

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

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FORM 8-K

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CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): **December 30, 2016**

**Ekso Bionics Holdings, Inc.**  
(Exact Name of Registrant as specified in its charter)

**Nevada**  
(State or Other Jurisdiction of  
Incorporation)

**001-37854**  
(Commission File Number)

**99-0367049**  
(IRS Employer  
Identification No.)

**1414 Harbour Way South, Suite 1201**  
**Richmond, California 94804**  
(Address of principal executive offices, including zip code)

**(203) 723-3576**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Registrant's former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## **Item 1.01 – Entry Into A Material Definitive Agreement.**

### *Loan and Security Agreement*

On December 30, 2016 (the “Closing Date”), Ekso Bionics Holdings, Inc. (the “Company”) and Ekso Bionics, Inc., the Company’s wholly-owned subsidiary (“Ekso Bionics”, and together with the Company, the “Borrower”), entered into a Loan and Security Agreement (the “Loan Agreement”) with Western Alliance Bank (the “Lender”), pursuant to which the Lender agreed to loan up to an aggregate of \$10 million to the Borrower in two tranches of \$7 million (the “Term A Loan”) and \$3 million (the “Term B Loan”, and together with the Term A Loan, the “Term Loans”), respectively. The Term A Loan was disbursed to the Borrower on the Closing Date. If the Company receives net cash proceeds of at least \$15 million in connection with the sale or issuance of its equity securities, including in connection with the exercise of warrants, prior to December 31, 2017, the Company may request on or prior to December 31, 2017, and the Lender agrees to make, the Term B Loan so long as no event of default has occurred.

Pursuant to the Loan Agreement, the proceeds from the Term Loans may only be used for working capital purposes and to fund general business requirements. The Term Loans will bear interest, on the outstanding daily balance thereof, at a floating per annum rate equal to the 30 day U.S. LIBOR rate plus 5.41%.

The Borrower is required to pay accrued interest on the Term Loans on the first day of each month through and including January 1, 2018, if the Term B Loan is not made (or July 1, 2018, if the Term B Loan is made). Commencing on February 1, 2018, if the Term B Loan is not made (or August 1, 2018, if the Term B Loan is made), the Borrower shall make equal monthly payments of principal, together with accrued and unpaid interest. The principal balance of the Term Loans amortizes ratably over 36 months, if the Term B Loan is not made (or 30 months, if the Term B Loan is made). The maturity of the Term Loans is January 1, 2021, at which time all unpaid principal and accrued and unpaid interest shall be due and payable in full.

The Borrower was required to pay a non-refundable loan fee of \$35,000 as of the Closing Date and will be required to pay an additional non-refundable loan fee of \$15,000 if the Lender advances the Term B Loan. The Borrower may elect to prepay a Term Loan at any time, in whole but not in part. If the Borrower prepays a Term Loan prior to the first anniversary of the funding date of the Term Loan, it will owe a prepayment fee to the Lender equal to 1.0% of the principal amount of such Term Loan prepaid. The prepayment fee is also payable in connection with any acceleration of a Term Loan by the Lender prior to the first anniversary of the funding date of the Term Loan following a default by the Borrower. In addition, the Borrower is required to pay a fee in an amount equal to 3.50% of each Term Loan upon the earlier to occur of (a) acceleration of such Term Loan by the Lender following a default by the Borrower, (b) voluntary prepayment of such Term Loan by the Borrower and (c) the maturity of such Term Loan.

The Loan Agreement includes funding conditions, representations and warranties and covenants customary to similar credit facilities. The covenants include, among others, restrictions on the ability of the Borrower and its subsidiaries to dispose of assets, enter into mergers or acquisitions, incur indebtedness, incur liens, pay dividends or make distributions on the Company’s capital stock, make investments or loans, enter into certain affiliate transactions, license or pledge its intellectual property, make any capital expenditure in excess of \$150,000 over projected amounts, permit a Change of Control (as defined in the Loan Agreement) to occur, or permit a foreign subsidiary to maintain certain excess cash deposits or other assets, in each case subject to exceptions customary to similar credit facilities. The Borrower and its domestic subsidiaries are also required to maintain substantially all of their cash and cash equivalents in accounts at the Lender. In addition, the Company agreed to a liquidity covenant requiring that it maintain unrestricted cash and cash equivalents in accounts at Lender or subject to control agreements in favor of Lender in an amount equal to at least three months of “Monthly Cash Burn,” which is the Company’s average monthly net income (loss) for the trailing six-month period plus certain expenses and plus the average monthly principal due and payable on interest-bearing liabilities in the immediately succeeding three-month period.

The Loan Agreement creates a first priority security interest in favor of the Lender with respect to substantially all assets of the Borrower and its domestic subsidiaries, including proceeds of intellectual property, but expressly excluding intellectual property itself. The Borrower was also required to pledge 100% of the stock of each of its domestic subsidiaries and 65% of the stock of each of its foreign subsidiaries.

Events of default which may cause repayment of the Term Loans to be accelerated include, among other customary events of default, (1) non-payment of any obligation when due, (2) the Borrower's failure to comply with its affirmative and negative covenants, (3) the Borrower's failure to perform any other obligation required under the Loan Agreement and to cure such default within a 30 days after becoming aware of such failure, (4) the occurrence of a Material Adverse Effect (as defined in the Loan Agreement), (5) the attachment or seizure of a material portion of the Borrower's assets if such attachment or seizure is not released, discharged or rescinded within 10 days, (6) bankruptcy or insolvency of the Borrower, (7) default by the Borrower under any agreement (i) resulting in a right by a third party to accelerate indebtedness in an amount in excess of \$250,000 or (ii) that would reasonably be expected to have a Material Adverse Effect, (8) entry of a final, uninsured judgment or judgments against the Borrower for the payment of money in an amount, individually or in the aggregate, of at least \$250,000, or (9) any material misrepresentation or material misstatement with respect to any warranty or representation set forth in the Loan Agreement.

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

#### *Success Fee Agreement*

In connection with the Loan Agreement, the Borrower simultaneously entered into a Success Fee Agreement (the "Success Fee Agreement") with the Lender. Pursuant to the Success Fee Agreement, the Borrower shall pay to the Lender a success fee of \$250,000 (the "Success Fee") upon the first to occur of any of the following events: (a) a sale or other disposition by the Borrower of all or substantially all of its assets; (b) a merger or consolidation of the Borrower into or with another person or entity, where the holders of the Borrower's outstanding voting equity securities immediately prior to such merger or consolidation hold less than a majority of the issued and outstanding voting equity securities of the successor or surviving person or entity immediately following the consummation of such merger or consolidation; or (c) the closing price per share for the Company's common stock being \$8.00 or more for five successive business days. The Success Fee Agreement will terminate on December 30, 2026 if the Success Fee has not been paid by such date.

The Success Fee is payable, at the option of the Company, in cash or in shares of the Company's common stock to the extent such shares may be sold without volume limitations pursuant to Rule 144 under the Securities Act of 1933, as amended (the "Securities Act") or are registered for resale under the Securities Act.

The foregoing description of the Success Fee Agreement does not purport to be complete and is qualified in its entirety by reference to the copy of the Success Fee Agreement attached hereto as Exhibit 10.2, which is incorporated herein by reference.

**Item 2.03 – Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information included in Item 1.01 above is incorporated herein by reference.

**Item 7.01. Regulation FD Disclosure.**

On January 6, 2017, the Company issued a press release announcing its entry into the Loan Agreement. A copy of the press release is attached hereto as Exhibit 99.1.

The information in this Item 7.01, including the exhibit attached hereto, is furnished pursuant to Item 7.01 and shall not be deemed “filed” for any other purpose, including for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that Section. The information in this Item 7.01 of this Current Report on Form 8-K shall not be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act regardless of any general incorporation language in such filing unless specifically provided otherwise.

**Item 9.01 – Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit</u>	<u>Description</u>
10.1	Loan and Security Agreement dated as of December 30, 2016 by and among Ekso Bionics Holdings, Inc., Ekso Bionics, Inc. and Western Alliance Bank
10.2	Success Fee Agreement dated as of December 30, 2016 by and among Ekso Bionics Holdings, Inc., Ekso Bionics, Inc. and Western Alliance Bank
99.1	Press Release dated January 6, 2017

**SIGNATURE**

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.

EKSO BIONICS HOLDINGS, INC.

By: /s/ Max Scheder-Bieschin

Name: Max Scheder-Bieschin

Title: Chief Financial Officer

Dated: January 6, 2017

**EKSO BIONICS HOLDINGS, INC.**

**EKSO BIONICS, INC.**

**WESTERN ALLIANCE BANK, AN ARIZONA CORPORATION**

**LOAN AND SECURITY AGREEMENT**

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This **Loan And Security Agreement** (“Agreement”) is entered into as of December 30, 2016, by and among **Western Alliance Bank**, an Arizona corporation (“Bank”), and **EKSO BIONICS HOLDINGS, INC.**, a Nevada corporation (“Parent”), and **EKSO BIONICS, INC.**, a Delaware corporation (“Ekso”) (individually and collectively, jointly and severally, “Borrower”).

### **Recitals**

Borrower wishes to obtain credit from time to time from Bank, and Bank desires to extend credit to Borrower. This Agreement sets forth the terms on which Bank will advance credit to Borrower, and Borrower will repay the amounts owing to Bank.

### **Agreement**

#### **1. Definitions and Construction.**

**1.1 Definitions.** As used in this Agreement, the following terms shall have the following definitions:

“Accounts” means all presently existing and hereafter arising accounts, contract rights, payment intangibles, and all other forms of obligations owing to Borrower arising out of the sale or lease of goods (including, without limitation, the licensing of software and other technology) or the rendering of services by Borrower, whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Borrower and Borrower’s Books relating to any of the foregoing.

“Affiliate” means, with respect to any Person, any Person that owns or controls directly or indirectly such Person, any Person that controls or is controlled by or is under common control with such Person, and each of such Person’s senior executive officers, directors, and partners.

“Amortization Date” is February 1, 2018; provided, however, that if Ekso requests and Bank advances the Term B Loan, then the Amortization Date shall automatically be extended to August 1, 2018.

“Bank Expenses” means all: reasonable out-of-pocket costs or expenses (including reasonable attorneys’ fees and expenses) incurred in connection with the preparation, negotiation, administration, and enforcement of the Loan Documents; reasonable out-of-pocket Collateral audit fees; and Bank’s reasonable out-of-pocket attorneys’ fees and expenses incurred in amending, enforcing or defending the Loan Documents (including fees and expenses of appeal), incurred before, during and after an Insolvency Proceeding, whether or not suit is brought.

“Borrower’s Books” means all of Borrower’s books and records including: ledgers; records concerning Borrower’s assets or liabilities, the Collateral, business operations or financial condition; and all computer programs, or tape files, and the equipment containing such information.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which banks in the State of California are authorized or required to close.

“Change in Control” shall mean a transaction in which any “person” or “group” (within the meaning of Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) becomes the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, of a sufficient number of shares of all classes of stock then outstanding of Borrower ordinarily entitled to vote in the election of directors, empowering such “person” or “group” to elect a majority of the Board of Directors of Borrower, who did not have such power before such transaction.

“Closing Date” means the date of this Agreement.

“Code” means the California Uniform Commercial Code.

“Collateral” means the property described on **Exhibit A** attached hereto.

“Contingent Obligation” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, letter of credit or other obligation of another; (ii) any obligations with respect to undrawn letters of credit, corporate credit cards, or merchant services issued or provided for the account of that Person; and (iii) all obligations arising under any agreement or arrangement designed to protect such Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term “Contingent Obligation” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by Bank in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

“Copyrights” means any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof.

“Credit Extension” means each Term Loan or any other extension of credit by Bank for the benefit of Borrower hereunder.

“Current Assets” means, as of any applicable date, all amounts that should, in accordance with GAAP, be included as current assets on the consolidated balance sheet of Borrower and its Subsidiaries as at such date.

“Daily Balance” means the amount of the Obligations owed at the end of a given day.

“Designated Deposit Account” means Borrower’s primary depository or operating account with Bank.

“Domestic Subsidiary” means a Subsidiary organized under the laws of the United States or any state or territory thereof or the District of Columbia.

“Draw Period” is the period commencing on the Draw Period Start Date and ending on the earlier of (i) December 31, 2017 and (ii) the occurrence of an Event of Default; provided, however, that the Draw Period shall not commence if on the date of the occurrence of the Draw Period Start Date an Event of Default has occurred and is continuing.

“Draw Period Milestone” is the achievement, after the Closing Date but prior to December 31, 2017, of receipt by Borrower of at least Fifteen Million Dollars (\$15,000,000) of New Equity.

“Draw Period Start Date” means the date on which Bank has received written evidence, in form and substance reasonably satisfactory to Bank, that Borrower has achieved the Draw Period Milestone.

“Equipment” means all present and future machinery, equipment, tenant improvements, furniture, fixtures, vehicles, tools, parts and attachments in which Borrower has any interest.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder.

“Event of Default” has the meaning assigned in Article 8.

“Final Payment” is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) due on the earliest to occur of (a) the Term Loan Maturity Date, or (b) the acceleration of any Term Loan, or (c) the prepayment of a Term Loan pursuant to Section 2.2(c) or (d), equal to the original principal amount of such Term Loan multiplied by the Final Payment Percentage, payable to Bank.

“Final Payment Percentage” is three and one half percent (3.50%).



“Foreign Subsidiary” means any Subsidiary which is not a Domestic Subsidiary.

“Funding Date” is any date on which a Credit Extension is made to or on account of Borrower which shall be a Business Day.

“GAAP” means generally accepted accounting principles as in effect from time to time.

“Indebtedness” means (a) all indebtedness for borrowed money or the deferred purchase price of property or services, including without limitation reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all capital lease obligations and (d) all Contingent Obligations.

“Index Rate” means the thirty (30) day U.S. LIBOR rate reported in the Wall Street Journal as of the first calendar day of each month.

“Insolvency Proceeding” means any proceeding commenced by or against any person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“Intellectual Property” means all of Borrower’s right, title, and interest in and to the following: Copyrights, Trademarks and Patents; all trade secrets, all design rights, claims for damages by way of past, present and future infringement of any of the rights included above, all licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights; all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; and all proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

“Inventory” means all inventory in which Borrower has or acquires any interest, including work in process and finished products intended for sale or lease or to be furnished under a contract of service, of every kind and description now or at any time hereafter owned by or in the custody or possession, actual or constructive, of Borrower, including such inventory as is temporarily out of its custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Borrower’s Books relating to any of the foregoing.

“Investment” means any beneficial ownership of (including stock, partnership interest or other securities) any Person, or any loan, advance or capital contribution to any Person.

“IRC” means the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

“Lien” means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

“Loan Documents” means, collectively, this Agreement, the Success Fee Agreement any note or notes executed by Borrower, and any other agreement entered into in connection with this Agreement, all as amended or extended from time to time.

“Material Adverse Effect” means a material adverse effect on (i) the business operations, condition (financial or otherwise) or prospects of Borrower and its Subsidiaries taken as a whole or (ii) the ability of Borrower to repay the Obligations or otherwise perform its obligations under the Loan Documents or (iii) the value or priority of Bank’s security interests in the Collateral.

“Monthly Cash Burn” means, for any period of determination, Borrower’s average monthly net income (loss), with the following expenses added back: (a) amortization, (b) depreciation, (c) non-cash stock-based compensation, (d) non-cash interest expenses and (e) non-cash losses on warrant liabilities (or similar non-cash items), as reduced by gains on non-cash warrant liabilities (or similar non-cash items), in each case for the trailing six (6) month period, all determined in accordance with GAAP and calculated on a trailing six (6) month basis, plus the average monthly principal due and payable on interest-bearing liabilities in the immediately succeeding three (3) month period.

“Negotiable Collateral” means all letters of credit of which Borrower is a beneficiary, notes, drafts, instruments, securities, documents of title, and chattel paper, and Borrower’s Books relating to any of the foregoing.

“New Equity” means net cash proceeds received after the Closing Date from the sale and/or issuance of Borrower’s equity securities, including, without limitation, in connection with the exercise of warrants therefor (regardless of whether such warrants are issued prior to or following the Closing Date).

“Obligations” means all debt, principal, interest, the Prepayment Fee, the Final Payment, Bank Expenses and other amounts owed to Bank by Borrower pursuant to this Agreement or any other agreement, whether absolute or contingent, due or to become due, now existing or hereafter arising, including any interest that accrues after the commencement of an Insolvency Proceeding and including any debt, liability, or obligation owing from Borrower to others that Bank may have obtained by assignment or otherwise.

“Patents” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“Payment Date” means the first (1st) calendar day of each calendar month.

“Periodic Payments” means all installments or similar recurring payments that Borrower may now or hereafter become obligated to pay to Bank pursuant to the terms and provisions of any instrument, or agreement now or hereafter in existence between Borrower and Bank.

“Permitted Indebtedness” means:

- (a) Indebtedness of Borrower in favor of Bank arising under this Agreement or any other Loan Document;
- (b) Indebtedness existing on the Closing Date and disclosed in the Schedule;
- (c) Indebtedness secured by a lien described in clause (c) of the defined term “Permitted Liens,” provided (i) such Indebtedness does not exceed the lesser of the cost or fair market value of the equipment financed with such Indebtedness and (ii) such Indebtedness does not exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate at any given time;
- (d) Subordinated Debt;
- (e) Unsecured Indebtedness to trade creditors incurred in the ordinary course of business;
- (f) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business; and
- (g) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (f) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

“Permitted Investment” means:

- (a) Investments existing on the Closing Date disclosed in the Schedule;

**(b)** (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one (1) year from the date of acquisition thereof, (ii) commercial paper maturing no more than one (1) year from the date of creation thereof and currently having rating of at least A-2 or P-2 from either Standard & Poor's Corporation or Moody's Investors Service, (iii) certificates of deposit maturing no more than one (1) year from the date of investment therein issued by Bank and (iv) Bank's money market accounts;

**(c)** Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

**(d)** Investments consisting of deposit accounts in which Bank has a perfected security interest;

**(e)** Investments accepted in connection with Transfers permitted by Section 7.1;

**( f )** Investments consisting of the creation of a Subsidiary for the purpose of consummating a merger transaction permitted by Section 7.3 of this Agreement, which is otherwise a Permitted Investment;

**(g)** Investments (i) by Parent in Ekso, (ii) by Borrower or any Domestic Subsidiaries that have become co-borrowers or guarantors in accordance with Section 6.11 hereof in any Domestic Subsidiaries that have become co-borrowers or guarantors in accordance with Section 6.11 hereof, (iii) by Borrower or any Subsidiaries in any Subsidiary (other than a Domestic Subsidiary described above in clause (i)) not to exceed in any fiscal year the sum of One Hundred Fifty Thousand Dollars (\$150,000) and the operating expenses and subject to Section 7.12, capital expenditures, included for such Subsidiary for such fiscal year in the projections delivered to Bank as of the Closing Date and (iv) by Borrower in any Subsidiary to the extent existing on the Closing Date and disclosed in the Schedule;

**(h)** Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors; not to exceed in the aggregate for (i) and (ii), Two Hundred Fifty Thousand Dollars (\$250,000) in any fiscal year;

**(i)** Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

**( j )** Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (j) shall not apply to Investments of Borrower in any Subsidiary; and

**( k )** joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the non-exclusive or exclusive licensing of technology (to the extent the same constitute Permitted Licenses), the development of technology or the providing of technical support, provided that any cash investments by Borrower do not exceed Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate in any fiscal year.

“Permitted Licenses” are (A) licenses existing on the Closing Date disclosed in the Schedule, (B) licenses of over-the-counter software that is commercially available to the public, and (C) non-exclusive and exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided, that, with respect to each such license described in clause (D), (i) no Event of Default has occurred or is continuing at the time of such license; (ii) the license constitutes an arms-length transaction, the terms of which, on their face, do not provide for legal transfer of title of any Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise Transfer any Intellectual Property other than, in the case of an exclusive license, as provided in clause (iii)(y) of this definition; (iii) in the case of any exclusive license, (x) Borrower delivers ten (10) days’ prior written notice and a brief summary of the terms of the proposed license to Bank and delivers to Bank copies of the final executed licensing documents in connection with the exclusive license promptly upon consummation thereof, and (y) any such license could not result in a legal transfer of title of the licensed property but may be exclusive in respects other than territory and may be exclusive as to territory only as to discrete geographical areas outside of the United States, provided that the foregoing territorial restriction shall not apply to a license exclusive as to field of use if the field of use contemplated therein is not one as to which Borrower generates or is anticipated to generate (in either case, at the time of the granting of such license) revenue in excess of five percent (5%) of Borrower’s consolidated revenue, based on the projections provided to Bank in accordance with Section 6.3(c) hereof; and (iv) all upfront payments, royalties, milestone payments or other proceeds arising from the licensing agreement that are payable to Borrower or any of its Subsidiaries are paid to a deposit account maintained with the Bank or to a deposit account that is governed by a control agreement. Permitted Licenses shall also include any amendments to the licenses described in clauses (A) and (C) above, provided that no such amendment shall provide for legal transfer of title of the Intellectual Property subject thereto and shall not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise Transfer the Intellectual Property subject thereto other than, in the case of an exclusive license, as provided in clause (iii)(y) of this definition).

“Permitted Liens” means the following:

- (a) Any Liens existing on the Closing Date and disclosed in the Schedule or arising under this Agreement or the other Loan Documents;
- (b) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings, provided the same have no priority over any of Bank’s security interests;
- (c) Liens (i) upon or in any equipment which was not financed by Bank acquired or held by Borrower or any of its Subsidiaries to secure the purchase price of such equipment or indebtedness incurred solely for the purpose of financing the acquisition of such equipment, or (ii) existing on such equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment;
- (d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;
- (e) Liens to secure payment of workers’ compensation, employment insurance, old- age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);
- (f) leases or subleases of real property granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), if the leases, subleases, licenses and sublicenses do not prohibit granting Bank a security interest therein;
- (g) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections 8.4 and 8.7;
- (h) Liens consisting of Permitted Licenses;

( i ) Liens in favor of other financial institutions arising in connection with Borrower's deposit and/or securities accounts held at such institutions, provided that Borrower is permitted under the terms of this Agreement to maintain such accounts and Bank has a perfected security interest in the amounts held in such deposit and/or securities accounts; and

( j ) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in clauses (a) through (i) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness being extended, renewed or refinanced does not increase.

"Person" means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental agency.

"Prepayment Fee" is, with respect to any Term Loan subject to prepayment prior to the first anniversary of the Funding Date applicable thereto, whether by mandatory or voluntary prepayment, acceleration or otherwise, an additional fee payable to Bank in amount equal to one percent (1.00%) of the principal amount of the Term Loan prepaid; provided, however, that no Prepayment Fee shall be due if any such prepayment occurs in connection with refinancing such Term Loan with Bank.

"Responsible Officer" means each of the Chief Executive Officer, the Chief Financial Officer, Treasurer, Assistant Treasurer and the Controller of Borrower.

"Schedule" means the schedule of exceptions attached hereto and approved by Bank, if any.

"Shares" is (i) one hundred percent (100%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower or Borrower's Subsidiary, in any Domestic Subsidiary; and (ii) sixty-five percent (65%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower or any Domestic Subsidiary in any Foreign Subsidiary.

"Success Fee Agreement" means that certain Success Fee Agreement, between Borrower and Bank, dated as of December 30, 2016.

"Subordinated Debt" means any debt incurred by Borrower that is subordinated to the debt owing by Borrower to Bank on terms acceptable to Bank (and identified as being such by Borrower and Bank).

"Subsidiary" means any corporation, company or partnership in which (i) any general partnership interest or (ii) more than 50% of the stock or other units of ownership which by the terms thereof has the ordinary voting power to elect the Board of Directors, managers or trustees of the entity, at the time as of which any determination is being made, is owned by Borrower, either directly or through an Affiliate.

"Term Loan" is defined in Section 2.2(a)(ii) hereof.

"Term A Loan" is defined in Section 2.2(a)(i) hereof.

"Term B Loan" is defined in Section 2.2(a)(ii) hereof.

"Term Loan Maturity Date" means January 1, 2021.

"Trademarks" means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

**1.2 Accounting Terms** . All accounting terms not specifically defined herein shall be construed in accordance with GAAP and all calculations made hereunder shall be made in accordance with GAAP. When used herein, the terms "financial statements" shall include the notes and schedules thereto.

## 2. Loan and Terms Of Payment.

### 2.1 Credit Extensions.

Borrower promises to pay to the order of Bank, in lawful money of the United States of America, the aggregate unpaid principal amount of all Credit Extensions made by Bank to Borrower hereunder. Borrower shall also pay interest on the unpaid principal amount of such Credit Extensions at rates in accordance with the terms hereof.

### 2.2 Term Loans.

#### (a) Availability.

( i ) Subject to the terms and conditions of this Agreement, Bank agrees to make a term loan to Ekso on the Closing Date in an aggregate amount of Seven Million Dollars (\$7,000,000.00) (such term loan the “**Term A Loan** ”). After repayment, the Term A Loan may not be re-borrowed.

( i i ) Subject to the terms and conditions of this Agreement, during the Draw Period, Ekso may request and Bank agrees to make a term loan to Ekso in an aggregate amount of Three Million Dollars (\$3,000,000.00) (the “**Term B Loan**”, each Term A Loan or Term B Loan is hereinafter referred to singly as a “ **Term Loan** ” and the Term A Loans and the Term B Loans are hereinafter referred to collectively as the “**Term Loans**”). After repayment, no Term B Loan may be re-borrowed.

( b ) Repayment. Borrower shall make monthly payments of interest only, in arrears, commencing on the first (1st) Payment Date following the Funding Date of each Term Loan, and continuing on the Payment Date of each successive month thereafter through and including the Payment Date immediately preceding the Amortization Date. Borrower agrees to pay, on the Funding Date of each Term Loan, any initial partial monthly interest payment otherwise due for the period between the Funding Date of such Term Loan and the first Payment Date thereof. Commencing on the Amortization Date, and continuing on the Payment Date of each month thereafter, Borrower shall make equal monthly payments of principal, together with applicable interest, in arrears, to Bank, as calculated by Bank (which calculations shall be deemed correct absent manifest error) based upon: (1) the amount of such Term Loan, (2) the effective rate of interest, as determined in Section 2.4(a), and (3) a repayment schedule equal to (i) if the Amortization Date is February 1, 2018, thirty-six (36) months and (ii) if the Amortization Date is August 1, 2018, thirty (30) months. All unpaid principal and accrued and unpaid interest with respect to each Term Loan is due and payable in full on the Term Loan Maturity Date. Each Term Loan may only be prepaid in accordance with Sections 2.2(c) and 2.2(d).

( c ) Mandatory Prepayments. If the Term Loans are accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to Bank, an amount equal to the sum of: (i) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (ii) the Final Payment, (iii) the Prepayment Fee, plus (iv) all other Obligations that are due and payable, including Bank’s Expenses and interest at the Default Rate with respect to any past due amounts. Notwithstanding (but without duplication with) the foregoing, on the Term Loan Maturity Date, if the Final Payment had not previously been paid in full in connection with the prepayment of the Term Loans in full, Borrower shall pay to Bank, the Final Payment in respect of the Term Loan(s).

( d ) Permitted Prepayment of Term Loans. Borrower shall have the option to prepay all, but not less than all, of the Term Loans advanced by Bank under this Agreement, provided Borrower (i) provides written notice to Bank of its election to prepay the Term Loans at least thirty (30) days prior to such prepayment, and (ii) pays to Bank on the date of such prepayment, an amount equal to the sum of (A) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (B) the Final Payment, (C) the Prepayment Fee, plus (D) all other Obligations that are due and payable, including Bank’s Expenses and interest at the Default Rate with respect to any past due amounts.

**2.3 Intentionally Omitted.**

**2.4 Interest Rates, Payments, and Calculations.**

(a) **Interest Rates.** Except as set forth in Section 2.4(b) below, each Term Loan shall bear interest, on the outstanding Daily Balance thereof, at a floating per annum rate equal to the Index Rate plus five and forty-one hundredths of one percent (5.41%).

(b) **Late Fee; Default Rate.** If any payment is not made within ten (10) days after the date such payment is due, Borrower shall pay Bank a late fee equal to the lesser of (i) five percent (5%) of the amount of such unpaid amount or (ii) the maximum amount permitted to be charged under applicable law, not in any case to be less than \$25.00. All Obligations shall bear interest, from and after the occurrence and during the continuance of an Event of Default, at a rate equal to five (5) percentage points above the interest rate applicable immediately prior to the occurrence of the Event of Default.

(c) **Payments.** Interest hereunder shall be due and payable on each Payment Date. Bank shall, at its option, charge such interest, all Bank Expenses, and all Periodic Payments against any of Borrower's deposit accounts (including but not limited to the Designated Deposit Account), in which case those amounts shall thereafter accrue interest at the rate then applicable hereunder. Any interest not paid when due shall be compounded by becoming a part of the Obligations, and such interest shall thereafter accrue interest at the rate then applicable hereunder. All payments shall be free and clear of any taxes, withholdings, duties, impositions or other charges, to the end that Bank will receive the entire amount of any Obligations payable hereunder, regardless of source of payment.

(d) **Computation.** Interest shall be computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) months of thirty (30) days.

**2.5 Crediting Payments.** Prior to the occurrence of an Event of Default, Bank shall credit a wire transfer of funds, check or other item of payment to such deposit account or Obligation as Borrower specifies. After the occurrence of an Event of Default, the receipt by Bank of any wire transfer of funds, check, or other item of payment shall be immediately applied to conditionally reduce Obligations, but shall not be considered a payment on account unless such payment is of immediately available federal funds or unless and until such check or other item of payment is honored when presented for payment. Notwithstanding anything to the contrary contained herein, any wire transfer or payment received by Bank after 12:00 noon Pacific time shall be deemed to have been received by Bank as of the opening of business on the immediately following Business Day. Whenever any payment to Bank under the Loan Documents would otherwise be due (except by reason of acceleration) on a date that is not a Business Day, such payment shall instead be due on the next Business Day, and additional fees or interest, as the case may be, shall accrue and be payable for the period of such extension.

**2.6 Fees.** Borrower shall pay to Bank the following:

(a) **Loan Fee.** (i) On the Closing Date, a loan fee equal to Thirty-Five Thousand Dollars (\$35,000), receipt of which hereby is acknowledged by Bank, and (ii) on the date Bank advances the Term Loan B, a loan fee equal to Fifteen Thousand Dollars (\$15,000), each which shall be nonrefundable;

(b) **Final Payment.** The Final Payment, when due hereunder;

(c) **Prepayment Fee.** The Prepayment Fee, when due hereunder; and

(d) **Bank Expenses.** On the Closing Date, all Bank Expenses incurred through the Closing Date, and, after the Closing Date, all Bank Expenses, as and when they are incurred by Bank.

**2.7 Term.** This Agreement shall become effective on the Closing Date and, subject to Section 13.7, shall continue in full force and effect for so long as any Obligations remain outstanding or Bank has any obligation to make Credit Extensions under this Agreement. Notwithstanding the foregoing, Bank shall have the right to terminate its obligation to make Credit Extensions under this Agreement immediately and without notice upon the occurrence and during the continuance of an Event of Default. Notwithstanding such termination, Bank's Lien on the Collateral shall remain in effect for so long as any Obligations are outstanding.

### 3. Conditions of Loans.

**3.1 Conditions Precedent to Initial Credit Extension.** The obligation of Bank to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, the following:

- (a) this Agreement;
- (b) a certificate of the respective Secretary of Parent and Ekso with respect to incumbency and resolutions authorizing the execution and delivery of this Agreement;
- (c) UCC National Form Financing Statement;
- (d) the Success Fee Agreement; in blank;
- (e) the certificate(s) for the Shares of Ekso, together with transfer power(s) executed
- (f) a landlord's consent executed in favor of Bank with respect to the location of Borrower's headquarters and each location leased by a Borrower or Domestic Subsidiary which holds assets with an aggregate value in excess of Two Hundred Fifty Thousand Dollars (\$250,000);
- (g) agreement to provide insurance;
- (h) payment of the fees and Bank Expenses then due specified in Section 2.6 hereof;
- (i) current financial statements of Borrower;
- ( j ) subject to Section 6.7, a deposit account control agreement with respect to any account permitted hereunder to be maintained outside Bank; and
- (k) such other documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

**3.2 Conditions Precedent to all Credit Extensions.** The obligation of Bank to make each Credit Extension, including the initial Credit Extension, is further subject to the following conditions:

- (a) timely receipt by Bank of (i) the Advance Request Form in the form of Exhibit B-1 attached hereto; and (ii) the Disbursement Letter in the form of Exhibit B-2 attached hereto; and
- ( b ) the representations and warranties contained in Section 5 shall be true and correct in all material respects on and as of the date of such Advance Request Form and Disbursement Letter, and on the Funding Date of each Credit Extension as though made at and as of each such date, except that Borrower shall be permitted to update the Schedule with respect to (i) inbound licenses and co-owned Intellectual Property entered into or acquired after the date hereof, and (ii) additional locations of Inventory and Equipment, to the extent necessary to avoid breaches of the representations in Sections 5.6 and 5.7 regarding Borrower's sole ownership of Intellectual Property and locations at which Inventory and Equipment is located, and no Event of Default shall have occurred and be continuing, or would exist after giving effect to such Credit Extension. The making of each Credit Extension shall be deemed to be a representation and warranty by Borrower on the date of such Credit Extension as to the accuracy of the facts referred to in this Section 3.2.



**3.3 Procedures for Borrowing.** Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan set forth in this Agreement, to obtain a Term Loan, Borrower shall notify Bank (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 noon Pacific time three (3) Business Days prior to the date the Term Loan is to be made. Together with any such electronic, facsimile or telephonic notification, Borrower shall deliver to Bank by electronic mail or facsimile a completed Disbursement Letter executed by a Responsible Officer or his or her designee. Bank may rely on any telephone notice given by a person whom Bank reasonably believes is a Responsible Officer or designee. On the Funding Date, Bank shall credit and/or transfer (as applicable) to the Designated Deposit Account, the amount of such Term Loan.

**4. Creation of Security Interest.**

**4.1 Grant of Security Interest.** Borrower grants and pledges to Bank a continuing security interest in all presently existing and hereafter acquired or arising Collateral in order to secure prompt repayment of any and all Obligations and in order to secure prompt performance by Borrower of each of its covenants and duties under the Loan Documents. Except as set forth in the Schedule, such security interest constitutes a valid, first priority security interest in the presently existing Collateral, and will constitute a valid, first priority security interest in Collateral acquired after the date hereof.

**4.2 Delivery of Additional Documentation Required.** Borrower shall from time to time execute and deliver to Bank, at the request of Bank, all Negotiable Collateral, all financing statements and other documents that Bank may reasonably request, in form satisfactory to Bank, to perfect and continue the perfection of Bank's security interests in the Collateral and in order to fully consummate all of the transactions contemplated under the Loan Documents. Borrower from time to time may deposit with Bank specific time deposit accounts to secure specific Obligations. Borrower authorizes Bank to hold such balances in pledge and to decline to honor any drafts thereon or any request by Borrower or any other Person to pay or otherwise transfer any part of such balances for so long as the Obligations are outstanding.

**4.3 Right to Inspect.** Bank (through any of its officers, employees, or agents) shall have the right, upon reasonable prior notice, from time to time during Borrower's usual business hours but no more than once a year (unless an Event of Default has occurred and is continuing), to inspect Borrower's Books and to make copies thereof and to check, test, and appraise the Collateral in order to verify Borrower's financial condition or the amount, condition of, or any other matter relating to, the Collateral.

**4.4 Pledge of Collateral.** Borrower hereby pledges, assigns and grants to Bank a security interest in all the Shares, together with all proceeds and substitutions thereof, all cash, stock and other moneys and property paid thereon, all rights to subscribe for securities declared or granted in connection therewith, and all other cash and noncash proceeds of the foregoing, as security for the performance of the Obligations. On the Closing Date, or, to the extent not certificated as of the Closing Date, within ten (10) days of the certification of any Shares, the certificate or certificates for the Shares will be delivered to Bank, accompanied by an instrument of assignment duly executed in blank by Borrower. To the extent required by the terms and conditions governing the Shares, Borrower shall cause the books of each entity whose Shares are part of the Collateral and any transfer agent to reflect the pledge of the Shares. Upon the occurrence and during the continuance of an Event of Default hereunder, Bank may effect the transfer of any securities included in the Collateral (including but not limited to the Shares) into the name of Bank and cause new (as applicable) certificates representing such securities to be issued in the name of Bank or its transferee. Borrower will execute and deliver such documents, and take or cause to be taken such actions, as Bank may reasonably request to perfect or continue the perfection of Bank's security interest in the Shares. Unless an Event of Default shall have occurred and be continuing, Borrower shall be entitled to exercise any voting rights with respect to the Shares and to give consents, waivers and ratifications in respect thereof, provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be inconsistent with any of the terms of this Agreement or which would constitute or create any violation of any of such terms. All such rights to vote and give consents, waivers and ratifications shall terminate upon the occurrence and continuance of an Event of Default.

## 5. Representations and Warranties.

Borrower represents and warrants as follows:

**5.1 Due Organization and Qualification.** Borrower and each Subsidiary is a corporation duly existing under the laws of its state of incorporation and qualified and licensed to do business in any state in which the conduct of its business or its ownership of property requires that it be so qualified.

**5.2 Due Authorization; No Conflict.** The execution, delivery, and performance of the Loan Documents are within Borrower's powers, have been duly authorized, and are not in conflict with nor constitute a breach of any provision contained in Borrower's Articles or Certificate of Incorporation or Bylaws, nor will they constitute an event of default under any material agreement to which Borrower is a party or by which Borrower is bound. Borrower is not in default under any material agreement to which it is a party or by which it is bound.

**5.3 No Prior Encumbrances.** Borrower has good and marketable title to its property, free and clear of Liens, except for Permitted Liens.

**5.4 Bona Fide Accounts.** The Accounts are bona fide existing obligations. The property and services giving rise to such Accounts has been delivered or rendered to the account debtor or to the account debtor's agent for immediate and unconditional acceptance by the account debtor. Borrower has not received notice of actual or imminent Insolvency Proceeding of any account debtor.

**5.5 Merchantable Inventory.** All Inventory is in all material respects of good and marketable quality, free from all material defects, except for Inventory for which adequate reserves have been made.

**5.6 Intellectual Property.** Except as set forth in the Schedule and for Permitted Licenses, Borrower is the sole owner of the Intellectual Property, except for non-exclusive or exclusive licenses granted by Borrower to its customers in the ordinary course of business. Each of the issued Patents is valid and enforceable, and no part of the Intellectual Property has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Intellectual Property violates the rights of any third party. Except as set forth in the Schedule and for Permitted Licenses, Borrower is not a party to, or bound by, any agreement with respect to Intellectual Property that restricts the grant by Borrower of a security interest in Borrower's rights under such agreement.

**5.7 Name; Location of Chief Executive Office.** Except as disclosed in the Schedule, Borrower has not done business under any name other than that specified on the signature page hereof. The chief executive office of Borrower is located at the address indicated in Section 10 hereof. All Borrower's Inventory and Equipment is located only at the locations set forth in the Schedule.

**5.8 Litigation.** Except as set forth in the Schedule, there are no actions or proceedings pending by or against Borrower or any Subsidiary before any court or administrative agency in which an adverse decision could have a Material Adverse Effect, or a material adverse effect on Borrower's interest or Bank's security interest in the Collateral.

**5.9 No Material Adverse Change in Financial Statements.** All consolidated and consolidating financial statements related to Borrower and any Subsidiary that Bank has received from Borrower fairly present in all material respects Borrower's financial condition as of the date thereof and Borrower's consolidated and consolidating results of operations for the period then ended. There has not been a material adverse change in the consolidated or the consolidating financial condition of Borrower since the date of the most recent of such financial statements submitted to Bank.

**5.10 Solvency, Payment of Debts.** Borrower is solvent and able to pay its debts (including trade debts) as they mature.

**5.11 Regulatory Compliance.** Borrower and each Subsidiary have met the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA, and no event has occurred resulting from Borrower's failure to comply with ERISA that could result in Borrower's incurring any material liability. Borrower is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940. Borrower is not engaged principally, or as one of the important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T and U of the Board of Governors of the Federal Reserve System). Borrower has complied with all the provisions of the Federal Fair Labor Standards Act. Borrower has not violated any statutes, laws, ordinances or rules applicable to it, violation of which could have a Material Adverse Effect.

**5.12 Environmental Condition.** Except as disclosed in the Schedule, none of Borrower's or any Subsidiary's properties or assets has ever been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous owners or operators, in the disposal of, or to produce, store, handle, treat, release, or transport, any hazardous waste or hazardous substance other than in accordance with applicable law; to the best of Borrower's knowledge, none of Borrower's properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a hazardous waste or hazardous substance disposal site, or a candidate for closure pursuant to any environmental protection statute; no lien arising under any environmental protection statute has attached to any revenues or to any real or personal property owned by Borrower or any Subsidiary; and neither Borrower nor any Subsidiary has received a summons, citation, notice, or directive from the Environmental Protection Agency or any other federal, state or other governmental agency concerning any action or omission by Borrower or any Subsidiary resulting in the releasing, or otherwise disposing of hazardous waste or hazardous substances into the environment.

**5.13 Taxes.** Borrower and each Subsidiary have filed or caused to be filed all tax returns required to be filed, and have paid, or have made adequate provision for the payment of, all taxes reflected therein.

**5.14 Subsidiaries.** Borrower does not own any stock, partnership interest or other equity securities of any Person, except with respect to its Subsidiaries and for Permitted Investments.

**5.15 Government Consents.** Borrower and each Subsidiary have obtained all material consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all governmental authorities that are necessary for the continued operation of Borrower's business as currently conducted.

**5.16 Accounts.** Except as permitted under Section 6.7, none of Borrower's nor any Domestic Subsidiary's cash or investments is maintained or invested with a Person other than Bank.

**5.17 Shares.** Borrower has full power and authority to create a first lien on the Shares and no disability or contractual obligation exists that would prohibit Borrower from pledging the Shares pursuant to this Agreement. To Borrower's knowledge, there are no subscriptions, warrants, rights of first refusal or other restrictions on transfer relative to, or options exercisable with respect to the Shares. The Shares have been and will be duly authorized and validly issued, and are fully paid and non-assessable. To Borrower's knowledge, the Shares are not the subject of any present or threatened suit, action, arbitration, administrative or other proceeding, and Borrower knows of no reasonable grounds for the institution of any such proceedings.

**5.18 Use of Proceeds.** Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements in accordance with the provisions of this Agreement, and not for personal, family, household or agricultural purposes.

**5.19 Full Disclosure.** No representation, warranty or other statement made by Borrower in any certificate or written statement furnished to Bank contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such certificates or statements not misleading.

## 6. Affirmative Covenants.

Borrower shall do all of the following:

**6.1 Good Standing.** Borrower shall maintain its and each of its Subsidiaries' corporate existence and good standing in its jurisdiction of incorporation and maintain qualification in each jurisdiction in which it is required under applicable law. Borrower shall maintain, and shall cause each of its Subsidiaries to maintain, in force all licenses, approvals and agreements, the loss of which could have a Material Adverse Effect.

**6.2 Government Compliance.** Borrower shall meet, and shall cause each Subsidiary to meet, the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. Borrower shall comply, and shall cause each Subsidiary to comply, with all statutes, laws, ordinances and government rules and regulations to which it is subject, noncompliance with which could have a Material Adverse Effect.

**6.3 Financial Statements, Reports, Certificates.** Borrower shall deliver the following to Bank: (a) as soon as available, but in any event within thirty (30) days after the end of each calendar month, a company prepared consolidated balance sheet, income statement, and cash flow statement covering Borrower's consolidated operations during such period, prepared in accordance with GAAP, consistently applied, in a form acceptable to Bank and certified by a Responsible Officer; (b) as soon as available, but in any event within ninety (90) days after the end of Borrower's fiscal year, audited consolidated financial statements of Borrower prepared in accordance with GAAP, consistently applied, together with an unqualified opinion on such financial statements of an independent certified public accounting firm reasonably acceptable to Bank; (c) copies of all statements, reports and notices sent or made available generally by Borrower to its security holders or to any holders of Subordinated Debt and, if applicable, all reports on Forms 10-K and 10-Q filed with the Securities and Exchange Commission; (d) promptly upon receipt of notice thereof, a report of any legal actions pending or threatened in writing against Borrower or any Subsidiary that could result in damages or costs to Borrower or any Subsidiary of One Hundred Thousand Dollars (\$100,000) individually or Two Hundred Fifty Thousand (\$250,000) in the aggregate or more; (e) as soon as available, but in any event within thirty (30) days after the end of each fiscal year of Borrower, (i) annual operating budgets (including income statements, balance sheets and cash flow statements, by month) for the upcoming fiscal year of Borrower, as approved by Borrower's board of directors, and (ii) annual financial projections for the following fiscal year, together with any related business forecasts used in the preparation of such annual financial projections; and (f) such budgets, sales projections, operating plans or other financial information as Bank may reasonably request from time to time.

Borrower shall deliver to Bank with the monthly financial statements a Compliance Certificate signed by a Responsible Officer in substantially the form of **Exhibit C** hereto.

Bank shall have a right from time to time hereafter to audit Borrower's Accounts and appraise Collateral at Borrower's expense, provided that such audits will be conducted no more often than once per year unless an Event of Default has occurred and is continuing.

**6.4 Inventory; Returns.** Borrower shall keep all Inventory in good and marketable condition, free from all material defects except for Inventory for which adequate reserves have been made. Returns and allowances, if any, as between Borrower and its account debtors shall be on the same basis and in accordance with the usual customary practices of Borrower, as they exist at the time of the execution and delivery of this Agreement. Borrower shall promptly notify Bank of all returns and recoveries and of all disputes and claims, where the return, recovery, dispute or claim involves more than Two Hundred Fifty Thousand Dollars (\$250,000).

**6.5 Taxes.** Borrower shall make, and shall cause each Subsidiary to make, due and timely payment or deposit of all material federal, state, and local taxes, assessments, or contributions required of it by law, and will execute and deliver to Bank, on demand, appropriate certificates attesting to the payment or deposit thereof; and Borrower will make, and will cause each Subsidiary to make, timely payment or deposit of all material tax payments and withholding taxes required of it by applicable laws, including, but not limited to, those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Bank with proof satisfactory to Bank indicating that Borrower or a Subsidiary has made such payments or deposits; provided that Borrower or a Subsidiary need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by Borrower.

## **6.6 Insurance.**

( a ) Borrower, at its expense, shall keep the Collateral insured against loss or damage by fire, theft, explosion, sprinklers, and all other hazards and risks, and in such amounts, as ordinarily insured against by other owners in similar businesses conducted in the locations where Borrower's business is conducted on the date hereof. Borrower shall also maintain insurance relating to Borrower's business, ownership and use of the Collateral in amounts and of a type that are customary to businesses similar to Borrower's.

( b ) All such policies of insurance shall be in such form, with such companies, and in such amounts as are reasonably satisfactory to Bank. All such policies of property insurance shall contain a lender's loss payable endorsement, in a form satisfactory to Bank, showing Bank as an additional loss payee thereof, and all liability insurance policies shall show the Bank as an additional insured and shall specify that the insurer must give at least twenty (20) days notice to Bank before canceling its policy for any reason; provided that only ten (10) days notice shall be required in connection with cancellation for non-payment of premiums. Upon Bank's request, Borrower shall deliver to Bank Acord certificates evidencing such policies of insurance and evidence of the payments of all premiums therefor. All proceeds payable under any such policy shall, at the option of Bank, be payable to Bank to be applied on account of the Obligations.

**6.7 Accounts.** Borrower shall (a) within five (5) Business Days after the Closing Date, maintain and shall cause each of its Domestic Subsidiaries to maintain all but One Million Dollars (\$1,000,000) of the aggregate amount of cash and cash equivalents in its depository, operating, and investment accounts with Bank and (b) by March 15, 2017, maintain and shall cause each of its Domestic Subsidiaries to maintain substantially all of the aggregate amount of cash and cash equivalents in its depository, operating, and investment accounts with Bank; provided, however, that at all times, Borrower may maintain one or more accounts at other financial institutions to the extent that such account(s) (i) are subject to a control agreement and (ii) at no time hold more than Five Hundred Thousand Dollars (\$500,000) of cash and cash equivalents. Notwithstanding anything to the contrary contained herein, until such time as a fully executed control agreement has been delivered with respect to Borrower's account(s) at JPMorgan Chase bank, N.A., which shall in no event be later than five (5) Business Days after the Closing Date, Borrower shall maintain all proceeds of the Term Loans in accounts with Bank.

**6.8 Minimum Liquidity.** Borrower shall maintain at all times unrestricted cash and cash equivalents in accounts maintained with Bank or subject to control agreements in favor of Bank, in an amount equal to or greater than three (3) times Borrower's Monthly Cash Burn.

## **6.9 Intentionally Omitted.**

## **6.10 Intellectual Property Rights.**

( a ) Borrower shall, concurrently with the delivery of the monthly Compliance Certificate, give Bank written notice of any applications or registrations of intellectual property rights filed with the United States Patent and Trademark Office, including the date of such filing and the registration or application numbers, if any, and the filing of any applications or registrations with the United States Copyright Office, including the title of such intellectual property rights to be registered, as such title will appear on such applications or registrations, and the date such applications or registrations will be filed.

( b ) Bank may audit Borrower's Intellectual Property to confirm compliance with this Section, provided such audit may not occur more often than once per year, unless an Event of Default has occurred and is continuing. Bank shall have the right, but not the obligation, to take, at Borrower's sole expense, any actions that Borrower is required under this Section to take but which Borrower fails to take, after 15 days' notice to Borrower. Borrower shall reimburse and indemnify Bank for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this Section.

**6.11 Formation or Acquisition of Subsidiaries.** Notwithstanding and without limiting the negative covenants contained in Sections 7.3 and 7.7 hereof, at the time that Borrower or any guarantor forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Closing Date, Borrower and such guarantor shall (a) cause such Subsidiary, if a Domestic Subsidiary, to provide to Bank (i) a joinder to this Agreement, to cause such Subsidiary to become a co-borrower hereunder or (ii) a Guaranty and security agreement, to cause such Subsidiary to become a guarantor hereunder; in each case, together with such appropriate financing statements and/or control agreements, all in form and substance satisfactory to Bank (including being sufficient to grant Bank a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary (subject to the limitations on the Collateral described on Exhibit A), (b) provide to Bank appropriate certificates and powers and financing statements, pledging the Shares in such new Subsidiary (in conformity with the definition of Shares herein), in form and substance satisfactory to Bank, and (c) provide to Bank all other documentation in form and substance satisfactory to Bank, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section shall be a Loan Document.

**6.12 Further Assurances.** At any time and from time to time Borrower shall execute and deliver such further instruments and take such further action as may reasonably be requested by Bank to effect the purposes of this Agreement.

**7. Negative Covenants.**

Borrower will not do any of the following:

**7.1 Dispositions.** Without Bank's prior written consent (not to be unreasonably withheld), convey, sell, lease, transfer or otherwise dispose of (collectively, a "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, other than: (i) Transfers of Inventory in the ordinary course of business; (ii) Transfers of worn-out or obsolete Equipment which was not financed by Bank; and (iii) in connection with Permitted Liens, Permitted Investments and Permitted Licenses.

**7.2 Change in Business; Change in Control or Executive Office.** Engage in any business, or permit any of its Subsidiaries to engage in any business, other than the businesses currently engaged in by Borrower and any business substantially similar or related thereto (or incidental thereto); or cease to conduct business in the manner conducted by Borrower as of the Closing Date; or suffer or permit a Change in Control; or without thirty (30) days prior written notification to Bank, relocate its chief executive office or state of incorporation or change its legal name; or without Bank's prior written consent, change the date on which its fiscal year ends.

**7.3 Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with or into any other business organization, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person, other than in connection with Permitted Investments.

**7.4 Indebtedness.** Create, incur, assume or be or remain liable with respect to any Indebtedness, or permit any Subsidiary so to do, other than Permitted Indebtedness.

**7.5 Encumbrances.** Create, incur, assume or suffer to exist any Lien with respect to any of its property (including without limitation, its Intellectual Property), or assign or otherwise convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or agree with any Person other than Bank not to grant a security interest in, or otherwise encumber, any of its property (including without limitation, its Intellectual Property), or permit any Subsidiary to do so.

**7.6 Distributions.** Pay any dividends or make any other distribution or payment on account of or in redemption, retirement or purchase of any capital stock, or permit any of its Subsidiaries to do so, except that Borrower may repurchase the stock of former employees pursuant to stock repurchase agreements as long as an Event of Default does not exist prior to such repurchase or would not exist after giving effect to such repurchase.

**7.7 Investments.** Directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries so to do, other than Permitted Investments; or maintain or invest any of its cash or investments with a Person other than Bank or permit any of its Domestic Subsidiaries to do so unless such Person has entered into an account control agreement with Bank in form and substance satisfactory to Bank; or suffer or permit any Subsidiary to be a party to, or be bound by, an agreement that restricts such Subsidiary from paying dividends or otherwise distributing property to Borrower.

**7.8 Transactions with Affiliates .** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower except for transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person.

**7.9 Subordinated Debt.** Make any payment in respect of any Subordinated Debt, or permit any of its Subsidiaries to make any such payment, except in compliance with the terms of such Subordinated Debt, or amend any provision contained in any documentation relating to the Subordinated Debt without Bank's prior written consent.

**7.10 Inventory and Equipment.** Store the Inventory or the Equipment with a bailee, warehouseman, or other third party unless the third party has been notified of Bank's security interest and Bank (a) has received an acknowledgment from the third party that it is holding or will hold the Inventory or Equipment for Bank's benefit or (b) is in pledge possession of the warehouse receipt, where negotiable, covering such Inventory or Equipment. Store or maintain any Equipment or Inventory at a location other than the location set forth in Section 10 of this Agreement.

**7.11 Compliance.** Become an "investment company" or be controlled by an "investment company," within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Credit Extension for such purpose. Fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur, fail to comply with the Federal Fair Labor Standards Act or violate any law or regulation, which violation could have a Material Adverse Effect, or a material adverse effect on the Collateral or the priority of Bank's Lien on the Collateral, or permit any of its Subsidiaries to do any of the foregoing.

**7.12 Capital Expenditures.** Make or contract to make, without Bank's prior written consent, capital expenditures, including leasehold improvements, in any fiscal year in excess of the sum of One Hundred Fifty Thousand Dollars (\$150,000) and the capital expenditures included for such fiscal year in the projections delivered to Bank as of the Closing Date.

**7.13 Assets in Foreign Subsidiaries.** Without Bank's prior written consent (not to be unreasonably withheld), permit any Foreign Subsidiary to maintain cash deposits in excess of Five Hundred Thousand Dollars (\$500,000) or other assets in excess of what is required for ordinary course operations, in each case, at any time and not to exceed the amounts contemplated by the projections delivered to Bank as of the Closing Date.

## **8. Events of Default.**

Any one or more of the following events shall constitute an Event of Default by Borrower under this Agreement:

**8.1 Payment Default.** If Borrower fails to pay, when due, any of the Obligations;

**8.2 Covenant Default.**

(a) If Borrower fails to perform any obligation under Article 6 or violates any of the covenants contained in Article 7 of this Agreement; or

( b ) If Borrower fails or neglects to perform or observe any other material term, provision, condition, covenant contained in this Agreement, in any of the Loan Documents, or in any other present or future agreement between Borrower and Bank and as to any default under such other term, provision, condition or covenant that can be cured, has failed to cure such default within ten days after Borrower receives notice thereof or any officer of Borrower becomes aware thereof; provided, however, that if the default cannot by its nature be cured within the ten day period or cannot after diligent attempts by Borrower be cured within such ten day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional reasonable period (which shall not in any case exceed 30 days) to attempt to cure such default, and within such reasonable time period the failure to have cured such default shall not be deemed an Event of Default but no Credit Extensions will be made.

**8.3 Material Adverse Effect.** If there occurs any circumstance or circumstances that could have a Material Adverse Effect;

**8.4 Attachment.** If any material portion of Borrower's assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within ten (10) days, or if Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any material portion of Borrower's assets, or if a notice of lien, levy, or assessment is filed of record with respect to any of Borrower's assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within ten (10) days after Borrower receives notice thereof, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by Borrower (provided that no Credit Extensions will be required to be made during such cure period);

**8.5 Insolvency.** If Borrower becomes insolvent, or if an Insolvency Proceeding is commenced by Borrower, or if an Insolvency Proceeding is commenced against Borrower and is not dismissed or stayed within thirty (30) days (provided that no Credit Extensions will be made prior to the dismissal of such Insolvency Proceeding);

**8.6 Other Agreements.** If there is a default or other failure to perform in any agreement to which Borrower is a party or by which it is bound resulting in a right by a third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of Two Hundred Fifty Thousand Dollars (\$250,000) or which could have a Material Adverse Effect;

**8.7 Judgments.** If a final, non-appealable judgment or judgments for the payment of money in an amount, individually or in the aggregate, shall be rendered against Borrower and more than Two Hundred Fifty Thousand Dollars (\$250,000) of such judgment or judgments shall not be covered by Borrower's insurance, and such judgment or judgments shall remain unsatisfied and unstayed for a period of twenty (20) days (provided that no Credit Extensions will be made prior to the satisfaction or stay of such judgment); or

**8.8 Misrepresentations.** If any material misrepresentation or material misstatement exists now or hereafter in any warranty or representation set forth herein or in any certificate delivered to Bank by any Responsible Officer pursuant to this Agreement or to induce Bank to enter into this Agreement or any other Loan Document, provided that Borrower shall be permitted to update the Schedule with respect to (i) inbound licenses and co-owned Intellectual Property entered into or acquired after the date hereof, and (ii) additional locations of Inventory and Equipment, to the extent necessary to avoid misrepresentations or misstatements of the representations in Sections 5.6 and 5.7 regarding Borrower's sole ownership of Intellectual Property and locations at which Inventory and Equipment is located.

**8.9 Guaranty.** If any guaranty of all or a portion of the Obligations (a "Guaranty") ceases for any reason to be in full force and effect, or any guarantor fails to perform any obligation under any Guaranty or a security agreement securing any Guaranty (collectively, the "Guaranty Documents"), or any event of default occurs under any Guaranty Document or any guarantor revokes or purports to revoke a Guaranty, or any material misrepresentation or material misstatement exists now or hereafter in any warranty or representation set forth in any Guaranty Document or in any certificate delivered to Bank in connection with any Guaranty Document, or if any of the circumstances described in Sections 8.3 through 8.8 occur with respect to any guarantor, or any circumstances arise causing Bank, in good faith, to become insecure as to the satisfaction of any of any guarantor's obligations under the Guaranty Documents.



**9. Bank's Rights and Remedies.**

**9.1 Rights and Remedies.** Upon the occurrence and during the continuance of an Event of Default, Bank may, at its election, without notice of its election and without demand, do any one or more of the following, all of which are authorized by Borrower:

(a) Declare all Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, immediately due and payable (provided that upon the occurrence of an Event of Default described in Section 8.5, all Obligations shall become immediately due and payable without any action by Bank);

(b) Cease advancing money or extending credit to or for the benefit of Borrower under this Agreement or under any other agreement between Borrower and Bank;

(c) Settle or adjust disputes and claims directly with account debtors for amounts, upon terms and in whatever order that Bank reasonably considers advisable;

(d) Make such payments and do such acts as Bank considers necessary or reasonable to protect its security interest in the Collateral. Borrower agrees to assemble the Collateral if Bank so requires, and to make the Collateral available to Bank as Bank may designate. Borrower authorizes Bank to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any encumbrance, charge, or lien which in Bank's determination appears to be prior or superior to its security interest and to pay all expenses incurred in connection therewith. With respect to any of Borrower's owned premises, Borrower hereby grants Bank a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of Bank's rights or remedies provided herein, at law, in equity, or otherwise;

(e) Set off and apply to the Obligations any and all (i) balances and deposits of Borrower held by Bank, or (ii) indebtedness at any time owing to or for the credit or the account of Borrower held by Bank;

(f) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Bank is hereby granted a license or other right, solely pursuant to the provisions of this Section 9.1, to use, without charge, Borrower's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section 9.1, Borrower's rights under all licenses and all franchise agreements shall inure to Bank's benefit;

(g) Dispose of the Collateral by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Borrower's premises) as Bank determines is commercially reasonable, and apply any proceeds to the Obligations in whatever manner or order Bank deems appropriate;

(h) Bank may credit bid and purchase at any public sale; and

(i) Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by Borrower.

**9.2 Power of Attorney.** Effective only upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably appoints Bank (and any of Bank's designated officers, or employees) as Borrower's true and lawful attorney to: (a) send requests for verification of Accounts or notify account debtors of Bank's security interest in the Accounts; (b) endorse Borrower's name on any checks or other forms of payment or security that may come into Bank's possession; (c) sign Borrower's name on any invoice or bill of lading relating to any Account, drafts against account debtors, schedules and assignments of Accounts, verifications of Accounts, and notices to account debtors; (d) dispose of any Collateral; (e) make, settle, and adjust all claims under and decisions with respect to Borrower's policies of insurance; (f) settle and adjust disputes and claims respecting the accounts directly with account debtors, for amounts and upon terms which Bank determines to be reasonable; and (g) to file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral. The appointment of Bank as Borrower's attorney in fact, and each and every one of Bank's rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully repaid and performed and Bank's obligation to provide Credit Extensions hereunder is terminated.

**9.3 Accounts Collection.** At any time after the occurrence of an Event of Default, (a) Bank may notify any Person owing funds to Borrower of Bank's security interest in such funds and verify the amount of such Account, and (b) Borrower shall collect all amounts owing to Borrower for Bank, receive in trust all payments as Bank's trustee, and immediately deliver such payments to Bank in their original form as received from the account debtor, with proper endorsements for deposit.

**9.4 Bank Expenses.** If Borrower fails to pay any amounts or furnish any required proof of payment due to third persons or entities, as required under the terms of this Agreement, then Bank may do any or all of the following after reasonable notice to Borrower: (a) make payment of the same or any part thereof; (b) set up such reserves under a loan facility in Section 2.1 as Bank deems necessary to protect Bank from the exposure created by such failure; or (c) obtain and maintain insurance policies of the type discussed in Section 6.6 of this Agreement, and take any action with respect to such policies as Bank deems prudent. Any amounts so paid or deposited by Bank shall constitute Bank Expenses, shall be immediately due and payable, and shall bear interest at the then applicable rate hereinabove provided, and shall be secured by the Collateral. Any payments made by Bank shall not constitute an agreement by Bank to make similar payments in the future or a waiver by Bank of any Event of Default under this Agreement.

**9.5 Bank's Liability for Collateral.** So long as Bank complies with reasonable banking practices, Bank shall not in any way or manner be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause; (c) any diminution in the value thereof; or (d) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other person whomsoever. All risk of loss, damage or destruction of the Collateral shall be borne by Borrower.

**9.6 Remedies Cumulative.** Bank's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Bank shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Bank of one right or remedy shall be deemed an election, and no waiver by Bank of any Event of Default on Borrower's part shall be deemed a continuing waiver. No delay by Bank shall constitute a waiver, election, or acquiescence by it. No waiver by Bank shall be effective unless made in a written document signed on behalf of Bank and then shall be effective only in the specific instance and for the specific purpose for which it was given.

**9.7 Demand; Protest.** Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees at any time held by Bank on which Borrower may in any way be liable.

## **10. Notices.**

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address or email address indicated below. Bank or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower: EKSO BIONICS HOLDINGS, INC.  
EKSO BIONICS, INC.  
1414 Harbour Way South, Suite 1201  
Richmond, CA 94804  
Attn: Max Scheder-Bieschin, CFO  
EMAIL: \_\_\_\_\_

If to Bank: Bridge Bank, a division of Western Alliance Bank  
55 Almaden Boulevard, Suite 100  
San Jose, CA 95113  
Attn: Loan Operations

With a copy to: Bridge Bank, a division of Western Alliance Bank  
12220 El Camino Real, Suite 100  
San Diego, CA 92130  
Attn: Robert C. Lake, SVP, Head of Life Sciences  
EMAIL: rob.lake@bridgebank.com

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

**11. Choice of Law and Venue; Jury Trial Waiver.**

This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law. Each of Borrower and Bank hereby submits to the exclusive jurisdiction of the state and Federal courts located in the County of Santa Clara, State of California. BORROWER AND BANK EACH HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH PARTY RECOGNIZES AND AGREES THAT THE FOREGOING WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR IT TO ENTER INTO THIS AGREEMENT. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

**12. Judicial Reference Provision.**

**12.1** In the event the Jury Trial Waiver set forth above is not enforceable, the parties elect to proceed under this Judicial Reference Provision.

**12.2** With the exception of the items specified in Section 12.3, below, any controversy, dispute or claim (each, a "**Claim**") between the parties arising out of or relating to this Agreement or any other document, instrument or agreement between the undersigned parties (collectively in this Section, the "**Loan Documents**"), will be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("**CCP**"), or their successor sections, which shall constitute the exclusive remedy for the resolution of any Claim, including whether the Claim is subject to the reference proceeding. Except as otherwise provided in the Loan Documents, venue for the reference proceeding will be in the state or federal court in the county or district where the real property involved in the action, if any, is located or in the state or federal court in the county or district where venue is otherwise appropriate under applicable law (the "**Court**").

**12.3** The matters that shall not be subject to a reference are the following: (i) nonjudicial foreclosure of any security interests in real or personal property, (ii) exercise of self-help remedies (including, without limitation, set-off), (iii) appointment of a receiver and (iv) temporary, provisional or ancillary remedies (including, without limitation, writs of attachment, writs of possession, temporary restraining orders or preliminary injunctions). This reference provision does not limit the right of any party to exercise or oppose any of the rights and remedies described in clauses (i) and (ii) or to seek or oppose from a court of competent jurisdiction any of the items described in clauses (iii) and (iv). The exercise of, or opposition to, any of those items does not waive the right of any party to a reference pursuant to this reference provision as provided herein.

**12.4** The referee shall be a retired judge or justice selected by mutual written agreement of the parties. If the parties do not agree within ten (10) days of a written request to do so by any party, then, upon request of any party, the referee shall be selected by the Presiding Judge of the Court (or his or her representative). A request for appointment of a referee may be heard on an ex parte or expedited basis, and the parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP § 170.6, each party shall have one preemptory challenge to the referee selected by the Presiding Judge of the Court (or his or her representative).

**12.5** The parties agree that time is of the essence in conducting the reference proceedings. Accordingly, the referee shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within fifteen (15) days after the date of selection of the referee, (ii) if practicable, try all issues of law or fact within one hundred twenty (120) days after the date of the conference and (iii) report a statement of decision within twenty (20) days after the matter has been submitted for decision.

**12.6** The referee will have power to expand or limit the amount and duration of discovery. The referee may set or extend discovery deadlines or cutoffs for good cause, including a party's failure to provide requested discovery for any reason whatsoever. Unless otherwise ordered based upon good cause shown, no party shall be entitled to "priority" in conducting discovery, depositions may be taken by either party upon seven (7) days written notice, and all other discovery shall be responded to within fifteen (15) days after service. All disputes relating to discovery which cannot be resolved by the parties shall be submitted to the referee whose decision shall be final and binding.

**12.7** Except as expressly set forth herein, the referee shall determine the manner in which the reference proceeding is conducted including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the reference proceeding. All proceedings and hearings conducted before the referee, except for trial, shall be conducted without a court reporter, except that when any party so requests, a court reporter will be used at any hearing conducted before the referee, and the referee will be provided a courtesy copy of the transcript. The party making such a request shall have the obligation to arrange for and pay the court reporter. Subject to the referee's power to award costs to the prevailing party, the parties will equally share the cost of the referee and the court reporter at trial.

**12.8** The referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. The rules of evidence applicable to proceedings at law in the State of California will be applicable to the reference proceeding. The referee shall be empowered to enter equitable as well as legal relief, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a court proceeding, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision at the close of the reference proceeding which disposes of all claims of the parties that are the subject of the reference. Pursuant to CCP § 644, such decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court and any such decision will be final, binding and conclusive. The parties reserve the right to appeal from the final judgment or order or from any appealable decision or order entered by the referee. The parties reserve the right to findings of fact, conclusions of laws, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a reference proceeding under this provision.

**12.9** If the enabling legislation which provides for appointment of a referee is repealed (and no successor statute is enacted), any dispute between the parties that would otherwise be determined by reference procedure will be resolved and determined by arbitration. The arbitration will be conducted by a retired judge or justice, in accordance with the California Arbitration Act §1280 through §1294.2 of the CCP as amended from time to time. The limitations with respect to discovery set forth above shall apply to any such arbitration proceeding.

**12.10** THE PARTIES RECOGNIZE AND AGREE THAT ALL CONTROVERSIES, DISPUTES AND CLAIMS RESOLVED UNDER THIS REFERENCE PROVISION WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS, HIS OR HER OWN CHOICE, EACH PARTY KNOWINGLY AND VOLUNTARILY, AND FOR THE MUTUAL BENEFIT OF ALL PARTIES, AGREES THAT THIS REFERENCE PROVISION WILL APPLY TO ANY CONTROVERSY, DISPUTE OR CLAIM BETWEEN OR AMONG THEM ARISING OUT OF OR IN ANY WAY RELATED TO, THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

### **13. General Provisions.**

**13.1 Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, that neither this Agreement nor any rights hereunder may be assigned by Borrower without Bank's prior written consent, which consent may be granted or withheld in Bank's sole discretion. Bank shall have the right without the consent of or notice to Borrower to sell, transfer, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights and benefits hereunder.

**13.2 Indemnification.** Borrower shall defend, indemnify and hold harmless Bank and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) all losses or Bank Expenses in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of, following, or consequential to transactions between Bank and Borrower whether under this Agreement, or otherwise (including without limitation reasonable attorneys' fees and expenses), except for losses caused by Bank's gross negligence or willful misconduct.

**13.3 Time of Essence.** Time is of the essence for the performance of all obligations set forth in this Agreement.

**13.4 Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

**13.5 Amendments in Writing, Integration.** Neither this Agreement nor the Loan Documents can be amended or terminated orally. All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto with respect to the subject matter of this Agreement and the Loan Documents, if any, are merged into this Agreement and the Loan Documents.

**13.6 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement.

**13.7 Survival.** All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations remain outstanding or Bank has any obligation to make Credit Extensions to Borrower. The obligations of Borrower to indemnify Bank with respect to the expenses, damages, losses, costs and liabilities described in Section 13.2 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Bank have run.

**13.8 Confidentiality.** In handling any confidential information Bank and all employees and agents of Bank, including but not limited to accountants, shall exercise the same degree of care that it exercises with respect to its own proprietary information of the same types to maintain the confidentiality of any non-public information thereby received or received pursuant to this Agreement except that disclosure of such information may be made (i) except upon the occurrence and during the continuance of an Event of Default, to the subsidiaries or affiliates of Bank in connection with their present or prospective business relations with Borrower, subject to execution of a confidentiality agreement by such subsidiaries or affiliates containing provisions substantially similar to those contained in this Section, (ii) except upon the occurrence and during the continuance of an Event of Default, to prospective transferees or purchasers of any interest in the Loans, subject to execution of a confidentiality agreement by such transferees or purchasers containing provisions substantially similar to those contained in this Section, (iii) as required by law, regulations, rule or order, subpoena, judicial order or similar order, (iv) as may be required in connection with the examination, audit or similar investigation of Bank and (v) as Bank may determine in connection with the enforcement of any remedies hereunder. Confidential information hereunder shall not include information that either: (a) is in the public domain or in the knowledge or possession of Bank when disclosed to Bank, or becomes part of the public domain after disclosure to Bank through no fault of Bank; or (b) is disclosed to Bank by a third party, provided Bank does not have actual knowledge that such third party is prohibited from disclosing such information.

**13.9 Patriot Act Notice.** Bank notifies Borrower that, pursuant to the requirements of the USA Patriot Act, Title III of Pub. L. 107-56 (signed into law on October 26, 2001) (the “Patriot Act”), it is required to obtain, verify and record information that identifies Borrower, which information includes names and addresses and other information that will allow Bank to identify the Borrower in accordance with the Patriot Act.

**14. Notice of Final Agreement.**

**BY SIGNING THIS DOCUMENT EACH PARTY REPRESENTS AND AGREES THAT: (A) THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES, (B) THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES, AND (C) THIS WRITTEN AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.**

*[Balance of Page Intentionally Left Blank]*

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

EKSO BIONICS HOLDINGS, INC.

By: /s/ Max Scheder-Bieschin  
Title: Chief Financial Officer

EKSO BIONICS, INC.

By: /s/ Max Scheder-Bieschin  
Title: Chief Financial Officer

WESTERN ALLIANCE BANK, an Arizona corporation

By: Bill Wickline  
Title: VP, Director of Portfolio Management

**EXHIBIT A**

**DEBTOR:** **EKSO BIONICS HOLDINGS, INC.**

**SECURED PARTY:** **WESTERN ALLIANCE BANK, an Arizona Corporation**

**COLLATERAL DESCRIPTION ATTACHMENT  
TO LOAN AND SECURITY AGREEMENT**

All personal property of Borrower (herein referred to as “Borrower” or “Debtor”) whether presently existing or hereafter created or acquired, and wherever located, including, but not limited to:

(a) all accounts (including health-care-insurance receivables), chattel paper (including tangible and electronic chattel paper), deposit accounts, documents (including negotiable documents), equipment (including all accessions and additions thereto), general intangibles (including payment intangibles and software), goods (including fixtures), instruments (including promissory notes), inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), letter of credit rights, money, and all of Debtor’s books and records with respect to any of the foregoing, and the computers and equipment containing said books and records;

(b) any and all cash proceeds and/or noncash proceeds of any of the foregoing, including, without limitation, insurance proceeds, and all supporting obligations and the security therefor or for any right to payment. All terms above have the meanings given to them in the California Uniform Commercial Code, as amended or supplemented from time to time.

Notwithstanding the foregoing, the Collateral shall not include any copyrights, patents, trademarks, servicemarks and applications therefor, now owned or hereafter acquired, or any claims for damages by way of any past, present and future infringement of any of the foregoing (collectively, the “Intellectual Property”); provided, however, that the Collateral shall include all accounts and general intangibles that consist of rights to payment and proceeds from the sale, licensing or disposition of all or any part, or rights in, the foregoing (the “Rights to Payment”). Notwithstanding the foregoing, if a judicial authority (including a U.S. Bankruptcy Court) holds that a security interest in the underlying Intellectual Property is necessary to have a security interest in the Rights to Payment, then the Collateral shall automatically, and effective as of the Closing Date, include the Intellectual Property to the extent necessary to permit perfection of Bank’s security interest in the Rights to Payment.

Notwithstanding the foregoing, the Collateral shall not include more than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter.



**EXHIBIT A**

**DEBTOR:** **EKSO BIONICS, INC.**

**SECURED PARTY:** **WESTERN ALLIANCE BANK, an Arizona Corporation**

**COLLATERAL DESCRIPTION ATTACHMENT  
TO LOAN AND SECURITY AGREEMENT**

All personal property of Borrower (herein referred to as "Borrower" or "Debtor") whether presently existing or hereafter created or acquired, and wherever located, including, but not limited to:

(a) all accounts (including health-care-insurance receivables), chattel paper (including tangible and electronic chattel paper), deposit accounts, documents (including negotiable documents), equipment (including all accessions and additions thereto), general intangibles (including payment intangibles and software), goods (including fixtures), instruments (including promissory notes), inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), letter of credit rights, money, and all of Debtor's books and records with respect to any of the foregoing, and the computers and equipment containing said books and records;

(b) any and all cash proceeds and/or noncash proceeds of any of the foregoing, including, without limitation, insurance proceeds, and all supporting obligations and the security therefor or for any right to payment. All terms above have the meanings given to them in the California Uniform Commercial Code, as amended or supplemented from time to time.

Notwithstanding the foregoing, the Collateral shall not include any copyrights, patents, trademarks, servicemarks and applications therefor, now owned or hereafter acquired, or any claims for damages by way of any past, present and future infringement of any of the foregoing (collectively, the "Intellectual Property"); provided, however, that the Collateral shall include all accounts and general intangibles that consist of rights to payment and proceeds from the sale, licensing or disposition of all or any part, or rights in, the foregoing (the "Rights to Payment"). Notwithstanding the foregoing, if a judicial authority (including a U.S. Bankruptcy Court) holds that a security interest in the underlying Intellectual Property is necessary to have a security interest in the Rights to Payment, then the Collateral shall automatically, and effective as of the Closing Date, include the Intellectual Property to the extent necessary to permit perfection of Bank's security interest in the Rights to Payment.

Notwithstanding the foregoing, the Collateral shall not include more than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter.

## SUCCESS FEE AGREEMENT

THIS SUCCESS FEE AGREEMENT (this “**Agreement**”), dated as of December 30, 2016 (the “**Closing Date**”), is made by and among **EKSO BIONICS HOLDINGS, INC.**, a Nevada corporation (“**Parent**”), and **EKSO BIONICS, INC.**, a Delaware corporation (“**Ekso**”) (individually and collectively, jointly and severally, “**Company**”), and **Western Alliance Bank**, an Arizona corporation (“**Bank**”). Company will enter into a Loan and Security Agreement with Bank, dated as of December 30, 2016 (as amended, restated, or otherwise modified from time to time, the “**Loan Agreement**”). Capitalized terms used herein and not otherwise defined herein shall have meanings assigned to such terms in the Loan Agreement.

AS INDUCEMENT FOR BANK TO ENTER INTO THE LOAN AGREEMENT AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, the parties agree as follows:

1. The Company agrees, and promises to pay to the order of Bank, the Success Fee within ninety (90) days of the closing of the Liquidity Event or Stock Threshold Event. At Company’s election, such payment shall be made either in (i) cash or (ii) Freely Tradeable Shares based upon the volume weighted average price of the common stock as calculated on the date of the Liquidity Event or Stock Threshold Event.
2. The “**Success Fee**” is an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000).
3. The “**Liquidity Event**” is the first to occur after the Closing Date of any of the following: (a) a sale or other disposition by Company of all or substantially all of its assets; or (b) a merger or consolidation of Company into or with another person or entity, where the holders of Company’s outstanding voting equity securities as of immediately prior to such merger or consolidation hold less than a majority of the issued and outstanding voting equity securities of the successor or surviving person or entity as of immediately following the consummation of such merger or consolidation.
4. The “**Stock Threshold Event**” is date on which Company’s common stock closes at or above Eight Dollars (\$8.00) for the fifth consecutive day.
5. “**Freely Tradeable Shares**” means shares of the Parent’s common stock that, at the time of determination, (i) may be sold without volume limitations pursuant to Rule 144 under the Securities Act of 1933, as amended (the “**Securities Act**”) or (ii) are registered for resale under the Securities Act.
6. Miscellaneous.
  - (a) Notice of Liquidity Event and Stock Threshold Event. The Company shall provide Bank with written notice prior to the Liquidity Event and Stock Threshold Event.
  - (b) Representations and Warranties. The Company represents and warrants to Bank as follows:
    - (i) This Agreement has been duly authorized and executed by the Company and is a valid and binding obligation of the Company enforceable in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and the rules of law or principles at equity governing specific performance, injunctive relief and other equitable remedies.

- (ii) The execution and delivery of this Agreement do not conflict with the Company's articles of incorporation or by-laws, do not and will not contravene any material law, governmental rule or regulation, judgment or order applicable to the Company, and do not and will not conflict with or contravene any provision of, or constitute a default under, any material indenture, mortgage, contract or other instrument of which the Company is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration or filing with or the taking of any action in respect of or by, any federal, state or local government authority or agency or other person.
- (c) Modification and Waiver. This Agreement and any provision hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the same is sought.
- (d) Descriptive Headings. The descriptive headings of the various Sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. The language in this Agreement shall be construed as to its fair meaning without regard to which party drafted this Agreement.
- (e) Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of California. Section 11 of the Loan Agreement is incorporated herein by this reference as though fully set forth.
- (f) Survival of Representations, Warranties and Agreements. All representations and warranties of the Company and Bank contained herein shall survive the date of this Agreement. All agreements of the Company and Bank contained herein shall survive indefinitely until, by their respective terms, they are no longer operative.
- (g) Remedies. In case any one or more of the covenants and agreements contained in this Agreement shall have been breached, Bank (in the case of a breach by the Company), or the Company (in the case of a breach by Bank), may proceed to protect and enforce their or its rights either by suit in equity and/or by action at law, including, but not limited to, an action for damages as a result of any such breach and/or an action for specific performance of any such covenant or agreement contained in this Agreement.
- (h) Severability. The invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction, or affect any other provision of this Agreement, which shall remain in full force and effect.
- (i) Recovery of Litigation Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable and documented attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.
- (j) Entire Agreement; Modification. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and undertakings of the parties, whether oral or written, with respect to such subject matter.
- (k) Termination of Agreement. This Agreement shall continue in full force and effect until the earlier of: (a) December 30, 2026 or (b) the first Business Day after Bank's receipt of the Success Fee. The obligations hereunder shall survive the termination of the Loan Agreement until terminated in accordance with the terms of this Agreement.

- (l) Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Company may not transfer, pledge or assign this Agreement or any rights or obligations under it without Bank's prior written consent. Bank has the right, without the consent of or notice to Company, to sell, transfer, assign, pledge, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights, and benefits under this Agreement.
- (m) No Impairment. The Company shall not by any action including, without limitation, amending its articles of incorporation or by-laws, any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Agreement, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate to protect the rights of Bank hereof against impairment. Without limiting the generality of the foregoing, the Company will obtain all such authorizations, exemptions or consents from any third party or any public regulatory body having jurisdiction thereof as may be necessary to enable the Company to perform its obligations under this Agreement.
- (n) Addresses. Any notice required or permitted hereunder shall be in writing and shall be mailed by overnight courier, registered or certified mail, return receipt required, and postage pre-paid, or otherwise delivered by hand or by messenger, addressed as set forth below, or at such other address as the Company or Bank shall have furnished to the other party.

If to the Company:                   c/o EKSO BIONICS HOLDINGS, INC.  
EKSO BIONICS, INC.  
1414 Harbour Way South, Suite 1201  
Richmond, CA 94804  
Attn: Max Scheder-Bieschin, CFO

If to Bank:                             Bridge Bank, a division of Western Alliance Bank  
12220 El Camino Real, Suite 100  
San Diego, CA 92130  
Attn: Robert C. Lake, SVP, Head of Life Sciences  
EMAIL: rob.lake@bridgebank.com

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by its officers thereunto duly authorized.

EKSO BIONICS HOLDINGS, INC.

By: /s/ Max Scheder-Bieschin  
Title: Chief Financial Officer

EKSO BIONICS, INC.

By: /s/ Max Scheder-Bieschin  
Title: Chief Financial Officer

WESTERN ALLIANCE BANK, an Arizona corporation

By: Bill Wickline  
Title: VP, Director of Portfolio Management

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## **Ekso Bionics Enters into a \$10 million Term Loan Agreement with Bridge Bank**

**RICHMOND, CA – January 6, 2017** – Ekso Bionics Holdings, Inc. (NASDAQ: EKSO), a robotic exoskeleton company, today announced that it has entered into a term loan agreement with Bridge Bank. The agreement provides Ekso Bionics with up to \$10 million of potential borrowing capacity. The initial term loan of \$7 million funded on December 30, 2016. Prior to December 31, 2017, Ekso Bionics has the ability, at its discretion, to secure an additional \$3 million term loan, provided certain conditions are met.

“We are thrilled to have the support and confidence of a leading technology and life science lender such as Bridge Bank,” stated Thomas Looby, chief executive officer of Ekso Bionics. “We are beginning to see solid traction in both our medical rehabilitation business - where last year’s FDA clearance is really starting to make a difference - and our industrial business – where pilot programs are now transitioning to a scalable business model. This financing with a partner like Bridge Bank provides capital on attractive terms that can support the continued growth of our exoskeleton technology, commercialization, and business fundamentals.”

“Bridge Bank is excited to be partnering with Ekso Bionics,” said Rob Lake, senior vice president and head of Bridge Bank's life sciences group. "I am impressed with the technology and the momentum at the company, and we are pleased to be a resource to support Ekso Bionics as it moves forward.”

### **About Ekso Bionics®**

Ekso Bionics is a leading developer of exoskeleton solutions that amplify human potential by supporting or enhancing strength, endurance and mobility across medical, industrial and defense applications. Founded in 2005, the company continues to build upon its unparalleled expertise to design some of the most cutting-edge, innovative wearable robots available on the market. Ekso Bionics is the only exoskeleton company to offer technologies that range from helping those with paralysis to stand up and walk, to enhancing human capabilities on job sites across the globe, to providing research for the advancement of R&D projects intended to benefit U.S. defense capabilities. The company is headquartered in the Bay Area and is listed on the Nasdaq Capital Market under the symbol EKSO. For more information, visit: [www.eksobionics.com](http://www.eksobionics.com).

### **About Ekso™ GT**

Ekso™ GT is the first exoskeleton cleared by the FDA for use with stroke and spinal cord injuries from L5 to C7. The Ekso GT with smart Variable Assist™ (marketed as SmartAssist outside the U.S.) software is the only exoskeleton available for rehabilitation institutions that can provide adaptive amounts of power to either side of the patient’s body, challenging the patient as they progress through their continuum of care. The suit’s patented technology provides the ability to mobilize patients earlier, more frequently and with a greater number of high intensity steps. To date, this device has helped patients take more than 55 million steps in over 120 rehabilitation institutions around the world.

### **About Bridge Bank**

Bridge Bank is a division of Western Alliance Bank, Member FDIC, the go-to bank for business in its growing markets. Bridge Bank was founded in 2001 in Silicon Valley to offer a better way to bank for small-market and middle-market businesses across many industries, as well as emerging technology companies and the private equity community. Geared to serving both venture-backed and non-venture-backed companies, Bridge Bank offers a broad scope of financial solutions including growth capital, equipment and working capital credit facilities, sustainable energy project finance, venture debt, treasury management, asset-based lending, SBA and commercial real estate loans, ESOP finance and a full line of international products and services. Based in San Jose, Bridge Bank has eight offices in major markets across the country along with Western Alliance Bank’s robust national platform of specialized financial services. Western Alliance Bank is the primary subsidiary of Phoenix-based Western Alliance Bancorporation, one of the country’s top-performing banking companies. For more information, visit [www.bridgebank.com](http://www.bridgebank.com).

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**Forward-Looking Statements**

Any statements contained in this press release that do not describe historical facts may constitute forward-looking statements. Forward-looking statements may include, without limitation, statements regarding (i) the plans and objectives of management for future operations, including plans or objectives relating to the design, development and commercialization of human exoskeletons, (ii) a projection of financial results, financial condition, capital expenditures, capital structure or other financial items, (iii) the Company's future financial performance and (iv) the assumptions underlying or relating to any statement described in points (i), (ii) or (iii) above. Such forward-looking statements are not meant to predict or guarantee actual results, performance, events or circumstances and may not be realized because they are based upon the Company's current projections, plans, objectives, beliefs, expectations, estimates and assumptions and are subject to a number of risks and uncertainties and other influences, many of which the Company has no control over. Actual results and the timing of certain events and circumstances may differ materially from those described by the forward-looking statements as a result of these risks and uncertainties. Factors that may influence or contribute to the inaccuracy of the forward-looking statements or cause actual results to differ materially from expected or desired results may include, without limitation, the Company's inability to obtain adequate financing to fund the Company's operations and necessary to develop or enhance our technology, the significant length of time and resources associated with the development of the Company's products, the Company's failure to achieve broad market acceptance of the Company's products, the failure of our sales and marketing organization or partners to market our products effectively, adverse results in future clinical studies of the Company's medical device products, the failure to obtain or maintain patent protection for the Company's technology, failure to obtain or maintain regulatory approval to market the Company's medical devices, lack of product diversification, existing or increased competition, and the Company's failure to implement the Company's business plans or strategies. These and other factors are identified and described in more detail in the Company's filings with the SEC. To learn more about Ekso Bionics please visit us at [www.eksobionics.com](http://www.eksobionics.com). The Company does not undertake to update these forward-looking statements.

**Media Contact:**

Carrie Yamond/Rajni Dhanjani  
212-867-1788  
[cyamond@lazarpartners.com](mailto:cyamond@lazarpartners.com)

**Investor Contact:**

Debbie Kaster  
415-937-5403  
[investors@eksobionics.com](mailto:investors@eksobionics.com)

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