Market Value per share of one (1) CDI shall be equal to the volume

weighted average closing price of the Company's CDIs on the ASX for the five (5) trading days ending immediately prior to the business day on which the Company receives the Holder's written Notice of Exercise (regardless if received during the trading hours or after);

(ii) if CDIs are not then quoted on the ASX, then if the Company's Common Stock is traded on another national securities exchange, the Fair Market Value of the CDIs shall be equal to the result obtained by dividing (A) the volume weighted average closing price of the Company's Common Stock on such securities exchange for the five (5) trading days ending immediately prior to the business day on which the Company receives the Holder's written Notice of Exercise (regardless if received during the trading hours or after), by (B) the number of CDIs (or fraction thereof) which equal an interest in exactly one share of Common Stock on such dates;

(iii) if CDIs are not then quoted on the ASX and the Common Stock is not then traded on another securities exchange, then if the Common Stock is traded over-the-counter, the Fair Market Value of the CDIs shall be equal to the result obtained by dividing (A) the volume weighted average closing price of the Company's Common Stock quoted on the principal market on which or through which the Common Stock is traded over the five (5) consecutive trading days ending immediately prior to the business day on which the Company receives the Holder's written Notice of Exercise (regardless if received during the trading hours or after), by (B) the number of CDIs (or fraction thereof) which equal an interest in exactly one share of Common Stock on such dates; or

(iv) if CDIs are not then quoted on the ASX and the Common Stock is not then listed on any securities exchange or traded in the over-the-counter market, the Fair Market Value of the CDIs shall be as determined by its Board of Directors in its reasonable good faith judgment (which determination shall take into consideration any available appraisals).

If any of the amounts used to calculate the Fair Market Value are expressed in Australian dollars and not the United States dollar, then each such amount shall be converted into United States dollars based on the closing exchange rate published by the Reserve Bank of Australia in their Official Bulletin at 4 pm for the applicable date. The amounts used to calculate the Fair Market Value shall be equitably adjusted for the occurrence of any of the events for which an adjustment would be made pursuant to Section 4 but which is not otherwise fully reflected in the Fair Market Value calculation.

(d) Election to receive Common Stock. The Holder may include in their Notice of Exercise, the election to receive the corresponding number of shares of Common Stock for the Warrant CDIs to be purchased.

(e) Exercise Process including Holding Statement. In the event of the valid exercise of this Warrant, the Company must, if the CDIs are quoted on the ASX, do the following:

(i) allot and issue to CHESS Depositary Nominees Pty Ltd ("**CDN**") the number of shares of Common Stock underlying the CDIs the subject of the Notice of

Exercise and procure CDN to allot and issue to the Holder the number of CDIs representing the Common Stock issued to CDN under this provision;

(ii) enter CDN into the Company's register of members as the holder of the relevant number of shares of Common Stock and procure CDN to enter the Holder into the register of CDI holders as the holder of the relevant number of CDIs;

(iii) deliver to the Holder a holding statement showing the Holder as the holder of the relevant number of CDIs;

(iv) apply for, and use its reasonable efforts to obtain, official quotation of the relevant number of CDIs (and underlying shares of Common Stock) on ASX as soon as practicable; and

(v) deliver in accordance with Section 6 to the Holder a check payable to the Holder for any cash amounts payable as a result of any fractional shares.

If, at the time of exercise, CDIs are no longer quoted on ASX, then on exercise of the Warrant the Company must issue directly to the Holder the number of shares of Common Stock over which the Warrant is exercised and must procure that those shares be listed for trading on any securities exchange on which the Company's Common Stock is tradeable and in accordance with Section 6 deliver to the Holder a check payable to Holder for any cash amounts payable as a result of any fractional shares.

3. Stock Fully Paid; Reservation of Shares. All of the Warrant CDIs or Common Stock issuable upon the exercise of this Warrant, upon issuance and receipt by the Company of the Exercise Price therefor (or upon Net Exercise thereof, as provided in Section 2(c)), shall be fully paid and nonassessable, and free from all preemptive rights, rights of first refusal or first offer, taxes, liens and charges with respect to the issuance thereof except as noted in Section 5. During the period within which the rights represented by this Warrant may be exercised, the Company shall at all times have authorized and reserved for issuance a sufficient number of shares of its Common Stock to provide for the exercise of this Warrant.

4. Adjustment of Exercise Price and Number of Shares. The number and kind of Warrant CDIs to be issued upon the exercise of this Warrant and the Exercise Price payable therefor shall be subject to adjustment from time to time upon the occurrence of certain events, as follows:

(a) Reclassification, Consolidation or Reorganization. Subject to Section 10, in case of any reclassification of the CDIs (other than as a result of a subdivision or combination), or in case of any consolidation or merger of the Company with or into another corporation or sale of all or substantially all of the Company's assets (any of which is a "**Reorganization Transaction**"), the Company, or such successor corporation as the case may be, shall execute a new warrant, providing that the Holder shall have the right to exercise such new warrant, and procure upon such exercise and payment of the same aggregate Exercise Price, in lieu of the Warrant CDIs then issuable upon exercise of this Warrant, the kind and amount of shares of stock, other securities, money and property as would be received by the Holder for such

Warrant CDIs as if such Warrant CDIs were outstanding immediately prior to the consummation of the Reorganization Transaction.

(b) Stock Splits, Dividends and Combinations. Subject to Section 10, in the event that the Company shall at any time subdivide the outstanding shares of Common Stock, or shall issue a stock dividend on its outstanding shares of Common Stock, the number of Warrant CDIs issuable upon exercise of this Warrant immediately prior to such subdivision or to the issuance of such stock dividend shall be proportionately increased and the Exercise Price shall be proportionately decreased, and in the event that the Company shall at any time combine the outstanding shares of Common Stock, the number of Warrant CDIs issuable upon exercise of this Warrant immediately prior to such combination shall be proportionately decreased and the Exercise Price shall be proportionately increased, effective at the close of business on the date of such subdivision, stock dividend or combination, as the case may be such that in each case, the result obtained by multiplying the Exercise Price by the number of Warrant CDIs shall be the same immediately prior to, and immediately after, such event.

(c) Notice of Corporate Action. If the Company (i) declares a dividend (other than a cash dividend payable out of earnings or earned surplus legally available for the payment of dividends under the laws of the jurisdiction of incorporation of the Company) or other distribution, or any right to subscribe for or purchase any evidences of its indebtedness, any shares of stock of any class or any other securities or property, or to receive any other right; (ii) authorizes and publicly approves, or enters into any agreement contemplating or solicits stockholder approval for any Reorganization Transaction; or (iii) publicly authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then the Company shall deliver to the Holder a notice describing the material terms and conditions of such transaction, at least ten (10) business days prior to the applicable record or effective date on which a person would need to hold Common Stock or CDIs in order to participate in or vote with respect to such transaction, and the Company will take all steps reasonably necessary in order to insure that the Holder is given the practical opportunity to exercise this Warrant prior to such time so as to participate in or vote with respect to such transaction. Each such written notice shall be sufficiently given if addressed to the Holder at the last address of the Holder appearing on the books of the Company and delivered in accordance with Section 11(d); provided, however, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.

(d) Subsequent Equity Sales. Notwithstanding any provision of this Warrant to the contrary, in the event that the Company issues any CDIs or Common Stock or any security that is exchangeable or convertible into CDIs or Common Stock (“***Additional Securities***”) after the date hereof at a price per CDI (or the equivalent for shares of Common Stock) that is less than the Exercise Price (or the equivalent for shares of Common Stock) in an equity financing, then the Exercise Price shall be reduced to the lowest price per CDI (or the equivalent for shares of Common Stock) at which any Additional Security was issued or sold or deemed to be issued or sold. The Company agrees that it will provide a notice to the Holder describing the material terms and conditions of any issuance of Additional Securities promptly after the issuance thereof. For the avoidance of doubt, the price per CDI (or the equivalent for shares of Common Stock) at which any Additional Securities are issued by the

Company to the Holder after the date hereof, including, without limitation, upon conversion into CDIs or Common Stock of (i) the Senior Secured Convertible Promissory Note, dated June 15, 2017, and amended as of December 31, 2018 and on or about the date of the Purchase Agreement, or (ii) the Senior Unsecured Promissory Note dated May 30, 2018, each issued to the Holder by the Company, will have no effect on the Exercise Price.

5. Holder Representations and Warranties; Transfer and Assignment.

(a) The representations and warranties and rights and obligations of transfer and assignment of Holder that are set forth in Section 4 of the Purchase Agreement with respect to the shares of Common Stock or Warrant CDIs issuable to Holder are hereby made a part of this Warrant and incorporated herein by this reference

(b) Notwithstanding any other provision of this Warrant or the Purchase Agreement, the Holder may not sell or transfer any shares of Common Stock or CDIs issued to the Holder pursuant to this Warrant (“***Restricted Securities***”), or grant, issue or transfer interests in, or options over, any Restricted Securities, at any time within 12 months after the issue of those Restricted Securities (“***Restricted Period***”) except as permitted by section 708 or any other applicable section of the *Corporations Act 2001* (Cth). Before commencement of the Restricted Period, to prevent any such restricted dealings in the Restricted Securities during the Restricted Period, the Holder agrees to (i) the application of a holding lock to the Restricted Securities by the Company’s securities registry for the Restricted Period, and (ii) enter into any other documents reasonably necessary to prevent any such restricted dealings in the Restricted Securities during the Restricted Period.

(c) The Holder may not sell or transfer this Warrant, or grant, issue or transfer interests in, or options over, this Warrant at any time within 12 months after the Issue Date except as permitted by section 708 or any other applicable section of the *Corporations Act 2001* (Cth).

6. Fractional Shares. No fractional shares of the Company’s capital stock will be issued in connection with any exercise of this Warrant, but in lieu of such fractional shares the Company shall make a cash payment therefor upon the basis of the Exercise Price then in effect.

7. Rights of Stockholders. The Holder shall not be entitled to vote or receive dividends or subscription rights or be deemed the holder of the CDIs, Common Stock or any other securities of the Company which may at any time be issuable on the exercise of this Warrant for any purpose, nor shall anything contained herein be construed to confer upon the Holder any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action (whether upon any recapitalization, issuance of stock, reclassification of stock, change of par value, consolidation, merger, conveyance, or otherwise) with respect to the Warrant CDIs until this Warrant shall have been exercised and the Warrant CDIs purchasable upon the exercise of this Warrant shall have become deliverable, as provided in Section 2(a).

8. **Term of Warrant.** This Warrant shall become exercisable on the Issue Date and shall terminate and no longer be exercisable from and after 5:00 p.m., Eastern Time, on the date that is the fifth (5th) anniversary of the Issue Date.
9. **Registry of Warrants.** The Company shall maintain a registry showing the name and address of the registered holder of this Warrant. Holder's initial address, for purposes of such registry, is set forth below Holder's signature on this Warrant. Holder may change such address by giving written notice of such changed address to the Company.
10. **ASX Listing Rules.** Until such time as the Company is removed from the Official List of the ASX, the following additional provisions will apply to the Warrant notwithstanding any other provision of this Warrant:
- (a) **Voting Rights.** The Warrant does not carry any voting rights at stockholder meetings of the Company unless and until the Warrant is exercised.
 - (b) **Participation Rights.** There are no participating rights or entitlements inherent in the Warrant and the Holder is not by virtue of holding the Warrant entitled to participate in any new issue of capital that may be offered to stockholders (except upon exercise of the Warrant).
 - (c) **Reorganisations.** The rights of the Holder will be changed to the extent necessary to comply with the ASX Listing Rules applying to a reorganization (including a reconstruction, consolidation, subdivision or reduction or return of capital) of the Company's capital at the time of the reorganization.
 - (d) **Bonus Issues.** If there is a bonus issue to the holders of CDIs, the number of CDIs representing shares of Common Stock over which the Warrant is exercisable will be increased by the number of CDIs which the Holder would have received if it had exercised the Warrant before the record date for the bonus issue.
 - (e) **Pro Rata Issue.** If the Company proceeds with a pro rata issue (except a bonus issue) of securities to stockholders after the date of issue of the Warrant, the Exercise Price of the Warrant will be reduced in accordance with the formula set out in ASX Listing Rule 6.22.2.
 - (f) **Not Quoted.** The Warrant will not be quoted on ASX or on any other securities exchange.
 - (g) **Equal Ranking.** The Common Stock and CDIs issued pursuant to an exercise of the Warrant will rank, from the date of issue, equally with the existing shares of Common Stock and CDIs of the Company in all respects.
 - (h) **Changes.** Other than as set out in this Warrant or the ASX Listing Rules, this Warrant does not confer the right to a change in the Exercise Price or a change in the underlying securities over which this Warrant can be exercised.

11. **Miscellaneous.**

(a) This Warrant shall be construed and enforced in accordance with and governed by the laws of the State of New York, without giving effect to principles of conflicts of laws.

(b) The headings in this Warrant are for purposes of reference only, and shall not limit or otherwise affect any of the terms hereof.

(c) The terms of this Warrant shall be binding upon and shall inure to the benefit of any successors or assigns of the Company and of the Holder and of the Warrant CDIs issued or issuable upon the exercise hereof.

(d) Any notice provided for or permitted under this Warrant shall be treated as having been given (i) upon receipt, when delivered personally, (ii) one day after sending, when sent by commercial overnight courier with written verification of receipt, (iii) upon confirmed transmission when sent via facsimile on a business day prior to 5:00 pm local time or, if sent after 5:00 pm local time, the next business day after confirmed transmission, or (iv) three business days after deposit with the United States Postal Service, when mailed postage prepaid by certified or registered mail, return receipt requested, in each case, addressed to the address or facsimile number set forth on the signature pages hereof or as otherwise furnished in writing.

(e) This Warrant, the Note and the Purchase Agreement constitute the full and entire understanding and agreement between the parties with regard to the matters contained herein.

(f) Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of any such mutilation, upon surrender and cancellation of such Warrant, the Company at the Holder's expense will execute and deliver to the holder of record, in lieu thereof, a new Warrant of like date and tenor.

(g) This Warrant and any provision hereof may be amended, waived or terminated only by an instrument in writing signed by the Company and the Holder provided that, while the Company is admitted to the Official List of the ASX, any proposed amendment, waiver or termination must not contravene the ASX Listing Rules.

[continued and to be signed on following page]

IN WITNESS WHEREOF, each of the Company and the Holder has caused this Warrant to be signed by its duly authorized officer, all as of the day and year first above written.

COMPANY:

GI DYNAMICS, INC.
a Delaware corporation

By: _____
Name: Scott Schorer
Title: Chief Executive Officer

Notice Address: PO Box 51915
Boston, MA 02205
U.S.A.
Attention: Chief Executive Officer

HOLDER:

CRYSTAL AMBER FUND LIMITED

By: _____
Name: Kevin Smith
Title: Alternate Director
Crystal Amber Asset Management (Guernsey) Ltd

Notice Address: PO Box 286
Floor 2
Trafalgar Court
St. Peter Port
Guernsey
GY1 4LY

With a copy (which shall not constitute notice) to:

Estera - GG - Crystal Amber Team
CrystalAmberTeam@estera.com

[SIGNATURE PAGE TO WARRANT]

EXHIBIT A

NOTICE OF EXERCISE

TO: GI DYNAMICS, INC.

1. Cash Exercise. The undersigned hereby elects to purchase _____ CHESSE Depositary Interests (with each CHESSE Depositary Interest representing 1/[50th] of a share of the Company's common stock, par value \$0.01 per share (the "**Common Stock**") ("**CDIs**") of GI DYNAMICS, INC., a Delaware corporation (the "**Company**"), pursuant to the terms of Section 2(b) of the Warrant to Purchase CHESSE Depositary Interests dated [____], 2019 (the "**Warrant**"), and tenders herewith payment of the Exercise Price (as such term is defined in the Warrant) therefor.

2. Net Exercise. The undersigned hereby elects to effect a Net Exercise for _____ CDIs pursuant to Section 2(c) of the Warrant.

Please issue a Holding Statement certifying said _____ CDIs have been issued in the name of the undersigned or in such other name as is specified below:

Name: _____

Address: _____

3. Common Stock Election. By initialing here, the undersigned hereby elects to receive the number of shares of Common Stock corresponding to the CDIs noted above in lieu of the CDIs otherwise issuable: _____

The undersigned hereby represents and warrants that the aforesaid shares of Common Stock or CDIs, as the case may be, are being acquired for the account of the undersigned for investment and not with a view to, or for resale, in connection with the distribution thereof, and that the undersigned has no present intention of distributing or reselling such shares.

Holder Name: _____

By: _____

Name: _____

Title: _____

Date: _____

THIS SENIOR UNSECURED CONVERTIBLE PROMISSORY NOTE (THIS “NOTE”) AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF REGULATIONS PROMULGATED UNDER THE SECURITIES ACT, PURSUANT TO REGISTRATION UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION. HEDGING TRANSACTIONS INVOLVING THE SECURITIES REPRESENTED HEREBY MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE SECURITIES ACT. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR LAWS OF ANY OTHER RELEVANT COUNTRY.

SENIOR UNSECURED CONVERTIBLE PROMISSORY NOTE

US\$1,000,000

March 15, 2019
Boston, Massachusetts

FOR VALUE RECEIVED, GI DYNAMICS, INC., a Delaware corporation (“*Payor*”), hereby promises to pay to the order of **CRYSTAL AMBER FUND LIMITED** (the “*Holder*”), the principal sum of One Million dollars (US\$1,000,000) with interest on the outstanding principal amount at the rate of ten percent (10%) per annum, compounded annually based on a 365-day year. Interest shall commence with the date hereof and shall continue on the outstanding principal until paid in full or, if permitted by the terms of the Note, converted pursuant to Section 2 below.

1. PAYMENT AND MATURITY

(a) Reference is hereby made to the Note and Warrant Purchase Agreement (the “*Purchase Agreement*”) dated as of even date herewith between Payor and Holder. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Purchase Agreement.

(b) If this Senior Unsecured Convertible Promissory Note (this “*Note*”) has not already been paid in full or, if permitted by the terms of this Note, converted in accordance with the terms of Section 2(a) below, the entire outstanding principal balance of this Note and all unpaid accrued interest thereon shall be due and payable on March 15, 2024 (the “*Maturity Date*”). All payments of interest and principal shall be in lawful money of the United States of America. All payments shall be applied first to accrued interest, and thereafter to principal. If any payments on this Note become due on a Saturday, Sunday or a public holiday under the laws of the State of New York, such payment shall be made on the next succeeding business day and such extension of time shall be included in computing interest in connection with such payment.

(c) Upon the occurrence and during the continuance of any Event of Default, the principal balance of this Note shall bear interest at the rate of sixteen percent (16%) per

annum, including after the commencement of, and during the pendency of, any bankruptcy or other insolvency proceeding.

2. CONVERSION

(a) Optional Conversion. Subject to Section 2(c) and Section 6(c) of this Note, the Holder shall have the option (the “**Conversion Option**”), but not the obligation, at any time after the date hereof and prior to March 15, 2024, exercisable upon written notice to the Payor, to (a) convert all (but not less than all) of the entire unpaid principal amount of this Note together with any interest accrued but unpaid thereon (such principal amount and interest, the “**Outstanding Amount**”) into the number of CDIs equal to the quotient obtained by dividing (x) the Outstanding Amount by (y) US\$0.0127 (such conversion price, the “**Conversion Price**”). In lieu of receiving CDIs, upon exercising the Conversion Option, the Holder may elect to instead receive the corresponding number of shares of Common Stock for the CDIs to be issued upon such conversion.

(b) Change of Control. Upon the consummation of a Change of Control prior to March 15, 2024 the Holder may, at its option, (i) receive an amount in cash equal to all unpaid interest that has accrued to date hereunder and 110% of the entire unpaid principal amount of this Note in full satisfaction of all obligations under the Note, or (ii) subject to the provisions of Section 2(c) and Section 6(a) hereof, retain the Note, including, without limitation, the Conversion Option set forth in Section 2(a) hereof. A “**Change of Control**” means any transaction or series of related transactions that could result in any of the following: (i) the sale of all or substantially all of the assets of the Payor to any person or related group of persons (other than the Holder or a person that directly or indirectly controls, is controlled by, or is under common control with, the Holder), (ii) the acquisition, directly or indirectly, by any person or related group of persons (other than the Payor or the Holder or a person that directly or indirectly controls, is controlled by, or is under common control with, the Payor or the Holder) of beneficial ownership of securities possessing more than fifty percent (50%) of the total combined voting power of the Payor’s outstanding securities pursuant to a tender or exchange offer made directly to the Payor’s stockholders, (iii) a merger or consolidation of the Payor, other than for the purpose of re-domiciling the Payor, unless following such transaction or series of transactions, the holders of the Payor’s securities prior to the first such transaction continue to hold more than fifty percent (50% percent) of the voting rights and equity interests in the surviving entity, (iv) a recapitalization, reorganization or other transaction involving the Payor that constitutes or results in a transfer of more than one-third of the equity interests in the Payor, unless following such transaction or series of transactions, the holders of the Payor’s securities prior to the first such transaction continue to hold more than fifty percent (50%) of the voting rights and equity interests in the surviving entity or acquirer or (v) the execution by the Payor or its controlling stockholders of an agreement providing for or reasonably likely to result in any of the foregoing events.

(c) Stockholder Approval. Notwithstanding anything to the contrary contained herein or in the Purchase Agreement, in the event that the rules of the Australian Securities Exchange (“**ASX**”) (or any other exchange on which the CDIs or Common Stock is then traded) require the Payor to obtain stockholder approval to issue CDIs pursuant to Section 2(a) or Section 2(b) hereof, the Payor shall convene a meeting of stockholders to seek approval

to issue those CDIs or Common Stock. If such approval is not obtained at such meeting, the Holder shall instead become entitled to receive an amount in cash equal to all unpaid (and unconverted) interest that has accrued to date hereunder and 110% of the entire unpaid (and unconverted) principal amount of this Note in full satisfaction of all obligations under the Note, and such amounts shall be due and payable upon the earlier of (i) the Maturity Date, or (ii) the date that is six months following the date of the stockholders' meeting at which such approval is not obtained. For the avoidance of doubt, while the Payor is listed on the ASX and the rules of the ASX require the Payor to obtain stockholder approval to issue CDIs, no conversion may occur under this Note, and no CDIs or Common Stock may be issued pursuant to Section 2(a) or Section 2(b) hereof, unless and until the Payor has obtained stockholder approval pursuant to this Section 2(c).

(d) Fractional Shares and Conversion Process. No fractional shares of Payor's capital stock will be issued upon conversion of this Note. In lieu of any fractional share to which Holder would otherwise be entitled, Payor will pay to Holder in cash the amount of the unconverted principal and interest balance of this Note that would otherwise be converted into such fractional share. Upon valid conversion of this Note pursuant to Section 2, Holder shall surrender this Note, duly endorsed, at the principal offices of Payor and the Payor must, if the CDIs are quoted on the ASX, do the following:

- (i) allot and issue to CHESS Depository Nominees Pty Ltd ("**CDN**") the number of shares of Common Stock underlying the CDIs the subject of the conversion notice and procure CDN to allot and issue to the Holder the number of CDIs representing the Common Stock issued to CDN under this provision;
- (ii) enter CDN into the Payor's register of members as the holder of the relevant number of shares of Common Stock and procure CDN to enter the Holder into the register of CDI holders as the holder of the relevant number of CDIs;
- (iii) deliver to the Holder a holding statement showing the Holder as the holder of the relevant number of CDIs;
- (iv) apply for, and use its reasonable efforts to obtain, official quotation of the relevant number of CDIs (and underlying shares of Common Stock) on ASX as soon as practicable; and
- (v) deliver to the Holder a check payable to Holder for any cash amounts payable as a result of any fractional shares.

If, at the time of conversion, CDIs are no longer quoted on ASX, then on conversion of the Note the Payor must issue directly to the Holder the number of shares of Common Stock over which the Note is convertible into and must procure that those shares be listed for trading on any securities exchange on which the Payor's Common Stock is tradeable and deliver to the Holder a check payable to Holder for any cash amounts payable as a result of any fractional shares.

(e) Holder Representations and Warranties; Transfer and Assignment. The representations and warranties and rights and obligations of transfer and assignment of Holder

that are set forth in Section 4 of the Purchase Agreement with respect to the shares of Common Stock or CDIs issuable to Holder are hereby made a part of this Note and incorporated herein by this reference.

(f) Restriction on Transfer. Notwithstanding any other provision of this Note or the Purchase Agreement, the Holder may not sell or transfer any shares of Common Stock or CDIs issued to the Holder pursuant to Section 2(a) hereof (“***Restricted Securities***”), or grant, issue or transfer interests in, or options over, any Restricted Securities, at any time within 12 months after the issue of those Restricted Securities (“***Restricted Period***”) except as permitted by section 708 or any other applicable section of the *Corporations Act 2001* (Cth). Before commencement of the Restricted Period, to prevent any such restricted dealings in the Restricted Securities during the Restricted Period, the Holder agrees to (i) the application of a holding lock to the Restricted Securities by the Payor’s securities registry for the Restricted Period, and (ii) enter into any other documents reasonably necessary to prevent any such restricted dealings in the Restricted Securities during the Restricted Period.

3. DEFAULT; REMEDIES

(a) The occurrence of any Event of Default described in Section 5.1 of the Purchase Agreement shall be an Event of Default hereunder.

(b) Upon the occurrence and during the continuance of any Event of Default, all unpaid principal on this Note, accrued and unpaid interest thereon and all other amounts owing hereunder shall, at the option of the Holder, and, upon the occurrence of any Event of Default pursuant to Sections 5.1(b), (c) or (d) of the Purchase Agreement, automatically, be immediately due, payable and collectible by Holder pursuant to applicable law.

(c) Upon the occurrence and during the continuance of any Event of Default, Payor shall pay, on demand, all reasonable attorneys’ fees and court costs incurred by Holder in enforcing and collecting this Note.

4. PREPAYMENT. Payor may not prepay this Note prior to the Maturity Date without the consent of the Holder, except to the extent permitted pursuant to Section 2(b) and Section 2(c) hereof.

5. NON-TRANSFERABLE. The Holder may not sell or transfer this Note, or grant, issue or transfer interests in, or options over, this Note at any time within 12 months after the date hereof except as permitted by section 708 or any other applicable section of the *Corporations Act 2001* (Cth).

6. FUNDAMENTAL TRANSACTIONS; CORPORATE EVENTS.

(a) *Fundamental Transactions.* If, at any time while this Note is outstanding, (i) the Payor effects any merger or consolidation of the Payor with or into another person pursuant to which the Common Stock is effectively converted and exchanged, (ii) the Payor effects any sale of all or substantially all of its assets in one or a series of related transactions pursuant to which the Common Stock is effectively converted and exchanged, (iii) any tender offer or exchange offer (whether by the Payor or another person) is completed pursuant to which

at least a majority of the outstanding Common Stock is tendered and exchanged for other securities, cash or property or (iv) the Payor effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (other than as a result of a subdivision or combination of shares of Common Stock) (in any such case, a “**Fundamental Transaction**”), then prior to any subsequent conversion of this Note, and subject to the provisions of Section 2(b) hereof, the Holder shall be entitled to require the surviving entity to issue to the Holder an instrument identical to this Note (with an appropriate adjustment to the conversion price(s)) such that the Holder may receive stock (or a beneficial interest in stock) of the surviving company’s stock. Subject to the provisions of Section 2(b) hereof, the terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this paragraph (a) and insuring that this Note (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

(b) *Notice of Corporate Events.* If the Payor (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including without limitation any granting of rights or warrants to subscribe for or purchase any shares of the Payor or any subsidiary, (ii) authorizes and publicly approves, or enters into any agreement contemplating or solicits stockholder approval for any Fundamental Transaction or (iii) publicly authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Payor, then the Payor shall deliver to the Holder a notice describing the material terms and conditions of such transaction, at least ten (10) business days prior to the applicable record or effective date on which a person would need to hold Common Stock or CDIs in order to participate in or vote with respect to such transaction, and the Payor will take all steps reasonably necessary in order to insure that the Holder is given the practical opportunity to convert this Note prior to such time so as to participate in or vote with respect to such transaction; provided, however, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.

(c) *Subsequent Equity Sales.* Notwithstanding any provision of this Note to the contrary, in the event that the Payor issues any CDIs or Common Stock or any security that is exchangeable or convertible into CDIs or Common Stock (“**Additional Securities**”) after the date hereof at a price per CDI (or the equivalent for shares of Common Stock) that is less than the Conversion Price (or the equivalent for shares of Common Stock) in an equity financing, then the Conversion Price shall be reduced to the lowest price per CDI (or the equivalent for shares of Common Stock) at which any Additional Security was issued or sold or deemed to be issued or sold. The Payor agrees that it will provide a notice to the Holder describing the material terms and conditions of any issuance of Additional Securities promptly after the issuance thereof. For the avoidance of doubt, the price per CDI (or the equivalent for shares of Common Stock) at which any Additional Securities are issued by the Payor to the Holder after the date hereof, including, without limitation, upon conversion into CDIs or Common Stock of (i) the Senior Secured Convertible Promissory Note, dated June 15, 2017, and amended December 31, 2018 and on or about the date hereof, or (ii) the Senior Unsecured Promissory Note dated May 30, 2018, each issued to the Holder by the Payor, will have no effect on the Conversion Price.

7. WAIVER; PAYMENT OF FEES AND EXPENSES. Payor waives presentment and demand for payment, notice of dishonor, protest and notice of protest of this Note, and shall pay all costs of collection when incurred, including, without limitation, reasonable attorneys' fees, costs and other expenses. The right to plead any and all statutes of limitations as a defense to any demands hereunder is hereby waived to the full extent permitted by law. No delay by Holder shall constitute a waiver, election or acquiescence by it.

8. CUMULATIVE REMEDIES. Holder's rights and remedies under this Note and the Purchase Agreement shall be cumulative. No exercise by Holder of one right or remedy shall be deemed an election, and no waiver by Holder of any Event of Default shall be deemed a continuing waiver of such Event of Default or the waiver of any other Event of Default.

9. MISCELLANEOUS

(a) **Governing Law.** The terms of this Note shall be construed in accordance with the laws of the State of New York, as applied to contracts entered into by New York residents within the State of New York, and to be performed entirely within the State of New York.

(b) **Exclusive Jurisdiction.** All actions and proceedings arising out of, or relating to, this Agreement shall be heard and determined in any state or federal court sitting in the State of New York, County of New York. The undersigned, by execution and delivery of this Agreement, expressly and irrevocably consent and submit to the personal jurisdiction of any of such courts in any such action or proceeding; and (ii) waive any claim or defense in any such action or proceeding based on any alleged lack of personal jurisdiction, improper venue or forum non conveniens or any similar basis.

(c) **Successors and Assigns; Assignment.** The terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. The Payor may not assign this Note or delegate any of its obligations hereunder without the written consent of the Holder. Subject to Section 5 hereof, the Holder may assign this Note and its rights hereunder without the consent of the Payor, subject to compliance with Section 4 of the Purchase Agreement.

(d) **Titles and Subtitles.** The titles and subtitles used in this Note are used for convenience only and are not to be considered in construing or interpreting the Note.

(e) **Notices.** All notices required or permitted hereunder by the Holder of this Note to Payor shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the principal offices of the Payor, to the attention of the Chief Executive Officer, (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery. Any refusal of delivery of a notice by Payor shall be deemed to have been delivered.

(f) **Amendment; Modification; Waiver.** No term of this Note may be amended, modified or waived without the written consent of the Payor and Holder provided that,

while the Payor is admitted to the Official List of the ASX, any amendment, modification or waiver must not contravene the ASX Listing Rules.

(g) **Counterparts.** This Note may be executed in two or more counterparts, each of which shall be deemed and original, but all of which together shall constitute one and the same instrument.

(h) **Voting Rights.** This Note does not carry any voting rights at stockholder meetings of the Payor unless and until the Note is converted.

(i) **Participation Rights.** The Holder is not by virtue of holding this Note entitled to participate in any new issue of securities made by the Payor to stockholders without first converting the Note.

(j) **Equal Ranking.** The Common Stock and CDIs issued pursuant to a conversion of this Note will rank, from the date of issue, equally with the existing shares of Common Stock and CDIs of the Payor in all respects.

(k) **Reorganisations.** While the Payor is admitted to the Official List of the ASX, the rights of the Holder will be changed to the extent necessary to comply with the ASX Listing Rules applying to a reorganization of the Payor's capital at the time of the reorganization.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this **CONVERTIBLE PROMISSORY NOTE** as of the date first written above.

GI DYNAMICS, INC.

By: /s/ Scott Schorer

Name: Scott Schorer

Title: Chief Executive Officer

AGREED TO AND ACCEPTED:

CRYSTAL AMBER FUND LIMITED

By: /s/ Kevin Smith

Name: Kevin Smith

Title: Alternate Director

Crystal Amber Asset Management (Guernsey) Ltd

Exhibit 10.3

GI DYNAMICS, INC.

SECOND AMENDMENT TO NOTE PURCHASE AGREEMENT

THIS SECOND AMENDMENT (the “*Amendment*”), dated effective as of March 29, 2019, is made to that certain **NOTE PURCHASE AGREEMENT**, dated June 15, 2017, by and between **GI DYNAMICS, INC.**, a Delaware corporation (the “*Company*”) and **CRYSTAL AMBER FUND LIMITED** (the “*Purchaser*”), as amended on December 31, 2018 (collectively, the “*Agreement*”). Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agreement.

WHEREAS, pursuant to Section 7.6 of the Agreement, any term of the Agreement may be amended, waived or modified only with the written consent of the Company and the Purchaser; and

WHEREAS, the Company and the Purchaser desire to amend certain provisions of the Agreement to provide for an amended form of senior secured convertible promissory note, which the Company issued to the Purchaser pursuant to the Agreement and subsequently amended (the “*Existing Note*”), such further amendment to the Existing Note in substantially the form attached hereto as Exhibit A.

NOW, THEREFORE, the undersigned Purchaser and the Company, in consideration of the mutual premises and covenants made herein and of the mutual benefits to be derived herefrom, hereby amend the Agreement as follows:

1. Amendments to the Agreement.
 - a. The Existing Note shall be amended in substantially the form set forth in Exhibit A.
 - b. The Company and the Purchaser hereby acknowledge and confirm by execution of this Amendment and as of the date hereof that (i) no event constituting an Event of Default under Section 5 of the Agreement has occurred and (ii) the Purchaser shall not be entitled to any remedy under such Section 5 with respect to any event that has occurred as of the date hereof.
2. Except as expressly modified by this Amendment, the Agreement shall remain unmodified and in full force and effect.
3. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Facsimile or PDF transmission of execution copies or signature pages for this Amendment shall be legal, valid and binding execution and delivery for all purposes.
4. This Amendment shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of New York, without regard to its principles of conflicts of laws.

[Signature pages follow]

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

COMPANY:

GI DYNAMICS, INC.

By: /s/ Scott Schorer
Name: Scott Schorer
Title: President & Chief Executive Officer

PURCHASER:

CRYSTAL AMBER FUND LIMITED

By: /s/ Mark Huntley
Name: Mark Huntley
Title: Director

Executed by Crystal Amber Asset Management
(Guernsey) Limited as Investment Manager, for and
on behalf of Crystal Amber Fund Limited

EXHIBIT A

**SECOND AMENDMENT TO
SENIOR SECURED CONVERTIBLE PROMISSORY NOTE**

[See Exhibit 10.4 to this Quarterly Report on Form 10-Q.]

Exhibit 10.4

SECOND AMENDMENT TO SENIOR SECURED CONVERTIBLE PROMISSORY NOTE

This Second Amendment to Senior Secured Promissory Note by and among **GI DYNAMICS, INC.**, a Delaware corporation (the “**Payor**”) and **CRYSTAL AMBER FUND LIMITED** (the “**Holder**”) is effective as of March 29, 2019. Capitalized terms used but not defined herein have the definitions ascribed thereto in that certain Senior Secured Convertible Promissory Note issued on June 15, 2017 by the Payor to the Holder, as amended December 31, 2018 (the “**Existing Note**”).

WHEREAS, the Payor and the Holder desire to further amend the terms of the Existing Note as set forth herein; and

WHEREAS, Section 10(f) of the Existing Note provides that any term of the Existing Note may be amended only with the written consent of the Payor and the Holder.

NOW, THEREFORE, in consideration of the foregoing premises and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Payor and the Holder, intending to be legally bound, agree as follows:

1. Amendments to Existing Note.
 - a. Sections 1(b), 2(a), 2(b) and 2(c) of the Existing Note are hereby amended with immediate effect to change the dates referred to in each such section (including, for the avoidance of doubt, the Maturity Date) from “December 31, 2018” or “March 31, 2019” (as applicable) to “May 1, 2019”.
 - b. Subject to the approval of stockholders under and in accordance with the ASX Listing Rules (“**Approval**”), Section 2(b) of the Existing Note is hereby further amended to replace the phrase “volume weighted average bid closing price” with the phrase “volume weighted average price” with effect from the date on which Approval is obtained.
2. No Other Changes. Except as specifically amended in this amendment, all other terms of the Existing Note shall remain unchanged and in full force and effect.
3. Efforts to Obtain Stockholder Approval. The Payor shall use its commercially reasonable efforts to obtain any stockholder approval described in Section 1(b) above.
4. Counterparts. This amendment may be executed in any number of counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Facsimile or PDF transmission of execution copies or signature pages for this amendment shall be legal, valid and binding execution and delivery for all purposes.

5. Governing Law. This amendment shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of New York, without regard to its principles of conflicts of laws.

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

PAYOR:

GI DYNAMICS, INC.

By: /s/ Scott Schorer
Name: Scott Schorer
Title: President & Chief Executive Officer

HOLDER:

CRYSTAL AMBER FUND LIMITED

By: /s/ Mark Huntley
Name: Mark Huntley
Title: Director

Executed by Crystal Amber Asset Management (Guernsey) Limited as Investment Manager, for and on behalf of Crystal Amber Fund Limited

**CERTIFICATION PURSUANT
TO RULES 13a-14(a) OR 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934**

I, Scott W. Schorer, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of GI Dynamics, Inc. (the “registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: May 17, 2019

/s/ SCOTT W. SCHORER

Scott W. Schorer

Chief Executive Officer

(principal executive officer)

**CERTIFICATION PURSUANT
TO RULES 13a-14(a) OR 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934**

I, Charles R. Carter, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of GI Dynamics, Inc. (the “registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: May 17, 2019

/s/ CHARLES R. CARTER

Charles R. Carter
Chief Financial Officer, Secretary
(principal accounting and financial officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of GI Dynamics, Inc. (the “Company”) on Form 10-Q for the period ended March 31, 2019 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Scott W. Schorer, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to my knowledge that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ SCOTT W. SCHORER

Scott W. Schorer

Chief Executive Officer

(principal executive officer)

May 17, 2019

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of GI Dynamics, Inc. (the “Company”) on Form 10-Q for the period ended March 31, 2019 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Charles R. Carter, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to my knowledge that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ CHARLES R. CARTER

Charles R. Carter

Chief Financial Officer, Secretary

(principal accounting and financial officer)

May 17, 2019

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.