

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K

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

For the fiscal year ended December 31, 2025

OR

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

Commission File No. 001-37854

Ekso Bionics Holdings, Inc.

(Exact name of registrant as specified in its charter)

Nevada
(State or Other Jurisdiction of
Incorporation or Organization)

99-0367049
(I.R.S. Employer
Identification No.)

101 Glacier Point, Suite A
San Rafael, California 94901
(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: **(510) 984-1761**

Securities registered pursuant to section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.001 par value	EKSO	Nasdaq Stock Market LLC (Nasdaq Capital Market)

Securities registered pursuant to section 12(g) of the Act: None

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act. Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company Emerging growth company

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

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

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant was \$8,158,292 based on the last sale price for such stock on June 30, 2025, the last business day of the registrant's most recently completed second fiscal quarter.

As of February 20, 2026, the registrant had 3,563,381 outstanding shares of common stock.

DOCUMENTS INCORPORATED BY REFERENCE:

Portions of the registrant's Proxy Statement for the 2026 Annual Meeting of Stockholders are incorporated herein by reference in Part III of this Annual Report on Form 10-K to the extent stated herein. Such proxy statement will be filed with the Securities and Exchange Commission within 120 days of the registrant's fiscal year ended December 31, 2025.

Ekso Bionics Holdings, Inc.
ANNUAL REPORT ON FORM 10-K
For the Year Ended December 31, 2025
Table of Contents

Part I

Item 1	Business	4
Item 1A	Risk Factors	11
Item 1B	Unresolved Staff Comments	27
Item 1C	Cybersecurity	27
Item 2	Properties	27
Item 3	Legal Proceedings	27
Item 4	Mine Safety Disclosures	27

Part II

Item 5	Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	28
Item 6	Reserved	28
Item 7	Management’s Discussion and Analysis of Financial Condition and Results of Operations	28
Item 7A	Quantitative and Qualitative Disclosures About Market Risk	36
Item 8	Financial Statements and Supplementary Data	37
Item 9	Changes in and Disagreements With Accountants on Accounting and Financial Disclosure	69
Item 9A	Controls and Procedures	69
Item 9B	Other Information	69
Item 9C	Disclosure Regarding Foreign Jurisdictions that Prevent Inspections	69

Part III

Item 10	Directors, Executive Officers and Corporate Governance	70
Item 11	Executive Compensation	70
Item 12	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	70
Item 13	Certain Relationships and Related Transactions and Director Independence	70
Item 14	Principal Accountant Fees and Services	70

Part IV

Item 15	Exhibits, Financial Statements and Financial Statement Schedules	71
Item 16	10-K Summary	75
	Signatures	76

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K (this "Annual Report") contains forward-looking statements, including, without limitation, in the sections captioned "Business," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," and elsewhere. Any and all statements contained in this Annual Report that are not statements of historical fact may be deemed forward-looking statements. Terms such as "may," "might," "would," "should," "could," "project," "estimate," "pro-forma," "predict," "potential," "strategy," "anticipate," "attempt," "develop," "plan," "help," "believe," "continue," "intend," "expect," "future," and terms of similar import (including the negative of any of the foregoing) may be intended to identify forward-looking statements. However, not all forward-looking statements may contain one or more of these identifying terms. Forward-looking statements in this Annual Report may include, without limitation, statements regarding (i) the plans and objectives of management for future operations, including those relating to the design, development, distribution and commercialization of exoskeleton products for humans, including for Nomad and BalanceTutor, (ii) the manufacturing of our products and strengthening of our supply chain, and potential opportunities for strategic partnerships, (iii) beliefs regarding the regulatory path for our products, including potential approvals required and timing of approvals, (iv) our future financial performance, including any such statement contained in a discussion and analysis of our financial condition by management or in our results of operations, (v) our beliefs regarding the potential for commercial opportunities, including for exoskeleton technology and our exoskeleton products, and for strategic partnerships, (vi) our beliefs regarding potential clinical and other health benefits of our medical devices, (vii) the actions we will take in seeking reimbursements from Centers for Medicare and Medicaid Services ("CMS") and the success of such actions, (viii) the timing and amounts of CMS reimbursement, (ix) our ability to grow and expand our Ekso Indego Personal Health market as we work to grow revenue in light of Medicare reimbursement from CMS of the Ekso Indego Personal, (x) our ability to obtain insurance coverage beyond CMS, (xi) our ability to obtain additional indications for products that cover the Ekso Indego Personal, (xii) the timing of executing large sales contracts, (xiii) our expectations regarding the timing and impact of impairment charges on the value of certain of our assets in future periods, (xiv) the impact and effects of the other risk factors on our business, results of operations or prospects, (xv) our evaluation of one or more strategic transactions, (xvi) statements regarding the Business Combination (as defined below), including the Closing (as defined below), the timing of the Business Combination and the structure of the Business Combination, (xvii) statements regarding ChronoScale (as defined below), and (xviii) the assumptions underlying or relating to any statement described in points (i) through (xvii) above.

The 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 our 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 we have 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 ability to consummate the Business Combination, the parties' ability to obtain regulatory [and stockholder] approval for the Business Combination and the parties' inability to comply with regulations, developments and changes in regulations, the Company's ability to operate as a standalone business if the Business Combination is not consummated, higher than anticipated transaction costs, the Company's ability to obtain reimbursement from CMS on a timely basis and at acceptable levels or at all, changes in CMS reimbursement processes, delays or errors in our insurance reimbursement submissions, including to CMS, the highly competitive markets in which the Company's products are sold, the Company's significant losses to date and anticipated future losses, the new and unproven nature of the market for the Company's products, the significant length of time and resources associated with the development of the Company's products, the long, cyclical and variable sales cycles for the Company's products, the factors outside the Company's control that affect the production and sales of its products, which include but are not limited to disruptions in the global supply chain, the costs related to and impacts of potential failure of the Company to obtain or maintain protection for the Company's intellectual property rights, the inability to successfully consummate and integrate acquisitions, the failure of the Company to obtain or maintain regulatory approval to market the Company's medical devices, adverse results in future clinical studies of the Company's medical device products, risks related to product liability, recall and warranty claims, and the volatility of the market price of and limited trading in our common stock. A description of some of the risks and uncertainties that could cause our actual results to differ materially from those described by the forward-looking statements in this Annual Report appears in the section captioned "Risk Factors" and elsewhere in this Annual Report.

Readers are cautioned not to place undue reliance on forward-looking statements because of the risks and uncertainties related to them and to the risk factors. We disclaim any obligation to update the forward-looking statements contained in this Annual Report to reflect any new information or future events or circumstances or otherwise, except as required by law.

Readers should read this Annual Report in conjunction with the discussion under the caption "Risk Factors," our financial statements and the related notes thereto in this Annual Report, and other documents that we may file from time to time with the SEC.

Notes regarding references to Ekso Bionics

In this Annual Report, the "Company," "we," "its" and "our" refers to Ekso Bionics Holdings, Inc. and its wholly owned subsidiaries. Ekso®, Ekso Bionics®, EksoNR™, EVO™, EksoPulse™, Indego®, and Nomad® are registered and unregistered trademarks of the Company. All other trademarks that may appear in this Annual Report are the property of their respective owners.

PART I

Item 1. BUSINESS

Company Background

Founded in 2005, we are a Nevada corporation that designs, develops, and markets exoskeleton products that augment human strength, endurance and mobility. The primary end market for our exoskeleton technology is healthcare, where our technology primarily serves people with physical disabilities or impairments in both physical rehabilitation and mobility. The majority of our sales are generated from our Enterprise Health products, which includes the sales of products and services related to neurorehabilitation in clinical settings. We also provide products and services from our Personal Health market to individual users.

In addition to our current products and services, we continue to explore business development initiatives to fuel growth and long-term value in our existing markets, and are committed to helping people improve mobility and live healthier lives through combining the use of technology with advanced rehabilitative programs.

Products

EksoNR

EksoNR is a wearable robotic exoskeleton specifically designed to be used in a rehabilitation setting to assist individuals recovering from both acute and chronic conditions. A trained clinician typically uses the EksoNR to provide adjustable levels of assistance to the wearer's legs to promote proper gait, active engagement, and higher dosage. EksoNR is cleared by the Food and Drug Administration (the "FDA") for use in a clinical setting with individuals with a spinal cord injury ("SCI"), acquired brain injury ("ABI") - including stroke and traumatic brain injuries ("TBI") - and multiple sclerosis ("MS").

Ekso Indego Therapy

Ekso Indego Therapy is a modular, adjustable, lightweight, lower-limb powered exoskeleton that can be custom-sized and fitted to patients for use in rehabilitation and wellness applications. Ekso Indego Therapy is cleared by the FDA for use with individuals with stroke or SCI.

Ekso Indego Personal

Ekso Indego Personal is a lightweight powered lower limb orthosis that enables people with mobility impairments the opportunity to walk independently. Ekso Indego Personal is cleared by the FDA for use with individuals with SCI levels from T3 to L5 in community or home settings.

Ekso Nomad

Ekso Nomad ("Nomad") is a power Knee Ankle Foot Orthosis, or KAFO. Subject to clinical and patient feedback from clinical trials, we expect to begin the general commercialization process for Nomad in late 2026.

Ekso EVO

Ekso EVO ("EVO") is a wearable upper body exoskeleton that elevates and supports a worker's arms to assist them with tasks from chest height to overhead. EVO is intended to reduce worker fatigue and reduce on-site injuries while boosting productivity. EVO is intended primarily for use with able-bodied individuals and has not been registered with or evaluated by the FDA.

MediTouch BalanceTutor™

The MediTouch BalanceTutor rehabilitation system is a multidirectional perturbation treadmill outfitted with multiple force and movement sensors that allows patients impacted by impaired balance to react to unanticipated disturbances while standing or walking. We believe that the BalanceTutor offers treatment options that are complementary to our rehabilitation exoskeletons and that the two can be used in combination for many patients. MediTouch BalanceTutor is developed and manufactured by MediTouch Inc. ("MediTouch") and will be exclusively distributed by us in the United States. We expect to begin the distribution of the BalanceTutor in early 2026.

Services

EksoCare

For most of our products, we offer extended warranty and premium service options under our EksoCare program. EksoCare includes a comprehensive warranty, loaner devices to minimize downtime, clinical support, access to our EksoPulse online portal to view statistics and device information gathered and transmitted during EksoNR walking sessions, and other benefits to customers.

Device servicing and repair

For devices not covered under warranty, we offer fee-for-service repairs and maintenance. Customers may also rent loaner devices on a short-term basis if the time required to service their device will interrupt their ongoing business.

Training

We offer a range of training programs that are aimed at demonstrating to customers how to use our products safely and effectively. Training is delivered as an online service, in-person, or as a combination of the two. Training is often included with the purchase of a new device, but training can also be purchased separately.

Segments

We operate as one operating and reportable segment with two markets: Enterprise Health and Personal Health. Our revenues are primarily generated through the sale and subscription of our EksoNR, Ekso Indego Therapy, and Ekso Indego Personal devices, along with the sale of support and maintenance contracts. For additional information, please refer to Note 16. *Segment Disclosures* in our notes to the consolidated financial statements.

Markets and Distribution

Enterprise Health Market

Our sales priority for Enterprise Health customers involves the education of clinical and executive stakeholders on the economic and clinical value of our robotic exoskeleton portfolio, including the EksoNR and the Ekso Indego Therapy devices. In tandem, we continue to leverage our EksoNR and Ekso Indego Therapy customer base to educate and mentor strategic target centers that specialize in stroke, TBI, MS, and SCI rehabilitation and treatment in specific geographies. Starting in late 2025, we began marketing the MediTouch BalanceTutor to our Enterprise Health customers as a complimentary offering for treadmill-based gait training.

Rehabilitation treatments that can benefit from the use of our EksoNR and Ekso Indego Therapy products take place in a range of different types of facilities. These include inpatient rehabilitation facilities ("IRF"), long-term acute care hospitals ("LTACH"), skilled nursing facilities, and outpatient rehabilitation clinics, among others. The primary facility types we currently serve are IRFs. Among these facilities, ownership structures also vary from small independent rehabilitation centers to larger networks of

providers. Our current market focus is on the larger network providers, referred to as integrated delivery networks ("IDN"). Sales to IDNs typically involve multi-unit transactions that can benefit from lower selling costs, better pipeline visibility, and better economies of scale.

We also market our Ekso Indego Therapy product to Enterprise Health customers to be used as a training device for users of our Ekso Indego Personal device. In such cases, the Ekso Indego Therapy product may be offered at a discount contingent on future Ekso Indego Personal device trainings volume at that center. See "Personal Health Market" below for additional information.

[Table of Contents](#)

Within our Enterprise Health market we also sell our EVO product to commercial and industrial companies that are focused on solving ergonomic challenges for their workers. These challenges range from injury prevention, fatigue reduction, and/or improved worker productivity. Sales of EVO are focused on applications that involve repetitive work at shoulder height and above. While EVO is a general-purpose product, we currently target specific vertical markets, including aerospace, automotive, general manufacturing, and certain construction trades.

The sales cycle in the Enterprise Health market varies but typically takes from approximately eight to 12 months for a first device and six to eight months for subsequent devices. The typical sale of our EksoNR and Ekso Indego Therapy is a complete package, which includes the device and all relevant components, batteries for continuous run-time, training, and certification. Some customers also purchase EksoCare at the time of a new device purchase for up to four years of coverage. The purchase rate of EksoCare varies by country, with U.S. customers typically preferring to include it in their initial purchase. Other regions have lower rates of purchase.

In the Enterprise Health market, we offer a range of purchase options. In most cases and when capital is available, the product is sold outright to the customer as a capital sale and the full price is invoiced to the customer after title transfers. For customers who prefer to finance the purchase of their device, we have finance partners who facilitate such transactions. These arrangements are generally marketed as a subscription product to the end customer. Typically, in a subscription arrangement we sell the device to the third-party financing partner who then contracts with the end customer for payment terms. In certain circumstances, we elect to maintain ownership of a product sold as a subscription in lieu of selling it to a third-party financing partner. Subscription arrangements typically last for 12 months to 36 months.

We distribute our products to the Enterprise Health market in all of our geographic regions through a combination of direct and indirect (distributor) channels. In the Americas geographic region, sales are primarily made through our direct salesforce. In the Europe, the Middle East, and Africa region ("EMEA"), we sell through a combination of direct and indirect channels, with German speaking countries handled direct, and other countries and regions served through distributors. In the Asia Pacific region ("APAC") we also use a combination of direct and indirect channels depending on the country.

Personal Health Market

Within the Personal Health market, we serve individual users with the Ekso Indego Personal, which is intended to provide overground ambulation in community and home settings. The primary use case for Ekso Indego Personal is for users with SCI. For this user population, confinement to a wheelchair can cause severe physical and psychological deterioration. As a result, the secondary medical consequences of paralysis can include difficulty with bowel and urinary tract function, osteoporosis, loss of lean mass, gain in fat mass, insulin resistance, diabetes, and heart disease. The cost of treating these conditions is substantial.

On April 11, 2024, CMS approved a payment level of approximately \$91,000 for Medicare reimbursement of the Ekso Indego Personal, which took effect on April 1, 2024. CMS reimbursement creates the possibility that we will see increased demand for this device as we are able to more economically serve the larger U.S. patient population suffering from SCI. Specifically, as of December 31, 2025, according to the National Spinal Cord Injury Statistical Center ("NSCISC") in their 2025 SCI Data Sheet, approximately, an estimated 309,000 individuals are currently living with SCI and another 18,000 suffer from new SCI injuries each year. According to the NSCISC in their SCI Model Systems 2024 Annual Statistical Report, approximately 57% of individuals with SCI are enrolled in Medicare or Medicaid within five years post-injury. The Ekso Indego Personal device is regulated by the FDA and the patient must have an injury level of T3 to L5 and have a support person when utilizing the device.

With Medicare reimbursement approved, we began selling products to individuals in this market through Durable Medical Equipment suppliers ("DMEs"). DMEs typically resell products from DME manufacturers, like us, to individual users. DMEs are responsible for the Medicare reimbursement process, which requires a physician's prescription and evidence of medical necessity to be submitted to and approved by Medicare before reimbursement is provided.

Throughout 2025, we continued to make progress on developing the go-to-market program for our Personal Health products. Users of this technology are individuals living with an SCI who will either self-pay, or work through the currently established reimbursement programs involving worker's compensation, VA, or Medicare. As in previous years, VA and worker's compensation claims are well defined but traditionally are lower volumes. For Medicare, we have continued to develop our channel partner program consisting of O&P and DME partners, and through the year ended December 31, 2025, our partners saw an increased number of Medicare claims submitted and reimbursed. To date, most reimbursements have involved an appeals process, but for newer claims, reimbursements are occurring much earlier than was the case for initial claims submitted in the previous year. As this category of product is relatively new within CMS, we have taken a measured approach with respect to the volume and timing of CMS reimbursement submissions, focusing on continued refinement and improvement of our candidate screening and submission documentation. The improvements in this process have resulted in an increase in our partners' CMS reimbursement submissions. In support of this effort, to date we have signed agreements with National Seating & Mobility for selling exclusivity into the Complex Rehabilitation Technology segment, with Bionic Prosthetics & Orthotics Group, a respected O&P provider serving 14 states, and recently with Ottobock Patient Care, a national provider of O&P services, and we continue to develop partnerships and pilots with other regional and national O&P suppliers that we believe will bear fruit in 2026 and beyond. In addition to this work, we have ramped up our direct marketing efforts and continue to develop and grow a sales backlog for the Ekso Indego Personal device. As of December 31, 2025, we had over 50 people who we believe qualify for potential reimbursement. We anticipate that many of these individuals will have their claims submitted to CMS by our partners over the next 12 months, though we expect our processes and procedures to continue to be refined as we continue to scale this sales channel over time. Given this ramp, we expect the majority of our revenue in 2026 will continue to come from Enterprise Health sales, but with Personal Health product sales contributing more quarter over quarter. See "Part I—Item 1A. Risk Factors," specifically the risk titled "Coverage policies and reimbursement levels of third-party payers, including Medicare or Medicaid, may impact sales of our products" for more information. Another key part of our growth strategy is seeking insurance coverage beyond CMS and seeking additional indications of use for our products. We believe that sales of our Personal Health products have the potential to be a significant growth driver for us as we work to gain coverage by other insurance providers, expand the products' indications of use beyond SCI and optimize our reimbursement submission processes.

The U.S. Department of Veterans Affairs (the "VA") has an active program to provide products like Ekso Indego Personal to U.S. veterans with SCI. With 25 VA SCI centers, the VA has the largest single network of SCI care in the United States. Veterans who receive our products through the VA complete a screening, in-clinic training and a home trial prior to the VA purchasing a device for each eligible Veteran. We provide products to the VA through distributors classified as Service-Disabled Veteran-Owned Small Businesses ("SDVOSB").

Outside of the VA and Medicare, we sell Ekso Indego Personal to individuals who pay out-of-pocket or have obtained coverage through a worker's compensation claim. We believe there is additional potential in EMEA and APAC for future sales to private individuals and through government-funded healthcare systems.

The sales cycle for the Ekso Indego Personal device averages six to 12 months from the first interaction we have with the potential Ekso Indego Personal device user.

Nomad is currently for sale in limited volumes in the Personal Health market for use in a non-Company-sponsored single clinical study. Subject to clinical and patient feedback from clinical trials, we expect to begin the general commercialization process for Nomad in late 2026.

Third-Party Coverage and Payment

In our Enterprise Health and Personal Health markets, third-party payers are often involved either to pay for procedures in which our products are used or to purchase our devices on behalf of an individual. These payment mechanisms vary by product line and are described below. Third-party payers are typically not involved in the purchase of our EVO product.

Enterprise Health

Our customers, including inpatient and outpatient rehabilitation facilities, typically bill third-party payors for the costs and fees associated with the procedures in which our products are used. In the U.S., in order to receive payment for the procedures performed using our products, our customers must report codes that describe the services provided and determine the medical necessity of the service or whether the service is included in the payors' policy. Codes used for reimbursement for procedures that utilize our products are generic in nature and do not reference our products specifically. In the U.S. and most markets globally where we sell our products, payment for medical services provided by our customers (collectively "providers") is determined by the government, commercial payors (insurers), or both.

Personal Health

Within the Personal Health market, the VA provides our products to qualified veterans for individual use. CMS and its fiscal intermediaries (Medicare Administrative Contractors) and state Medicaid programs establish reimbursement policies for medical and surgical services at the state and federal level for the Medicare and Medicaid programs.

In April 2024, CMS made a final pricing determination setting the reimbursement rate for the product code applicable to our Ekso Indego Personal product. This determination allows individual users who meet the FDA-approved indications, along with other criteria, to purchase a device through an authorized DME provider and be reimbursed for 80% of the reimbursable rate.

Private third-party payors often rely upon Medicare coverage policy and payment limitations in setting their own coverage and payment policies but also have their own methods and approval processes. In some cases, individuals covered under worker's compensation insurance have also purchased our products.

Government Regulation

U.S. Medical Device Regulation

The U.S. government regulates the medical device industry through various agencies, including but not limited to the FDA, which administers the Federal Food, Drug and Cosmetic Act ("FDCA"). The design, testing, manufacturing, storage, labeling, distribution, advertising, and marketing of medical devices are subject to extensive regulation by federal, state, and local governmental authorities in the United States, including the FDA, and by similar agencies in other countries. Any medical device product that we develop must receive all requisite regulatory approvals or clearances, as the case may be, before it may be marketed in a particular country.

Our establishments in California and Ohio are registered with the FDA as a medical device manufacturer or specification developer, and all of our products, with the exception of EVO, are listed in the FDA database as medical devices. Our bipedal lower extremity exoskeletons - EksoNR, Ekso Indego Therapy, and Ekso Indego Personal - are regulated as Class II devices and thus are covered under our 510(k) clearances. Nomad is listed as a Class I device with the FDA and is exempt from premarket notification.

In the year ended December 31, 2025, there were no reports of adverse events made to the FDA under the Manufacturer and User Facility Device Experience Database relating to any of our products.

Device Classification

Unless otherwise specified by the FDA, under the FDCA, medical devices are classified into one of three classes-Class I, Class II or Class III-depending on the degree of risk associated with each medical device and the extent of control needed to provide reasonable assurances with respect to safety and effectiveness.

Class I includes devices with the lowest risk to the patient and are those for which safety and effectiveness can be reasonably assured by adherence to a set of FDA regulations, referred to as the General Controls for Medical Devices, which require compliance with the applicable portions of the Quality System Regulation ("QSR"), facility registration and product listing, reporting of adverse medical events and malfunctions, and appropriate, truthful and non-misleading labeling, and promotional materials. The FDA's new regulation referred to as the Quality Management System Regulation ("QMSR") went into effect in February 2026, which incorporates by reference the quality management system requirements of ISO 13485:2016. Most Class I products are exempt from the premarket notification requirements.

Class II devices are those that are subject to the General Controls, and special controls as deemed necessary by the FDA to ensure the safety and effectiveness of the device. These special controls can include performance standards, patient registries, FDA guidance documents and post-market surveillance. Most Class II devices are subject to premarket review and clearance by the FDA. Premarket review and clearance by the FDA for Class II devices is accomplished through the 510(k) premarket notification process, in which the device manufacturer must demonstrate substantial equivalence to a previously cleared device, known as a predicate device. In certain cases, where no predicate device exists, Class II devices may come to market through the de novo authorization process.

Establishments that manufacture any class of device, including manufacturers, contract manufacturers, sterilizers, repackagers and relabelers, specification developers, reproducers of single-use devices, remanufacturers, initial importers, and U.S. manufacturers of export-only devices, are required to register their establishments with the FDA and provide FDA a list of the devices that they handle at their facilities.

After a device is authorized for marketing, numerous regulatory requirements continue to apply. Manufacturing processes for medical devices are required to comply with the applicable portions of the QMSR, which cover the methods and the facilities and controls for the design, manufacture, testing, production, processes, controls, quality assurance, labeling, packaging, distribution, installation and servicing of finished devices intended for human use. The QMSR also requires, among other things, maintenance of a device master file, device history file, and complaint files. Medical device manufacturers are subject to periodic scheduled or unannounced inspections by the FDA and other state and federal authorities, to determine compliance with the QMSR and other regulations, and these inspections may include the manufacturing facilities of suppliers.

Failure to maintain compliance with the QMSR requirements could result in the shutdown of, or restrictions on, manufacturing operations and the recall or seizure of marketed products. The discovery of previously unknown problems with marketed medical devices, including unanticipated adverse events or adverse events of increasing severity or frequency, whether resulting from the use of the device within the scope of its marketing authorization or off-label by a physician in the practice of medicine, could result in restrictions on the device, including the removal of the product from the market or voluntary or mandatory device recalls.

The FDA has broad regulatory compliance and enforcement powers. Failure to comply with applicable regulatory requirements can result in compliance or enforcement action by FDA, which may include any or all of the following sanctions, including warning letters, untitled letters, fines, injunctions, consent decrees, and civil penalties; repair, replacement, withdrawal, administrative detention, refunds, recall or seizure of products; operating restrictions, partial suspension or total shutdown of production; refusing or delaying requests for 510(k) clearance of new products or modified products; withdrawing 510(k) clearance or other authorizations; refusal to grant export approvals; or criminal prosecution.

Other U.S. regulatory matters

Medical device companies are subject to additional healthcare regulation and enforcement by the federal government and by authorities in the states and foreign jurisdictions in which they conduct their business, including the FDA, CMS, other divisions of the Department of Health and Human Services, the Department of Justice, the Consumer Product Safety Commission, the Federal Trade Commission, the Occupational Safety & Health Administration, the Environmental Protection Agency, and state and local governments.

In the United States, sales, marketing and scientific and educational programs also must comply with state and federal fraud and abuse, anti-kickback false claims, transparency, government price reporting, anti-corruption, and health information privacy and security laws and regulations. Internationally, other governments also impose regulations in connection with their healthcare reimbursement programs and the delivery of healthcare items and services. These laws include the following:

- the federal Anti-Kickback Statute, which makes it illegal for any person, including a medical device manufacturer and DME suppliers (or a party acting on its behalf), to knowingly and willfully solicit, receive, offer or pay any remuneration (including any kickback, bribe or certain rebate), directly or indirectly, overtly or covertly, in cash or in kind, or in return for, that is intended to induce or reward referrals, including the purchase, recommendation, order of a medical device or DME for which payment may be made under a federal healthcare program, such as Medicare or Medicaid. Violations are subject to civil and criminal fines and penalties for each violation, plus imprisonment and exclusion from government healthcare programs. In addition, the government may assert that a claim that includes items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act (“FCA”);
- the federal civil and criminal false claims laws, including the FCA, which prohibit individuals or entities from, among other things, knowingly presenting, or causing to be presented, to the federal government, claims for payment or approval that are false, fictitious or fraudulent; knowingly making, using or causing to be made or used, a false statement or record material to a false or fraudulent claim or obligation to pay or transmit money or property to the federal government; or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay money to the federal government. Manufacturers can be held liable under the FCA even when they do not submit claims directly to government payers if they are deemed to “cause” the submission of false or fraudulent claims. DME companies that submit claims directly to payers may also be liable under the FCA for the direct submission of such claims. The FCA also permits a private individual acting as a “whistleblower” to bring actions on behalf of the federal government alleging violations of the FCA and to share in any monetary recovery. When an entity is determined to have violated the FCA, the government may impose civil fines and penalties for each false claim, plus treble damages, and exclude the entity from participation in Medicare, Medicaid and other federal healthcare programs;
- the federal civil monetary penalties laws, which impose civil fines for, among other things, the offering or transfer or remuneration to a Medicare or state healthcare program beneficiary if the person knows or should know it is likely to influence the beneficiary’s selection of a particular provider, practitioner, or supplier of services reimbursable by Medicare or a state health care program, unless an exception applies;
- the Health Insurance Portability and Accountability Act (“HIPAA”), which created additional federal criminal statutes that prohibit knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program or obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any healthcare benefit program, regardless of the payer (e.g., public or private) and knowingly and willfully falsifying, concealing or covering up by any trick or device a material fact or making any materially false statements in connection with the delivery of, or payment for, healthcare benefits, items or services relating to healthcare matters. Similar to the federal Anti-Kickback Statute, a person or entity can be found guilty of violating HIPAA without actual knowledge of the statute or specific intent to violate it;
- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), and their respective implementing regulations, impose requirements on certain covered healthcare providers, health plans, and healthcare clearinghouses as well as their respective business associates that perform services for them that involve the use, or disclosure of, individually identifiable health information, relating to the privacy, security and transmission of individually identifiable health information. The HITECH Act also created tiers of civil monetary penalties, amended HIPAA to make civil and criminal penalties directly applicable to business associates, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorneys’ fees and costs associated with pursuing federal civil actions;
- the federal Physician Payments Sunshine Act and its implementing regulations require manufacturers of drugs, devices, biological and medical supplies for which payment is available under Medicare, Medicaid or the Children’s Health Insurance Program (with certain exceptions) to report annually to CMS, under the Open Payments Program, information related to payments or other transfers of value made to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members; and
- analogous state and foreign law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payer, including commercial insurers or patients; state laws that require device companies to comply with the industry’s voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; state and local laws that require the licensure of sales representatives; state laws that require device manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures and pricing information; data privacy and security laws and regulations in foreign jurisdictions that may be more stringent than those in the United States (such as the European Union, which adopted the General Data Protection Regulation, which became effective in May 2018); state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts; and state laws related to insurance fraud in the case of claims involving private insurers.

Because of the breadth of these laws, it is possible that some of our business activities could, despite efforts to comply, be subject to challenge under one or more of such laws. Moreover, efforts to ensure that our business arrangements comply with applicable healthcare laws may involve substantial costs. It is possible that governmental and enforcement authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law interpreting applicable fraud and abuse or other healthcare laws and regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant civil, criminal and administrative penalties, damages, disgorgement, monetary fines, exclusion from participation in Medicare, Medicaid and other federal healthcare programs, integrity and oversight agreements to resolve allegations of non-compliance, contractual damages, reputational harm, diminished profits and future earnings, and curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our results of operations. In addition, the commercialization of any of our products outside the United States will also likely subject us to foreign equivalents of the healthcare laws mentioned above, among other foreign laws.

United States health care reform

The commercial success of our products will depend in part on the extent to which governmental payor programs at the federal and state levels, including Medicare and Medicaid, private health insurers, and other third-party payors provide coverage for and establish adequate reimbursement levels for our products. In the United States, private health insurers and other third-party payors often provide reimbursement for products and services based on the level at which the government provides reimbursement through the Medicare or Medicaid programs for such products and services. The cost containment measures that payers and providers are instituting and the effect of any healthcare reform initiative implemented in the future could significantly reduce our revenues from the sale of our products.

[Table of Contents](#)

Changes in healthcare policy, including changes in the implementation or the repeal of the Patient Protection and Affordable Care Act (the “ACA”) in the United States, could increase our costs, decrease our revenue and impact sales of and reimbursement and coverage for our current and future products. Since its enactment, there have been judicial and Congressional challenges to certain aspects of the ACA. For example, in June 2021 the U.S. Supreme Court held that Texas and other challengers had no legal standing to challenge the ACA, dismissing the case on procedural grounds without specifically ruling on the constitutionality of the ACA. Thus, the ACA will remain in effect in its current form. It is possible that the ACA will be subject to judicial or Congressional challenges in the future. It is unclear how any such challenges and healthcare measures promulgated by the Trump administration will impact the ACA, our business, financial condition and results of operations.

Federal programs also impose price controls through mandatory ceiling prices on purchases by federal agencies and federally funded hospitals and clinics. These restrictions and limitations influence the purchase of healthcare services and products. Private payors often rely on the lead of the governmental payors in rendering coverage and reimbursement determinations. Therefore, achieving favorable CMS coverage and reimbursement is usually a significant gating issue for successful introduction of a new product.

Further, the increased emphasis on managed healthcare in the United States and on country and regional pricing and reimbursement controls in the European Union will put additional pressure on product pricing, reimbursement, and utilization, which may adversely affect our future product sales and results of operations. These pressures can arise from rules and practices of managed care groups, competition from other products, judicial decisions and governmental laws and regulations related to Medicare, Medicaid, and healthcare reform, and pricing in general. Sales of our product candidates will depend substantially, both domestically and abroad, on the extent to which the costs of our products will be paid by health maintenance, managed care, and similar healthcare management organizations, or reimbursed by government health administration authorities, such as Medicare and Medicaid, private health insurers, and other third-party payors. Adequate third-party reimbursement may not be available to enable us to maintain price levels sufficient to realize an appropriate return on our investment. Legislative proposals to reform healthcare or reduce costs under government insurance programs may result in lower reimbursement for our products or exclusion of our products from coverage.

Foreign Medical Device Regulation

In addition to regulations in the United States, we are subject to a variety of foreign regulations governing clinical trials and commercial sales and distribution of our products in foreign countries. Regardless of the FDA’s approval requirements for a particular product, we must obtain approval of a product by the comparable regulatory authorities of foreign countries before we can commence clinical trials or marketing of the product in those countries. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary greatly from country to country.

European Union

The European Union requires that manufacturers of medical devices obtain the right to bear the “CE” conformity marking which designates compliance with existing directives and standards regulating the design, manufacture and distribution of medical devices in member countries of the European Union. The rules for CE marking a product are set forth in the EU Medical Device Regulation (the “EU MDR”), which replaces the EU Medical Device Directive (the “EU MDD”). The EU MDR regulations were adopted with transitional periods that allow some products to rely on EU MDD certificates for a period of time. As a result of the EU MDR transition, some of our products are currently CE marked with EU MDD certificates.

On February 10, 2025, we received our CE certificate from our notified body for our Ekso Indego Therapy and Ekso Indego Personal products, finalizing our transition to EU MDR. Subsequently, in the second half of 2025, we transitioned manufacturing of our Ekso Indego Therapy and Ekso Indego Personal products from our facility in Brecksville, Ohio to our facility in San Rafael, California. We are unable to ship these products into the European Union until our CE certificate is updated to reflect this manufacturing location change. We expect an updated CE certificate to be issued in the first half of 2026.

As of December 31, 2025, our EksoNR products continue to bear a CE mark and certificates which were obtained under EU MDD regulations. Under EU MDR rules, we can continue to place these products on the market until December 31, 2028, provided that we adhere to certain restrictions. These restrictions include: (i) not making any substantial changes to the products prior to EU MDR certification, (ii) implementing certain EU MDR requirements immediately, and (iii) applying for an EU MDR conformity assessment and having a quality management system in place by May 26, 2024 and signing a written agreement with a notified body by September 26, 2024. As of December 31, 2025, all of those conditions have been met. Our application for EU MDR with our notified body is currently pending technical review.

Regulatory requirements in the United Kingdom (“UK”) are also changing as a result of Brexit (the UK’s withdrawal from the EU), and regulatory requirements in Switzerland are changing as a result of the country’s withdrawal from its Mutual Recognition Agreement with the EU Commission. Complying with the EU MDR and the evolving regulatory regimes in the UK and Switzerland require modifications to our quality management systems, additional resources in certain functions and updates to technical files, among other changes.

Other countries

Regulations in other countries, including the requirements for approvals, certification, or clearance and the time required for regulatory review, vary by country. Certain countries, such as Australia, Indonesia, Malaysia, Singapore, Canada, and others have their own regulatory agencies. These countries typically require regulatory approvals and compliance that we comply with either directly or through distribution partners. Failure to obtain regulatory approval in any foreign country in which we market our products, or failure to comply with any regulation in any foreign country in which we market our products, may negatively impact our ability to generate revenue and harm our business.

The policies of the FDA and foreign regulatory authorities may change, and additional government regulations may be enacted which could prevent or delay regulatory approval of our products and could also increase the cost of regulatory compliance. We cannot predict the likelihood, nature or extent of adverse governmental regulation that might arise from future legislative or administrative action, either in the U.S. or abroad.

Competition

The medical technology and industrial robotics industries are characterized by intense competition and rapid technological change. Specifically, exoskeleton technology remains in its early stages. As this field develops, we believe that we will face increased competition on the basis of product features, critical outcomes, price, services and other factors. Our competitive position will depend on multiple, complex factors, including our ability to achieve market acceptance for our products, develop new products, implement production and marketing plans, secure regulatory approvals for products under development and protect our intellectual property. There are a number of other companies that are developing competitive technology and devices related to our Enterprise Health and Personal Health products.

Enterprise Health

For our Enterprise Health products, we face competition from products that target lower extremity gait therapy, ambulation, and rehabilitation in IRF, LTACH, skilled nursing facility, and outpatient rehabilitation clinic settings. While there are multiple ways to perform lower extremity rehabilitation in these settings, the primary competitive alternative to our products remains traditional, non-robotic therapy by a licensed physical therapist. There are also other mechanical or robotic therapy devices, including treadmills, track-based weight support systems, end-effector devices and other exoskeletons. We believe the clinical evidence supports our claims that using Ekso devices for lower extremity rehabilitation can result in better clinical outcomes for the patient and can help avoid or prevent fatigue and injuries to physical therapists.

Personal Health

For our Personal Health products, which are intended to provide overground mobility for physically impaired users in a home and community setting, we face competition primarily from manual or powered wheelchairs and other traditional mobility aids. We also face competition from other lower extremity exoskeleton devices, although we believe that few of these devices have been cleared by the FDA or other regulators for home and/or community use. Clinical evidence shows that compared to traditional mobility aids, exoskeleton solutions, including our devices, can provide better outcomes for certain SCI users by reducing comorbidities. Comorbidities that have been shown to benefit from exoskeleton use include improved bowel and bladder function, cardiorespiratory health, pain and spasticity, among others. Compared to other exoskeletons in this market, we believe that our products have several advantages, including low weight, modularity, wheelchair compatibility and potentially faster maximum walking speeds.

Supply of Components

Our EksoNR device is currently manufactured at our facility in San Rafael, California. In the first two quarters of 2025, our Ekso Indego Therapy, Ekso Indego Personal and Ekso Nomad devices were primarily manufactured at our facility in Brecksville, Ohio. Through the remainder of 2025, we completed the transfer of all final assembly of such devices at our facility in San Rafael, California. We currently run one shift per day at both of our facilities and believe we have the capacity to eventually run additional shifts should we deem it appropriate.

In the second quarter of 2025, we completed the transfer of partial production of our Ekso Indego Personal product to a third-party contract manufacturing partner located in the USA.

EVO products are manufactured by a third-party contract manufacturing partner in Malaysia.

As part of our manufacturing process, we purchase both custom and off-the-shelf components from a large number of suppliers and subject them to stringent quality specifications and processes. Whenever possible, we seek to secure dual source suppliers for our components. Some of the components necessary for the assembly of our products are currently provided to us by single-sourced suppliers (the only approved supply source for us among other sources). We purchase the majority of our components and major assemblies through purchase orders rather than long-term supply agreements and do not generally plan to hold finished goods inventory in excess of our anticipated demand.

Research and Development

We focus our engineering and research and development efforts on both improvement to existing products and services and new products and services that align with our strategy. We believe that by investing in innovation we can expand the number of individuals whose lives are improved by the use of our products. We subscribe to a customer-focused approach to new product development, wherein we use customer feedback and suggestions to inform development plans. Areas our engineering and research and development teams target for improvement include enhanced functionality, improved reliability and uptime, and lower cost, among others.

Intellectual Property

We have established an extensive intellectual property portfolio that includes various U.S. patents and patent applications. The table below provides a summary of U.S. patents by issuing status and ownership status as of December 31, 2025.

License Status	Issuing Status	
	Issued Patents	Pending Applications
Exclusively licensed to the Company	12	—
Co-owned with a third party, exclusively licensed to the Company	4	—
Co-owned with a third party	3	—
Sole ownership by the Company	55	3
Total	74	3

Pending applications mean a complete application has been filed with the applicable patent authority and additional action is pending.

Many of these applications have also been filed internationally as appropriate for their respective subject matter. As of December 31, 2025, 236 applications have been issued or have been allowed as patents internationally. Our solely owned patent portfolio contains 233 cases that have issued or are in prosecution in 23 countries outside the U.S.

Our patent portfolio includes product and method type claims, since the devices that we produce and the processes performed by those devices are patentable. Our patents encompass technologies relevant to our devices, including medical exoskeletons, commercial exoskeletons, actuators, and strength-enhancing exoskeletons. The earliest priority date of the portfolio reaches back to 2003, and new applications may continue to be filed from time-to-time.

Licensors include the Regents of the University of California, or UC Berkeley, and Vanderbilt University ("Vanderbilt").

The license with UC Berkeley consists of two agreements and one amendment to the agreement covering ten patent cases exclusively licensed to us. Inventions covered by a further three patent applications are co-owned by us and UC Berkeley, with no license agreement between us and UC Berkeley. As a result, UC Berkeley may license its rights in these patents to a third-party. With respect to two of these co-owned patent applications, UC Berkeley has licensed their rights in the U.S. to an unrelated third party.

[Table of Contents](#)

Pursuant to the UC Berkeley License Agreements, we are required to pay a 1% royalty on sales, including sales generated by sublicenses. In addition, the UC Berkeley License Agreements call for minimum annual payments of \$50,000. We do not pay royalties to UC Berkeley on products sold or to be resold to the U.S. government.

As part of the acquisition from Parker Hannifin Corporation ("Parker") of certain assets related to Parker's Human Motion Control ("HMC") business, software applications, support services and cloud environments related to such business in December 2022 (the "HMC Acquisition"), we acquired and assumed certain intangible assets including license agreements with Vanderbilt.

On October 15, 2012, Parker entered a license agreement ("Exoskeleton License Agreement") with Vanderbilt and was granted exclusive license within the HMC field of use to specific licensed patents and licensed software by paying a non-refundable, non-creditable license issue fee and running royalties. Subsequently, Parker entered three amendments with Vanderbilt and was granted license to additional patents and software from 2014 to 2019 by paying license issue fee and running royalties. The royalties were set to be calculated at 6% of Net Sales for Licensed Patent Products (or a minimum of \$250,000) and 3% of Net Sales for Licensed Software products.

On March 1, 2022, Parker entered a license agreement ("P-H Knee License Agreement") with Vanderbilt and was granted exclusive license to specific licensed patents, licensed software and copyrightable technical information by paying a non-refundable, non-creditable license issue fee and running royalties. Included in this agreement was the right to sublicense beginning in March 2024. On April 16, 2025, we executed a Termination Agreement with Vanderbilt of the P-H Knee License Agreement (the "Termination Agreement"). Per the Termination Agreement, we are no longer required to pay 3.75% of net sales for its Swing-Assist Microprocessor-Controlled Knee ("SA-MPK") licensed patent products and a minimum annual royalty of \$75,000 due on or before July 31, 2028 and \$100,000 per year thereafter until February 15, 2041. Under the Termination Agreement, should, to the extent Vanderbilt successfully licenses the rights of the SA-MPK technology to a third-party, Vanderbilt will pay us 50% of Vanderbilt's share of any net revenues attributable to the rights received from such future license agreement until \$100,000 has been paid to us.

In addition to the aforementioned agreements, various other subsidized research and development agreements have been entered into with Vanderbilt covering specific work product as articulated in those documents.

In some cases, as a result of government funding we receive, our patents have a government use license, granting the U.S. government a non-exclusive, non-transferable, irrevocable, paid-up license for use of the inventions for or on behalf of the U.S. government, as is typical in the case of government sponsored research.

Intellectual Property Out-Licensing

In June 2020, we entered into a non-exclusive license agreement with HAWE Hydraulik of Germany ("HAWE") for rights to develop hydraulic pumps covered by a family of our patents. The agreement additionally includes an exclusivity option. In January 2025, HAWE notified us that they are not moving forward with the technology and therefore were terminating the license agreement. We did not receive any royalty revenue from this license in the years ended December 31, 2025 and 2024, and do not expect to receive any royalty revenue from this license in the future.

Clinical Evidence

Numerous research studies have been conducted focusing on safety and feasibility of exoskeletons and robotics in rehabilitation. As of February 20, 2026, a search for "robotic exoskeleton" on PubMed, a search engine for biomedical literature and life science journal articles, garners approximately 409 unique publications. The full portfolio of currently available and legacy Ekso exoskeletons (EksoNR, Ekso Indego Therapy and Ekso Indego Personal) have been utilized in many of these protocols. The body of research examines a wide variety of diagnoses including ABI, SCI, stroke, MS, and others. The findings of this research are overall positive and promote use of an Ekso exoskeleton in rehabilitation to provide patient outcomes that are equal to or superior to traditional physical therapy in both the inpatient and outpatient setting. Some of these outcomes include faster gait speed, increased gait endurance, improvements in cardiometabolic responses, enhanced quality of life, more typical gait kinematics, increased function, and therapy session duration.

Human Capital Resources and Management

As of February 20, 2026, we had 50 full-time employees and five part-time employees, including 47 employees in the United States and eight employees in Europe. None of our employees are covered by a collective bargaining agreement and we consider our relationship with our employees to be good.

We endeavor to maintain a workplace that is free from discrimination or harassment. The basis for recruitment, hiring, development, training, compensation and advancement at the Company includes qualifications, performance, skills, and experience. We believe our employees are fairly compensated. Our compensation program is designed to attract and retain talent.

Corporate Information

Our principal executive office is located at 101 Glacier Point, Suite A, San Rafael, California, 94901 and our telephone number is (510) 984-1761.

We make available free of charge on or through our website our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and all amendments to those reports as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. Our internet address is www.eksobionics.com. This website address is intended to be an inactive, textual reference only; none of the material on this website is part of this Annual Report. Copies of our annual reports on Form 10-K will be furnished without charge to any person who submits a written request directed to the attention of our Secretary, at our offices located at 101 Glacier Point, Suite A, San Rafael, California, 94901. The SEC maintains an internet site (<http://www.sec.gov>) that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC.

Item 1A. RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below, together with all of the other information in this Annual Report on Form 10-K including the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and related notes, before making a decision to invest in our common stock. Our business, results of operations, financial condition or prospects could also be harmed by risks and uncertainties that are not presently known to us or that we currently believe are not material. If any of the risks actually occur, our business, results of operations and financial condition could be adversely affected. In that event, the market price of our common stock could decline, and you could lose all or part of your investment.

Summary of Risk Factors

Our business is subject to numerous risks and uncertainties that you should consider before investing in our company, as fully described below. The principal factors and uncertainties that make investing in our company risky include, among others:

- Our proposed business combination with Applied Digital Corporation’s cloud computing business, Applied Digital Cloud, may not be completed on the terms or timeline currently contemplated or at all, which could have a material adverse effect on our business, financial condition and results of operations. We are incurring material costs in connection with our evaluation of strategic transactions, including such proposed business combination, which impacts our liquidity, prospects and our ability to survive as a standalone business, especially if no strategic transaction is consummated.
- If we fail to manage the complex and lengthy reimbursement process, our business and operating results could be adversely affected.
- The markets in which our products are sold are highly competitive and continue to develop, and important assumptions about the potential market for our current and future products may be inaccurate.
- If we or our third-party manufacturers are unable to produce our products at a satisfactory quality, in a timely manner, in sufficient quantities or at an acceptable cost, our business could be negatively impacted.
- Shortages in the materials used to manufacture our products and supply chain disruptions, including as a result of changes in trade policies, could impact our future results.
- Coverage policies and reimbursement levels of third-party payers, including Medicare or Medicaid, may impact sales of our products.
- The acquisition and integration of other companies, businesses, or technologies could result in operating difficulties, dilution, and other harmful consequences.
- We may not be able to enhance our product offerings through our research and development efforts.
- We have incurred significant losses to date and anticipate continuing to incur losses in the future, and we may not achieve or maintain profitability.
- Our promissory note agreement imposes certain financial and operational restrictions on us, limiting the discretion of our management in operating our business.
- Protecting our intellectual proprietary rights can be costly, and our success in doing so is not certain.
- If we fail to obtain or maintain necessary regulatory clearances or approvals for our medical device products, or if clearances or approvals for future products or modifications to existing products are delayed or not issued, our commercial operations would be harmed.
- Modifications to our current and our future products may require new 510(k) clearances or premarket approvals, or may require us to cease marketing or recall the modified products until clearances are obtained.
- Our failure to meet strict post-market regulatory requirements with respect to our products could require us to pay fines, incur other costs or even close our facilities.
- If we do not continue to satisfy the Nasdaq continued listing requirements, our common stock could be delisted from Nasdaq.
- We might not be able to continue as a going concern.

Risks Related to the Proposed Business Combination

Our proposed business combination with Applied Digital Corporation’s cloud computing business, Applied Digital Cloud, may not be completed on the terms or timeline currently contemplated or at all, which could have a material adverse effect on our business, financial condition and results of operations.

On February 15, 2026, we entered into a Contribution and Exchange Agreement (the “Contribution Agreement”) with APLD Intermediate HoldCo LLC, a Delaware limited liability company (“APLD Intermediate”), APLD ChronoScale HoldCo LLC, a Delaware limited liability company and a wholly owned subsidiary of APLD Intermediate (“Contributor”), each a wholly owned direct or indirect subsidiary of Applied Digital Corporation, a Nevada corporation, and Applied Digital Cloud Corporation, a Nevada corporation, which at the time of the Closing (as defined below), will be a wholly owned subsidiary of Contributor (“Cloud”), for purposes of consummating a business combination (the “Business Combination”), as a result of which (i) Cloud will become our wholly owned subsidiary, (ii) we will, immediately after the consummation of the Business Combination (the “Closing”), continue as the parent of the combined company, and (iii) we will change our name to ChronoScale Corporation (“ChronoScale”).

Subject to the satisfaction or waiver of the conditions set forth in the Contribution Agreement, Contributor will contribute all of its right, title and interest in and to 1,200 shares of the common stock of Cloud, constituting 100% of the issued and outstanding equity of Cloud, to us in exchange for 138,216,820 newly issued shares of our common stock (the “Exchanged Shares”). As a result of and upon the consummation of the Business Combination, Contributor is expected to own approximately 97% of the combined company’s outstanding equity before giving effect to the other transactions contemplated by the Contribution Agreement.

The Contribution Agreement provides that the Closing is subject to certain conditions, including, among other things: (i) stockholder approval of the Business Combination as set forth in the Contribution Agreement and related proposals; (ii) an Information Statement or a Proxy Statement must be cleared by the SEC and sent to our stockholders in accordance with Regulation 14A under the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), and in the case of the Information Statement, such mailing must be at least twenty (20) calendar days prior to Closing; (iii) no order or law shall have been entered, adopted, enacted, issued, promulgated or enforced, in each case, by a governmental entity that prevents, enjoins, prohibits, restrains or makes illegal the consummation of the Business Combination or the other transactions contemplated by the Contribution Agreement; (iv) all requisite approvals or waivers as required by the terms of the Contribution Agreement shall have been obtained; (v) we shall have cash and cash equivalents equal to at least \$15,000,000; and (vi) our Second Amended and Restated Articles of Incorporation (the “Second Restated Articles”) shall have been duly adopted by all necessary corporate action on our part, filed with the Secretary of State of the State of Nevada, and shall be in full force and effect as of immediately prior to the Closing.

The obligation of each party to consummate the Business Combination is also conditioned upon (i) performance and compliance by the other party in all material respects with its pre-Closing obligations and covenants under the Contribution Agreement; (ii) the accuracy of the representations and warranties of the other party as of the Closing (subject to customary materiality qualifiers); (iii) in both Cloud’s and our case, the absence of a continuing material adverse effect with respect to the other party; (iv) in Cloud’s case, that (a) a private placement transaction for gross proceeds of an amount to be determined by APLD Intermediate and on terms acceptable to APLD Intermediate, shall have been consummated concurrently with the Closing (the securities to be issued in such private placement transaction, the “PIPE Securities”), (b) certain third-party consents as required by the terms of the Contribution Agreement shall have been obtained, (c) the Nasdaq listing application shall have been submitted and approved, (d) the Investor Rights Agreement (the “Investor Rights Agreement”) between us and Contributor shall be in full force and effect at Closing, and (e) certain tail insurance policies as described in the Contribution Agreement have been bound, paid for and in effect.

While it is currently anticipated that the Business Combination will be consummated in the second quarter of 2026, there can be no assurance that the foregoing conditions will be satisfied in a timely manner or at all, or that an effect, event, development or change will not transpire that could delay or prevent these conditions from being satisfied. If the Business Combination is consummated, the combined company will be subject to risks related to, among other things, ChronoScale’s ability to successfully

integrate our market opportunities, technology, personnel and operations and to achieve expected benefits, including the possibility that the expected strategic benefits from the transaction will not be realized or will not be realized within the expected time period or that general economic conditions or updated accounting or regulatory requirements could have a material adverse effect on the combined business after the Closing.

If the Business Combination is not consummated for any reason, the trading price of our common stock may decline, and we may also be subject to additional risks if the Business Combination is not completed, including:

- we expect to have limited cash resources available to fund our ongoing operations, even after giving effect to our recent fundraising efforts. In such circumstances, our available liquidity would be insufficient to sustain operations for the next twelve months;
- incurring substantial costs related to the Business Combination, such as financial advisory, legal, accounting and other professional services fees that have already been incurred or will continue to be incurred until and following the Closing;
- we may experience negative reactions from the financial markets, including negative impacts on our stock price, and it is uncertain when, if ever, the price of the shares would return to the prices at which the shares currently trade;
- the requirement in the Contribution Agreement that, unless the Contribution Agreement is terminated in accordance with its terms, we shall pay, at the Closing, all fees and expenses of the parties, including the fees and expenses of advisers, counsel, accountants and other experts, if any, as well as all other out-of-pocket expenses incurred by such parties in connection with the negotiation, preparation, execution, and delivery of the Contribution Agreement. If the Contribution Agreement is terminated in accordance with its terms, each party shall be responsible for its own expenses, and APLD Intermediate and Contributor shall be responsible for any expenses incurred by Cloud;
- limitations on our ability to attract and retain key personnel;
- reputational harm, including relationships with investors, customers, and business partners due to the adverse perception of any failure to successfully complete the Business Combination; and
- potential disruption to our business and distraction of our workforce and management team to pursue other opportunities that could be beneficial to us, in each case without realizing any of the benefits of having the Business Combination completed.

Absent the Business Combination, we do not believe there is a reasonable prospect for our business to achieve or sustain profitability or positive cash flow in the near term without significant additional capital fundraising. Any such financing, if available at all, would likely be on terms that are highly dilutive to existing stockholders and could include the issuance of substantial amounts of equity, convertible securities, or other instruments with preferential rights. There can be no assurance that we would be able to obtain additional financing on acceptable terms, or at all. If we are unable to secure sufficient funding, we may be forced to liquidate assets, restructure, seek bankruptcy protection, or otherwise wind down our operations, which could result in a complete loss of stockholders' investment.

The pendency of the Business Combination has and could continue to negatively impact our business, financial condition and results of operations.

The pendency of the Business Combination has and could continue to adversely affect our business, financial condition and results of operations and may result in the departure of key personnel. In connection with the Business Combination, some of our customers, suppliers, vendors, and other business partners may delay or defer decisions or may end their relationships with us, which could negatively affect our revenue, earnings, and cash flows, regardless of whether the Business Combination is completed. Similarly, our employees may experience uncertainty about their future roles with us following the Business Combination, which may materially adversely affect our ability to attract and retain key personnel during the pendency of the Business Combination.

Until the completion of the Business Combination or the termination of the Contribution Agreement in accordance with its terms, we are prohibited from entering into certain transactions and taking certain actions that might otherwise be beneficial to us and our stockholders.

The Contribution Agreement imposes customary “no-shop” restrictions on our ability to solicit alternative acquisition proposals, to furnish information to, and participate in discussions or negotiations with, third parties regarding any alternative acquisition proposals. Neither Contributor nor APLD Intermediate shall solicit, discuss or negotiate any acquisition proposal with respect to Cloud other than with us; however, transactions involving Cloud as part of any proposed sale of APLD are not restricted. These restrictions may prevent us from making changes to our business or organizational structure or from pursuing business opportunities that may arise prior to the completion of the Business Combination. It is possible that these or other provisions in the Contribution Agreement might discourage a potential competing acquirer that might have an interest in acquiring all or a significant part of our outstanding capital stock from considering or proposing an acquisition or might result in a potential competing acquirer proposing to pay a lower per share price to acquire our capital stock than it might otherwise have proposed to pay. Adverse effects arising from these restrictions could be exacerbated by any delays in the consummation of the Business Combination or the termination of the Contribution Agreement.

We have incurred, and will continue to incur, direct and indirect costs as a result of the Business Combination.

We have incurred, and will continue to incur, significant costs and expenses, including fees for professional services and other transaction costs in connection with the Business Combination, for which we will receive little or no benefit if the Business Combination is not completed. There are a number of factors beyond our control that could affect the total amount or the timing of these costs and expenses. Many of these fees and costs will be payable by us even if the Business Combination is not completed and may relate to activities that we would not have undertaken other than to complete the Business Combination.

Litigation challenging the Contribution Agreement may prevent the Business Combination from being consummated within the expected timeframe or at all.

Lawsuits may be filed in the future, against us, the Board of Directors, or other parties to the Contribution Agreement, challenging the adequacy of the transaction disclosures or making other claims in connection with the Business Combination. Such lawsuits may be brought by purported stockholders or other interested parties, seeking, among other things, to enjoin the consummation of the Business Combination. One of the conditions to the consummation of the Business Combination is that no order or law shall have been entered, adopted, enacted, issued, promulgated or enforced, in each case, by a governmental entity that prevents, enjoins, prohibits, restrains or makes illegal the consummation of the Business Combination or the other transactions contemplated by the Contribution Agreement. As such, if the plaintiffs in such potential lawsuits are successful in obtaining an injunction prohibiting the defendants from completing the Business Combination on the agreed upon terms, then such injunction may prevent the Business Combination from becoming effective within the expected timeframe or at all.

Our stockholders will be significantly diluted from the issuance of the Exchanged Shares and any other issuances in connection with the Business Combination, and such issuances, or perception that such issuances may occur, could depress the market price of our common stock.

The consummation of the Business Combination will cause significant dilution to our stockholders. As a result of and upon the consummation of the Business Combination, Contributor is expected to own approximately 97% of the combined company's outstanding equity and our legacy stockholders will own approximately 3% of the combined company's outstanding equity before giving effect to the other transactions contemplated by the Contribution Agreement. In addition, we may consummate a private placement of securities to fund the post-closing business. The issuance of the Exchanged Shares or such other securities, or the perception that such issuances could occur, could depress the market price of our common stock.

Business and Operational Risks

If we fail to manage the complex and lengthy reimbursement process, our business and operating results could be adversely affected.

The sale of our Personal Health products primarily depends on reimbursements provided by third party payors. We distribute these products to end users through the VA hospitals. Our products are also distributed through DME suppliers, who will then pursue reimbursement from Medicare, Medicaid, or private insurance providers. Our financial condition and results of operations have been affected by coverage and reimbursement policies of these payors, which are also subject to change over time. The reimbursement process is complex and can involve lengthy delays between the time that a product is delivered to the consumer and the time that the reimbursement amounts are settled. Depending on the payor, we or our customers have been required to obtain certain payor-specific documentation from physicians and other healthcare providers before submitting claims for reimbursement. Certain payors have filing deadlines and they will not pay claims submitted after such time. We have been subject to extensive pre-payment, and may be subject post-payment, audits by governmental and private payors that have resulted in material delays and may result in refunds of monies received or denials of claims submitted for payment under such third-party payor programs and contracts.

Throughout 2025, we continued to make progress on developing the go-to-market program for our Personal Health products. Users of this technology are individuals living with an SCI who will either self-pay, or work through the currently established reimbursement programs involving worker's compensation, VA, or Medicare. As in previous years, VA and worker's compensation claims are well defined but traditionally are lower volumes. For Medicare, we have continued to develop our channel partner program consisting of O&P and DME partners, and through the year ended December 31, 2025, our partners saw an increased number of Medicare claims submitted and reimbursed. To date, most reimbursements have involved an appeals process, but for newer claims, reimbursements are occurring much earlier than was the case for initial claims submitted in the previous year. As this category of product is relatively new within CMS, we have taken a measured approach with respect to the volume and timing of CMS reimbursement submissions, focusing on continued refinement and improvement of our candidate screening and submission documentation. The improvements in this process have resulted in an increase in our partners' CMS reimbursement submissions. In support of this effort, to date we have signed agreements with National Seating & Mobility for selling exclusivity into the Complex Rehabilitation Technology segment, with Bionic Prosthetics & Orthotics Group, a respected O&P provider serving 14 states, and recently with Ottobock Patient Care, a national provider of O&P services, and we continue to develop partnerships and pilots with other regional and national O&P suppliers that we believe will bear fruit in 2026 and beyond. In addition to this work, we have ramped up our direct marketing efforts and continue to develop and grow a sales backlog for the Ekso Indego Personal device. As of December 31, 2025, we had over 50 people who we believe qualify for potential reimbursement. We anticipate that many of these individuals will have their claims submitted to CMS by our partners over the next 12 months, though we expect our processes and procedures to continue to be refined as we continue to scale this sales channel over time.

While we believe we have improved the CMS reimbursement processes in respect of the Ekso Indego Personal devices, such efforts may be unsuccessful, as the CMS and similar reimbursement processes are complex and we have no guarantees of success for any existing or future claims, and any claim, even if successful, may be materially delayed.

The markets in which our products are sold are highly competitive and continue to develop, and important assumptions about the potential market for our current and future products may be inaccurate.

We face competition within the medical devices and industrial robotics markets on the basis of product features, clinical outcomes, price, services and other factors. Our competitive position will depend on multiple, complex factors, including our ability to achieve market acceptance for our products, develop new products, implement production and marketing plans, secure regulatory approvals for products under development and protect our intellectual property. Competitors may offer, or may attempt to develop, more efficacious, safer, cheaper, or more convenient alternatives to our products, including alternatives that could make the need for robotic exoskeletons obsolete. The entry into the market of manufacturers located in low-cost manufacturing locations may also create pricing pressure, particularly in developing markets. Our future success depends, among other things, upon our ability to compete effectively against current technology, as well as to respond effectively to technological advances, and upon our ability to successfully implement our marketing strategies and execute our research and development plan. If customers do not perceive our product offerings to be of value or to be easy and comfortable to use, we may not be able to attract and retain customers. If we are unable to successfully retain existing customers and attract new customers and achieve volume sales of our products, our business, prospects, financial condition and operating results will be materially and adversely affected.

[Table of Contents](#)

Our business strategy is based, in part, on our estimates of the number of individuals with physical limitations and disability, and it considers the occurrence of strokes, TBIs, SCIs and MS in our target markets and the percentage of those groups that would be able to use our current and future products. Limited sources exist to obtain reliable market data with respect to the number of mobility-impaired individuals and the occurrences of ABIs, SCIs and strokes in our target markets. In addition, we are not aware of any third-party reports or studies regarding the percentage of patients with limited mobility and/or SCIs who are able to use exoskeletons, in general, or our current or planned future products, in particular. Our assumptions regarding our addressable markets may be inaccurate and may change. If our estimates of our current or future addressable market are incorrect, our business may not develop as we expect, and the price of our common stock may suffer.

Furthermore, the markets for medical and industrial robotic exoskeletons are continuing to develop. We cannot be certain that the markets for robotic exoskeletons will continue to develop as we expect, or that robotic exoskeletons for medical or industrial use will achieve widespread market acceptance. Additionally, the development of new or improved products, processes or technologies by other companies may render our products or proposed products less competitive or obsolete. The use of robotic devices is not universally accepted in the rehabilitation community and may never be. Current or future clinical trials and studies may not provide sufficient data that the rehabilitation community interprets to support the use of exoskeletons in rehabilitation. Any of these outcomes could materially and adversely affect our business, financial condition and operating results and prospects.

If we or our third-party manufacturers are unable to produce our products at a satisfactory quality, in a timely manner, in sufficient quantities or at an acceptable cost, our business could be negatively impacted.

In order to reduce manufacturing costs, we intend to transition a significant amount of our manufacturing processes to third parties. Reliance on third parties to manufacture our products presents significant risks to us, including the potential that manufacturing costs may be higher than if we had kept manufacturing in house, as well as risks of reduced control over delivery schedules and product reliability, manufacturing deviations from internal and regulatory specifications, failure of a manufacturer to perform its obligations to us for technical, market or other reasons, misappropriation of our intellectual property, and other risks in meeting schedules and satisfying requirements of our customers.

We have not entered into any long-term manufacturing or supply agreements for any of our products, and we may need to enter into additional agreements for the commercial development, manufacturing and sale of our products. There can be no assurance that we can do so on favorable terms, if at all.

Our products have been produced in quantities, and on timelines, sufficient to meet commercial demand and for us to satisfy our delivery schedules. However, our dependence upon others for the production of a portion of our products, or for a portion of the manufacturing process, may adversely affect our ability to satisfy demand, as well as to develop and commercialize new products, on a timely and competitive basis. If manufacturing capacity is reduced or eliminated at one or more of our third-party manufacturers' facilities, we could have difficulties fulfilling our customer orders, which could adversely affect customer relationships, and our net revenues and results of operations could decline.

Shortages in the materials used to manufacture our products and supply chain disruptions, including as a result of changes in trade policies, could impact our future results.

Due to a variety of factors, various materials we and the third-party manufacturers we rely on use to manufacture our products are currently, or may in the future, experience shortages and supply chain disruptions, including from shipping delays. Electronic components in general, battery cells, metals and plastics, all of which we use in our products, have, in the recent past, been in shorter supply compared to prior periods. Numerous factors, such as conflicts in the Middle East and Europe or further trade tensions between the United States and China, may prolong or deepen these challenges. Our operating results may be negatively impacted if global supply chains of semiconductors and other important commodities recur in the future.

Additionally, we may experience shortages and supply chain disruptions as a result of changes in domestic and international trade policies, including the imposition of higher tariffs on imports from various countries from which we procure raw materials and components to support the manufacturing and sale of our products, as well as retaliatory tariffs imposed by other countries. There have been significant changes to tariffs recently. While we believe that under current tariff criteria we will not be subject to additional direct costs from tariffs on the raw materials used to manufacture our medical products, we may be adversely impacted by indirect impact from tariff increases or the existing criteria may change such that we become subject to direct tariffs on imported raw materials. These tariffs could lead to increased costs for raw materials and components, which may not be fully passed on to our customers, thereby reducing our profit margins. Additionally, retaliatory tariffs could adversely affect our export sales. Such changes in trade policies may lead to supply chain disruptions and material shortages, which could adversely affect our financial results.

The uncertainty surrounding future trade policies and potential further tariff increases could also impact our strategic planning and investment decisions. We may need to adjust our sourcing strategies, explore alternative suppliers or consider other international contract manufacturer partners, all of which could cause us to incur substantial costs and face operational challenges. Furthermore, prolonged trade tensions and the potential for a trade war could lead to broader economic instability, affecting consumer confidence and demand for our products. We are actively monitoring developments in trade policies and are prepared to take necessary actions to mitigate these risks, but there can be no assurance that our efforts will be successful.

Certain of our customers utilize federal funding to purchase our products, and recent federal policy changes has disrupted, and could continue to disrupt, that funding.

Certain of our customers, including certain hospital systems, utilize federal funding to purchase our products. The current presidential administration has proposed and implemented certain budget cuts to key federal health agencies, which has reduced the availability of federal funding. Shifting priorities in federal research funding or a move toward industry partnerships over direct grant funding could further reduce the availability of federal funding for certain of our customers. These policy shifts have led, and may continue to lead, to a reduction or elimination of funding for programs for our customers, which has impacted their ability to purchase our products. As such, such reductions and potential further reductions could adversely impact our financial results.

Coverage policies and reimbursement levels of third-party payers, including Veteran's Administration, Medicare, Medicaid, and commercial payors may impact sales growth of our products.

To the extent that the adoption of our products by our customers is dependent in the future on their ability to obtain adequate reimbursement for the products or treatments provided using our product from third-party payers, including government payors such as Veteran's Administration ("VA"), Medicare, and Medicaid, as well as private payors, such as managed care organizations and commercial payors, the coverage policies and reimbursement levels of these third-party payers may impact the decisions of healthcare providers, facilities, or end users to purchase our products or the prices they would be willing to pay for those products. Reimbursement coverage could also affect the acceptance rates of new technologies. We have no control over these factors.

In the United States, there are multiple avenues for potential medical product reimbursement, including through government payors, such as VA and CMS, or private sector payors, such as commercial or managed health care organizations. Often principal decisions regarding initial reimbursement for new medical products are made by CMS, the largest domestic payor. The decisions made by CMS, including whether and to what extent a new product will be covered and reimbursed under Medicare, often precede adoption of private sector payors. However, because there is no uniform policy of coverage and reimbursement in the United States, each payor generally determines for its own enrollees or insured patients whether to cover or otherwise establish a policy to reimburse based on its own medical relevance testing. Additionally, seeking payor approvals is a time-consuming and costly process often involving third-party durable medical equipment providers ("DMEs"). Our business plan for our Personal Health

products depends in a large part on sales of our Ekso Indego Personal product to or through DMEs to individuals living with SCI. These individuals can either self-pay or submit for reimbursement through the public or private sector payor network.

With CMS currently having the largest number of covered patients, if CMS delays or cancels reimbursement decisions, or materially changes the reimbursement level it has set, our ability to sell into this market may be diminished. In addition, the policies affecting the implementation of individual reimbursement decisions are made by regional DME Medicare Administrative Contractors. Certain policies are not yet known to us and may affect the number of individual purchases that are approved to receive reimbursement in the future. In addition, we have no guarantee that our products will obtain insurance coverage beyond CMS and VA. We cannot be certain that coverage for our current and our planned future products will be provided in the future by additional payors or that existing agreements, policy decisions or reimbursement levels will remain in place, remain adequate, or be fulfilled under existing terms and provisions. If we cannot obtain coverage and adequate reimbursement from governmental and private sector payors, such as Medicare, Medicaid, Medicare Advantage, or commercial payors, for our current products or new products that we may develop in the future, demand for such products may decline or may not grow as we expect, which could limit our ability to generate revenue and have a material adverse effect on our financial condition, results of operations and cash flow.

The coverage and reimbursement market may be additionally impacted by future legislative changes. There are increasing efforts by governmental and private sector payors in the United States and abroad to cap or reduce healthcare costs which may cause such organizations to limit both coverage and the level of reimbursement for newly approved products and, as a result, they may not cover or provide adequate payment for our products. Specifically, there have been several recent U.S. presidential executive orders, Congressional inquiries, and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to drug and medical device pricing, reduce the cost under Medicare, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies. We expect to experience pricing pressures in connection with the sale of any of our products due to the trend toward managed healthcare, the increasing influence of health maintenance organizations, cost containment initiatives and additional legislative changes.

The acquisition and integration of other companies, businesses, or technologies could result in operating difficulties, dilution, and other harmful consequences.

We may selectively pursue strategic acquisitions, any of which could be material to our business, operating results, and financial condition. Future acquisitions could divert management's time and focus from operating our business. In addition, integrating an acquired company, business or technology is risky and may result in unforeseen operating difficulties and expenditures associated with integrating employees from the acquired company into our organization and integrating each company's accounting, management information, human resources and other administrative systems to permit effective management. The anticipated benefits of future acquisitions may not materialize, including our ability to expand our product offerings as a result of overlap in the addressable market for our existing products and the addressable market for products we may acquire. Future acquisitions or dispositions could result in potentially dilutive issuances of our equity securities, the incurrence of debt, contingent liabilities, amortization expenses, or write-offs of goodwill and intangible assets, any of which could harm our financial condition. Future acquisitions may also require us to obtain additional financing, which may not be available on favorable terms or at all.

We may not be able to enhance our product offerings through our research and development efforts.

In order to increase our sales and our market share in the exoskeleton market, we continue to invest in our research and development efforts and product offerings in response to the evolving demands of people with lower extremity impairment, other medical conditions and healthcare providers, as well as competitive technologies. We may decide to invest our business development resources in partnerships, licensing agreements, business acquisition, distribution arrangements, and other ways that will provide us new product offerings without significant research and development activities. We may not be successful in developing, obtaining regulatory approval for, or marketing our currently proposed products, or our approved products for additional indications, products proposed to be created in the future or products that will be available for us through business acquisitions and distribution arrangements. In addition, notwithstanding our market research efforts, our future products may not be accepted by consumers, their caregivers, healthcare providers or third-party payors who reimburse consumers for our products. The success of any proposed product offerings will depend on numerous factors, including our ability to:

- identify the product features that people with lower extremity impairment, their caregivers, and healthcare providers are seeking in a medical device that restores mobility and successfully incorporate those features into our products;
- identify the product features that people with lower extremity impairment or other similar indications require while the products are used at home as well as what items are valuable to the clinics that provide them rehabilitation;
- develop and introduce proposed products in sufficient quantities and in a timely manner;
- adequately protect our intellectual property and avoid infringing upon the intellectual property rights of third-parties;
- demonstrate the safety, efficacy, and health benefits of proposed products; and
- obtain the necessary regulatory clearances and approvals for proposed products.

If we fail to generate demand by developing products that incorporate features desired by consumers, their caregivers or healthcare providers, or if we do not obtain regulatory clearance or approval for proposed products in time to meet market demand, we may fail to generate sales sufficient to achieve or maintain profitability. We have in the past experienced, and we may in the future experience, delays in various phases of product development, including during research and development, manufacturing, limited release testing, marketing, and customer education efforts. Such delays could cause customers to delay or forgo purchases of our products, or to purchase our competitors' products. Even if we are able to successfully develop proposed products when anticipated, these products may not produce sales in excess of the costs of development, and they may be quickly rendered obsolete by changing consumer preferences or the introduction by our competitors of products embodying new technologies or features.

We will experience long and variable sales cycles.

The EksoNR and Ekso Indego Therapy products have a lengthy sale and purchase order cycle because it is a major capital expenditure item and generally requires the approval of senior management at purchasing institutions. Ekso Indego Personal likewise can have a long sales cycle due to the complexity of the sales channel and lengthy approval process by CMS contractors. Such delays may contribute to substantial fluctuations in our quarterly operating results.

International sales of our products are subject to factors outside of our control.

Our business currently depends in part on our activities in the EMEA, APAC, and other foreign markets. Our international activities are subject to a number of risks inherent in selling and operating abroad, including failure of local laws to provide the same degree of protection against infringement of our intellectual property rights; protectionist laws and business practices that favor local competitors, which could slow our growth in international markets; the expense of establishing facilities and operations in new foreign markets; building an organization capable of supporting geographically dispersed operations; challenges caused by distance, language and cultural differences; challenges caused by differences in legal regulations, markets, and customer preferences, which may limit our ability to adapt our products or succeed in other regions; multiple, conflicting, and changing laws and regulations, including complications due to unexpected changes in regulatory requirements, foreign laws, tax schemes, international import and export legislation, trading and investment policies, exchange controls and tariff and other trade barriers; foreign tax consequences; fluctuations in currency exchange rates and foreign currency translation adjustments; foreign exchange controls that might prevent us from repatriating income earned outside the United States; imposition of public sector controls; differing payer reimbursement regimes, governmental payers or patient self-pay systems and price controls; political, economic and social instability; and restrictions on the export or import of technology.

In addition, policy changes that result in increased international sales may not continue or may increase cyclicity of our sales cycles. For example, due to local policy changes, we saw increased sales in France in 2024. Such increased sales are expected to be limited to 2024 and future periods when such devices may be replaced in the future, to the extent such policy changes remain in effect.

We may never complete the development of any of our proposed products or product improvements into marketable products.

We do not know when or whether we will successfully complete the development of the planned development-stage or next generation exoskeletal technologies, or any other proposed, developmental, or contemplated product for any of our target markets. We continue to seek to improve our technologies before we are able to produce a commercially viable product. For example, we have developed and are continuing to evaluate our Nomad product in the clinical setting. While we expect to begin the general commercialization process for Nomad in 2026, we may be unsuccessful in our clinical efforts or receive negative patient feedback, which may delay such rollout or result in us abandoning the Nomad product altogether.

Failure to improve any of our technologies could delay or prevent their successful development for any of our target markets. Developing any technology into a marketable product is a risky, time-consuming and expensive process. You should anticipate that we will encounter setbacks, discrepancies requiring time-consuming and costly redesigns and changes and that there is the possibility of outright failure. We may not meet our product development, manufacturing, regulatory, commercialization and other milestones.

We have historically relied, and in the future may rely, on sales of our EksoNR, Ekso Indego Therapy and Ekso Indego Personal for a significant portion of our revenue.

We currently rely, and in the future will rely, on sales of our EksoNR, Ekso Indego Therapy and Ekso Indego Personal for a large portion of our revenue. These products are relatively new, and market acceptance and adoption depends on educating people with lower extremity impairment, physical therapists and other clinicians as to the distinct features, ease-of-use, improved quality of life and other benefits when compared to alternative therapies. These products may not be perceived to have sufficient potential benefits compared with their alternatives. In addition, physical therapists and other clinicians may be slow to change their treatment practices because of perceived liability risks arising from the use of new products. Accordingly, physical therapists and other clinicians may not recommend these products until there is sufficient evidence to convince them to alter the treatment methods they typically recommend. Such evidence may include endorsements from prominent healthcare providers or other key leaders in the lower extremity impairment and neurological impairment communities attesting to the effectiveness of these products in providing identifiable immediate and long-term quality of life benefits, and the publication of peer-reviewed clinical studies demonstrating their value. Any factors that negatively impact sales of these products would adversely affect our business, financial condition and operating results.

We rely on independent distributors for the sale and marketing of our products in certain geographies.

In non-German-speaking countries in Europe, other countries in EMEA, and countries in APAC except Singapore, we rely on independent distributors to distribute and assist us with the marketing and sale of our products. These distributors are our principal customers, and revenue growth will depend in large part on our success in establishing and maintaining this sales and distribution channel. If any of our key independent distributors were to cease to distribute our products, our sales could be adversely affected. Further, our independent distributors fail to comply with their regulatory requirements, that could prevent them from marketing and selling our products. In such situations, we may need to seek alternative independent distributors or increase our reliance on our other independent distributors or our direct sales representatives, which may not prevent our sales from being adversely affected.

Our success depends on our management team, and on our ability to hire, train, retain, and motivate employees.

Our success depends on our management team and on our ability to identify, hire, train and retain highly qualified managerial, technical and sales and marketing personnel. Any significant leadership change and accompanying senior management transition, and the hiring of other new leaders in key roles, involves inherent risk and any failure to ensure a smooth transition could hinder our strategic planning, execution and future performance. In addition, as we introduce new products or services, we will need to hire additional personnel. Competition for personnel with the required knowledge, skill and experiences has, from time to time, been intense, particularly in the San Francisco Bay area, where we are headquartered, and we may not be able to attract, assimilate or retain such personnel. The inability to attract and retain the necessary managerial, technical and sales and marketing personnel could have a material adverse effect on our business, results of operations and financial condition.

Shutdowns of the U.S. federal government could materially impair our business and financial condition.

Development of our product candidates or regulatory approval may be delayed for reasons beyond our control. For example, starting in October 2025, the U.S. federal government shut down for 43 days, and certain regulatory agencies, such as the FDA and the SEC, had to furlough critical FDA, SEC, and other government employees and stop critical activities. If a prolonged government shutdown or budget sequestration occurs, it could significantly impact the ability of the FDA to timely review and process our regulatory submissions, which could have a material adverse effect on our business. In addition, while CMS reimbursement is considered an essential service and is thus less likely to be affected, other administrative functions within CMS could be affected, including as a result of the executive and congressional branches of the U.S. government being unable to reach a resolution on the deployment of the federal government's funds]. Further, in our operations as a public company, future government shutdowns could impact our ability to access the public markets, such as through the declaration of effectiveness of registration statements and obtain necessary capital in order to properly capitalize and continue our operations.

Damage to our brand and reputation could have an adverse effect on our business and financial performance.

One of our largest assets is the value of our brands, which is directly linked to our reputation. We must protect our reputation in order to continue to be successful and to grow the value of our brands. Negative publicity directed at any of our brands, regardless of factual basis, such as, relating to product quality, service quality, customer complaints or litigation alleging deficiencies or defects in design or manufacture of our products, adverse events made to the FDA under the Manufacturer and User Facility Device Experience Database relating to any of our products, or any other adverse event involving our products, any failure to comply with applicable regulations or standards, allegations of harassment, or other negative publicity, could damage our reputation. Negative publicity about us could harm our reputation and damage the value of our brands, which could materially and adversely affect our financial performance.

We may not be able to reduce the cost to manufacture or service our products as planned.

Our business plan assumes that exoskeletons can be manufactured more inexpensively than they are currently being manufactured. However, we have not yet found a way to significantly reduce the manufacturing cost of our products and doing so may prove more difficult than expected or even impossible. For example, if expectations for greater functionality of the products drive costs up as other factors drive costs down, the result may be that the overall cost of manufacturing the product stays the same or even increases. Likewise, we currently provide service and support of our products for our customers at a high standard (both in and out of warranty), and plan on continuing to do so. Our business plan also assumes that as we continue to improve our product, we achieve improved levels of product reliability and decreased service cost and frequency, which also may prove more difficult than expected.

Financial & Accounting Risks

We have incurred significant losses to date and anticipate continuing to incur losses in the future, and we may not achieve or maintain profitability.

We have thus far been largely dependent on capital raised through the sale of equity securities in various public and private offerings, and we have incurred losses in each fiscal year since our incorporation in 2005. Our net losses were \$11.7 million and \$11.3 million for the years ended December 31, 2025 and 2024, respectively. As of December 31, 2025 and 2024, we had an accumulated deficit of \$262.4 million and \$250.5 million, respectively.

The operation of our business and our growth efforts will require significant cash outlays to support our operations. We believe we have sufficient resources to operate for the foreseeable future based upon our current cash resources, expected rate of cash to be used for operations assuming modest increases in current revenue and operating expenses remaining flat, and cash required to satisfy debt obligations. However, unless we are able to generate significant revenues from sales, we will not be able to achieve or maintain profitability in the near future or at all, and we will remain largely dependent on capital raised from past and future financings to implement our business plan, support our operations and service our debt obligations. Our lack of profitability may depress our stock price, and if we are unable to become profitable, we may be required to reduce the scope of our business development activities, which could harm our business plans, financial condition and operating results, or to cease our operations entirely.

Our promissory note agreement imposes certain financial and operational restrictions on us, limiting the discretion of our management in operating our business.

Our Secured Promissory Note and Security Agreement with B. Riley Commercial Capital, LLC ("B. Riley"), which we entered into in September 2025 (the "B. Riley Promissory Note"), contains, subject to certain carve-outs, various restrictive covenants that limit our management's discretion in operating our business. In particular, these instruments limit our ability to, among other things, incur additional debt, grant liens on assets, sell assets outside the ordinary course of business, pay dividends and make certain fundamental business changes. Our obligations, which mature on the earlier of the receipt of \$2.4 million in net proceeds from the sale of the equity interests of the Company from new equity investors or September 2026. The obligations under the B. Riley Promissory Note are guaranteed by Ekso Bionics, Inc. ("Guarantor") and are secured by a security interest in substantially all of our assets and Guarantor's assets. As a result, we may need to use our capital resources to repay the B. Riley Promissory Note in order to undertake certain financing or strategic transactions.

In addition, we issued shares of Series B Preferred Stock to certain purchasers in connection with the Private Placement (as defined below). The shares of Series B Preferred Stock are redeemable at the Company's or the holder's option at the Stated Value (as defined in the Certificate of Designation of the Powers, Preferences and Relative, Participating, Option and Other Restrictions of the Series B Preferred Stock (the "Certificate of Designation")) starting on January 26, 2027. The shares of Series B Preferred Stock are also redeemable at the holder's option at the Stated Value upon a Trading Failure (as defined in the Certificate of Designation), subject to certain exceptions. Our redemption obligations with respect to the Series B Preferred Stock could adversely affect our liquidity and reduce the amount of cash available for working capital, capital expenditures, growth opportunities, acquisitions and other general corporate purposes.

We may be unable to generate sufficient cash flow to service our debt obligations and operate our business.

As described in Note 9. *Notes Payable*, net to the consolidated financial statements, we have material near-term indebtedness due to the B. Riley Promissory Note and the \$5 million unsecured, subordinated promissory note (the "Parker Hannifin Promissory Note") we delivered to Parker Hannifin Corporation in connection with the HMC Acquisition.

Servicing our debt requires a significant amount of cash. While we anticipate that we will have adequate cash resources to fund our operations and satisfy our debt obligations, our ability to generate sufficient cash depends on numerous factors beyond our control and our business may not generate sufficient cash flow from operating activities. Our ability to make payments on, and refinance, our debt and fund planned capital expenditures will depend on our ability to generate cash in the future. To some extent, this is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control, including rising interest rates.

We cannot assure our business will generate sufficient cash flow from operations, or future borrowings will be available to us in an amount sufficient to fund our liquidity needs.

If our cash flows and capital resources are insufficient to service our indebtedness, we may be forced to reduce or delay capital expenditures, sell assets or product lines, seek additional capital or restructure or refinance our indebtedness. These alternative measures may not be successful and may not permit us to meet our scheduled debt service obligations. Our ability to restructure or refinance our debt will depend on the condition of the capital markets and our financial condition at such time. Any refinancing of our debt could be at higher interest rates and may require us to comply with more onerous covenants, which could further restrict our business operations.

We might not be able to continue as a going concern.

Our audited consolidated financial statements as of December 31, 2025 have been prepared under the assumption that we will continue as a going concern for the next twelve months. As of December 31, 2025, we had cash of \$1.2 million and an accumulated deficit of \$262.4 million. We do not believe that our cash is sufficient to fund our operations for the next 12 months. We will need to increase revenues substantially beyond levels that we have attained in the past in order to generate sustainable operating profit and sufficient cash flows to continue doing business without raising additional capital from time to time. As a result of our expected operating losses and cash burn for the foreseeable future and recurring losses from operations, if we are unable to raise sufficient capital through additional debt or equity arrangements, there will be uncertainty regarding our ability to maintain liquidity sufficient to operate our business effectively, which raises substantial doubt as to our ability to continue as a going concern. If we cannot continue as a viable entity, our stockholders would likely lose most or all of their investment in us.

If the Business Combination is not completed, this going concern uncertainty would persist and could intensify, adversely affecting our relationships with customers, suppliers, and other counterparties, and limiting our access to additional capital. If we are unable to consummate the Business Combination or generate sustainable operating profit and sufficient cash flows, then our future success will depend on our ability to raise capital. We are seeking additional financing and evaluating financing alternatives in order to meet our cash requirements for the next 12 months. We cannot be certain that raising additional capital, whether through selling additional debt or equity securities or obtaining a line of credit or other loan, will be available to us or, if available, will be on terms acceptable to us. If we issue additional securities to raise funds, these securities may have rights, preferences, or privileges senior to those of our common stock, and our current stockholders may experience dilution. If we are unable to obtain funds when needed or on acceptable terms, we may be required to curtail our current product development programs, cut operating costs, forego future development and other opportunities or even terminate our operations.

Material impairments in the value of our intangible assets, including developed technology and trade name, have affected, and could further negatively affect, our operating results.

We regularly review our intangible assets, including our goodwill, for impairment. Goodwill and other intangible assets are subject to impairment review on an annual basis and whenever potential impairment indicators are present. Changes in market conditions or other changes in the future outlook of value may lead to impairment charges. Future results, events or decisions may lead to asset impairments and/or related charges. Certain non-cash impairments may result from failure to achieve the expected financial results with respect to acquired assets and/or a change in our strategic goals, business direction or other factors relating to the overall business environment. Material impairment charges could negatively affect our results of operations.

For example, we recorded \$2.3 million for each of the developed technology and trade name assets relating to our acquisition of the Human Motion Control business unit of Parker Hannifin Corporation in our consolidated financial statements included in this Annual Report. Failure to recognize sufficient revenue from the technology received in such acquisition has led to a \$0.6 million impairment loss on the value of our trade name asset for the year ended December 31, 2025, which is material to our results of operations. In the future, failure to recognize sufficient revenue from the technology received in such acquisition could lead to impairment charges on the value of our developed technology assets and could lead to further impairment charges on the value of our trade name asset in future periods, including as soon as the first quarter of 2026, which could be material to our results of operations. Additionally, for the year ended December 31, 2025, we recorded a \$0.2 million impairment loss on the full carrying value of one of our intellectual property assets due to the termination of a licensing agreement affecting the future potential revenues of such asset. For more information, see our audited consolidated financial statements included in this Annual Report.

We may not be able to leverage our cost structure or achieve better margins.

Due to the early-stage customer adoption of our products, our current sales and marketing, research and development, and general and administrative expenses are each a higher percentage of sales than they will need to be for us to reach profitability. While we do expect these expenses to grow as our business grows, we also expect these expenses to decline as a percentage of revenues over time. If we are unable to leverage these costs and grow revenues at a greater pace than these operating expenses as we expect, we will not be able to achieve viable operating margins and profitability.

We could fail to maintain effective internal control over our financial reporting.

Section 404 of the Sarbanes-Oxley Act of 2002 requires us to include in our annual reports on Form 10-K and quarterly reports on Form 10-Q an assessment by management of the effectiveness of our internal control over financial reporting. While we believe that the policies, processes and procedures we have put in place will be sufficient to maintain the effectiveness of our internal controls over financial reporting, our initiatives may not prove successful. If so, management may not be able to conclude that our internal control over financial reporting is effective. This could result in a loss of investor confidence in the reliability of our financial statements, which in turn could negatively affect the price of our common stock. In addition, we must perform system and process evaluation and testing of our internal control over financial reporting to allow management to report on the effectiveness of our internal control over financial reporting, as required by Section 404. Our compliance with Section 404 may require that we incur substantial accounting expense and expend significant management efforts.

Intellectual Property Risks

Protecting our intellectual proprietary rights can be costly, and our success in doing so is not certain.

Our long-term success largely depends on our ability to market technologically competitive products. Failure to protect or to obtain, maintain or extend adequate patent and other intellectual property rights could have a material adverse impact on our competitive advantage and impair our business. Our issued patents may not be sufficient to protect our intellectual property and our patent applications may not result in issued patents. Even if our patent applications issue as patents, they may not issue in a form that will provide us with any meaningful protection, prevent competitors from competing with us or otherwise provide us with any competitive advantage. Our competitors may be able to circumvent our patents by developing similar or alternative technologies or products in a non-infringing manner or may challenge the validity of our patents. Our attempts to prevent third parties from circumventing our intellectual property and other rights ultimately may be unsuccessful. We may also fail to take the required actions or pay the necessary fees to maintain any of our patents that issue.

Furthermore, we have not filed applications for all of our inventions internationally and may not be able to prevent third parties from using our proprietary technologies or may lose access to technologies critical to our products in other countries. These include, in some cases, countries in which we are currently selling products and countries in which we intend to sell products in the future.

Intellectual property litigation and infringement claims could cause us to incur significant expenses or prevent us from selling certain of our products.

The industries in which we operate, including, in particular, the medical device industry, are characterized by extensive intellectual property litigation and, from time to time, we might be the subject of claims by third parties of potential infringement or misappropriation. Regardless of outcome, such claims are expensive to defend and divert the time and effort of our management and operating personnel from other business issues. A successful claim or claims of patent or other intellectual property infringement against us could result in our payment of significant monetary damages and/or royalty payments or negatively impact our ability to sell current or future products in the affected category and could have a material adverse effect on our business, cash flows, financial condition or results of operations.

Because competition in our industry is intense, competitors may infringe or otherwise violate our issued patents, patents of our licensors or other intellectual property. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time-consuming. Any claims we assert against perceived infringers could provoke these parties to assert counterclaims against us alleging that we infringe their patents. In addition, in a patent infringement proceeding, a court may decide that a patent of ours is invalid or unenforceable, in whole or in part, construe the patent's claims narrowly, or refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation proceeding could put one or more of our patents at risk of being invalidated or interpreted narrowly. We may also elect to enter into license agreements in order to settle patent infringement claims or to resolve disputes prior to litigation, and any such license agreements may require us to pay royalties and other fees that could be significant. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure.

Some of the patents and patent applications in the intellectual property portfolio are not within our complete control, which could reduce the value of such patents.

Some of our U.S. patents (which have associated international patents and applications) that cover our commercial products are co-owned by UC Berkeley. UC Berkeley has exclusively licensed its rights under many of these patents to us, but we do not have an exclusive license to UC Berkeley's rights under three of these patents.

UC Berkeley has licensed their U.S. rights in two of these three co-owned patents to an unrelated third-party.

The third patent is a continuation-in-part of a patent that UC Berkeley has licensed to us. Under the terms of the relevant license agreement between us and UC Berkeley, we have exclusive rights to any claims that are fully supported by the specification in the parent application. However, any claims that are not based on the specification in the parent application are co-owned by UC Berkeley and us, and UC Berkeley's rights in respect of such claims are not exclusively licensed to us. There is no assurance that we will be able to obtain a license to UC Berkeley's rights in any such claims on commercially reasonable terms or at all, and UC Berkeley may choose to license its rights to third parties instead of us.

If we fail to comply with our obligations in the agreements under which we license intellectual property rights from third-parties or otherwise experience disruptions to our business relationships with our licensors, we could lose intellectual property rights that are important to our business.

We are a party to two exclusive license agreements with UC Berkeley, covering ten patents exclusively licensed to us. In addition, we are party to two license agreements with Vanderbilt University. We may also need to obtain additional licenses from others to advance our research and development activities or allow the commercialization of our devices or any other devices we may identify and pursue. Our license agreements with UC Berkeley and Vanderbilt University impose various development, diligence, commercialization, and other obligations on us, and any future license agreements may impose similar or other obligations on us. For example, under our license agreements with UC Berkeley and Vanderbilt University, we must satisfy specified minimum annual royalty payment obligations. In spite of our efforts, our licensors might conclude that we have materially breached our obligations under such license agreements and might therefore terminate the license agreements, thereby removing or limiting our ability to develop and commercialize products and technology covered by these license agreements. If our license agreements with UC Berkeley or Vanderbilt University are terminated, competitors or other third parties would have the freedom to seek regulatory approval of, and to market, products that may be identical or functionally similar to our devices and we may be required to cease our development and commercialization of such devices. Any of the foregoing could have a material adverse effect on our competitive position, business, financial conditions, results of operations and prospects.

Moreover, disputes may arise between us and our counterparties, including with our non-Company-sponsored single clinical study partner for our Nomad product, regarding intellectual property subject to a licensing agreement, including the scope of rights granted under the license agreement and other interpretation-related issues; the extent to which our devices, technology and processes infringe on intellectual property of the licensor that is not subject to the licensing agreement; the sublicensing of patent and other rights under our collaborative research and development relationships; our diligence obligations under the license agreement and what activities satisfy those diligence obligations; the ownership of inventions and know-how resulting from the joint creation or use of intellectual property by our licensors and us and our partners; and the priority of invention of patented or patentable technology. In addition, certain provisions in our license agreements with UC Berkeley and Vanderbilt University may be susceptible to multiple interpretations. The resolution of any contract interpretation disagreement that may arise could narrow what we believe to be the scope of our rights to the relevant intellectual property or technology, or increase what we believe to be our financial or other obligations under the agreement, either of which could have a material adverse effect on our business, financial condition, results of operations and prospects. Moreover, if disputes over intellectual property that we have licensed prevent or impair our ability to maintain our current licensing arrangements on commercially acceptable terms, we may be unable to successfully develop and commercialize the affected devices, which could have a material adverse effect on our business, financial conditions, results of operations and prospects.

Patent terms may be inadequate to protect our competitive position on our devices for an adequate amount of time.

Patents have a limited lifespan. In the United States, if all maintenance fees are timely paid, the natural expiration of a patent is generally 20 years from its earliest U.S. non-provisional filing date. Various extensions may be available, but the life of a patent, and the protection it affords, is limited. Even if patents covering our devices are obtained, once the patent life has expired, we may be open to competition from competitive products. Given the amount of time required for the development, testing and regulatory review of new devices, patents protecting such devices might expire before or shortly after such devices are commercialized. As a result, our owned and licensed patent portfolio may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours.

Legal and Regulatory Compliance Risks

If we fail to obtain or maintain necessary regulatory clearances or approvals for our medical device products, or if clearances or approvals for future products or modifications to existing products are delayed or not issued, our commercial operations would be harmed.

Our EksoNR, Ekso Indego, and Nomad products are medical devices and are regulated by the FDA, the European Union and other governmental authorities both inside and outside of the United States. These agencies enforce laws and regulations that govern the development, testing, clinical trials, manufacturing, labeling, advertising, marketing and distribution, recordkeeping, recalls and field safety corrective actions, and market surveillance of our medical products. Our failure to comply with these complex laws and regulations could have a material adverse effect on our business, results of operations, financial condition and cash flows.

In the United States, before we can market a new medical device, or a new use of, new claim for or significant modification to an existing product, we must first receive either clearance under Section 510(k) of the FDCA or approval of a premarket approval ("PMA") application from the FDA, unless an exemption applies. Both the PMA and the 510(k) clearance process can be expensive, lengthy and uncertain. The FDA's 510(k) clearance process may take anywhere from several months to over a year. The process of obtaining a PMA is much more costly and uncertain than the 510(k) clearance process and generally takes from one to three years, or even longer, from the time the application is filed with the FDA. In addition, PMA generally requires the performance of one or more clinical trials.

The FDA also has substantial discretion in the medical device review process. Despite the time, effort and cost, we cannot assure you that any particular device will be approved or cleared by the FDA. Any delay or failure to obtain necessary regulatory approvals could harm our business. Failure can occur at any stage, and we could encounter problems that cause us to repeat or perform additional development, standardized testing, pre-clinical studies and clinical trials. Any delay or failure to obtain necessary regulatory approvals could harm our business.

The FDA or other non-U.S. regulatory authorities can delay, limit or deny clearance or approval of a medical device candidate for many reasons, including a medical device candidate may not be deemed to be substantially equivalent to a device lawfully marketed either as a grandfathered device or one that was cleared through the 510(k) premarket notification process; a medical device candidate may not be deemed to be substantially equivalent to a device lawfully marketed either as a grandfathered device or one that was cleared through the 510(k) premarket notification process; a medical device candidate may not be deemed to be in conformance with applicable standards and regulations; FDA or other regulatory officials may not find the data from pre-clinical studies and clinical trials or other product testing data to be sufficient; other non-U.S. regulatory authorities may not approve our processes or facilities or those of any of our third-party manufacturers, thereby restricting export; or the FDA or other non-U.S. regulatory authorities may change clearance or approval policies or adopt new regulations.

Even after regulatory clearance or approval has been granted, a cleared or approved product and its manufacturer are subject to extensive regulatory requirements relating to manufacturing, labeling, packaging, adverse event reporting, storage, advertising and promotion, recordkeeping, and recalls and field safety corrective actions of the product. If we fail to comply with the regulatory requirements of the FDA or other non-U.S. regulatory authorities, or if previously unknown problems with our products or manufacturing processes are discovered, we could be subject to administrative or judicially imposed sanctions, including restrictions on the products, manufacturers or manufacturing process; adverse publicity; adverse inspectional observations (Form 483), warning letters, non-warning letters incorporating inspectional observations; consent decrees; civil or criminal penalties or fines; injunctions; product seizures, detentions or import bans; voluntary or mandatory product recalls and publicity requirements; suspension or withdrawal of regulatory clearances or approvals; total or partial suspension of production; imposition of restrictions on operations, including costly new manufacturing requirements; refusal to clear or approve pending applications or premarket notifications; and import and export restrictions.

If imposed on us, any of these sanctions could have a material adverse effect on our reputation, business, results of operations and financial condition.

Our products and operations are subject to extensive government regulation and oversight in the United States and other countries where we commercialize our medical devices.

Medical devices regulated by the FDA are subject to "general controls" which include: registration with the FDA; listing commercially distributed products with the FDA; complying with all applicable requirements under the QMSR, which went into effect in February 2026; filing reports with the FDA of and keeping records relative to certain types of adverse events associated with devices under the medical device reporting regulation; assuring that device labeling complies with device labeling requirements; reporting certain device field removals and corrections to the FDA; and obtaining pre-market notification 510(k) clearance for devices prior to marketing. Some devices known as "510(k)-exempt" devices can be marketed without prior marketing-clearance or approval from the FDA. In addition to the "general controls," some Class II medical devices are also subject to "special controls," including adherence to a particular guidance document and compliance with the performance standard. Instead of obtaining 510(k) clearance, most Class III devices are subject to PMA.

Although our Class II medical devices have received regulatory clearance from FDA in the United States for a particular patient population, they will be subject to ongoing regulatory requirements for manufacturing, labeling, packaging, storage, advertising, promotion, sampling, record-keeping, conduct of post-marketing studies and submission of safety, effectiveness and other post-market information, including both federal and state requirements in the United States and requirements of comparable non-U.S. regulatory authorities in any international markets we choose to enter.

Any regulatory clearances that we have received for our products will be subject to limitations on the cleared or approved indicated uses for which the product may be marketed and promoted, will be subject to the conditions of approval, or will contain requirements for potentially costly post-marketing testing. We are required to report certain adverse events and production problems, if any, to the FDA and comparable foreign regulatory authorities. Any new legislation addressing product safety issues could result in increased costs to assure compliance. The FDA and other agencies, including the DOJ, closely regulate and monitor the post-clearance or approval marketing and promotion of products to ensure that they are marketed and distributed only for the cleared or approved indications and in accordance with the provisions of the cleared or approved labeling. We have to comply with requirements concerning advertising and promotion for our products.

Promotional communications with respect to devices are subject to a variety of legal and regulatory restrictions and must be consistent with the information in the products' cleared or approved labeling. As such, we may not promote our products for indications or uses for which they do not have clearance. If the FDA determines that our promotional, reimbursement or training materials for sales representatives or doctors constitute promotion of an off-label use, the FDA could request that we modify our training, promotional or reimbursement materials and/or subject us to regulatory or enforcement actions, including the issuance of an untitled letter, a warning letter, injunction, seizure, disgorgement of profits, significant penalties, including civil fines and criminal penalties. Other federal, state or foreign governmental authorities also might take action if they consider our promotion, reimbursement or training materials to constitute promotion of an off-label use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement. Although we train our sales force not to promote our products for off-label uses, and our instructions for use in all markets specify that our products are not intended for use outside of those indications cleared or approved for use, the FDA or another regulatory agency could conclude that we have engaged in off-label promotion. For example, the government may take the position that off-label promotion resulted in inappropriate reimbursement for an off-label use in violation of the federal civil False Claims Act for which it might impose significant civil fines and even pursue criminal action. In those possible events, our reputation could be damaged, and adoption of the products would be impaired.

If a regulatory agency discovers previously unknown problems with a product, such as adverse events of unanticipated severity or frequency, or problems with our facility where the product is manufactured or disagrees with the promotion, marketing or labeling of a product, such regulatory agency may impose restrictions on that product or us, including requiring withdrawal of the product from the market.

If we fail to comply with applicable regulatory requirements, a regulatory agency or enforcement authority may, among other things:

- subject our facility to an adverse inspectional finding or Form 483, or other compliance or enforcement notice, communication or correspondence;
- issue warning or untitled letters that would result in adverse publicity or may require corrective advertising;
- impose civil or criminal penalties;
- suspend or withdraw regulatory clearances or approvals;
- refuse to clear or approve pending applications or supplements to approved applications submitted by us;
- impose restrictions on our operations, including closing our sub-assembly suppliers' facilities;
- seize or detain products; or
- require a product recall.

In addition, violations of the FDCA relating to the promotion of approved products may lead to investigations alleging violations of federal and state healthcare fraud and abuse and other laws, as well as state consumer protection laws. Any government investigation of alleged violations of law could require us to expend significant time and resources in response and could generate negative publicity. Any failure to comply with ongoing regulatory requirements may significantly and adversely affect our ability to commercialize and generate revenue from our products. If regulatory sanctions are applied or if regulatory clearance or approval is withdrawn, it would have a material adverse effect on our business, financial condition and results of operations.

In addition, FDA and other regulatory authorities may change their policies, issue additional regulations or revise existing regulations, any of which could delay our ability to obtain new marketing authorizations and increase the costs of compliance or restrict our ability to maintain any regulatory authorizations we may have obtained. In June 2024, the U.S. Supreme Court overruled the Chevron doctrine, which gives deference to regulatory agencies' statutory interpretations in litigation against federal government agencies, such as the FDA where the law is ambiguous. This Supreme Court decision may invite more stakeholders to bring lawsuits against the FDA to challenge longstanding decisions and policies of the FDA, which could undermine the FDA's authority, lead to uncertainties in the industry, and disrupt the FDA's normal operations, any of which could delay the FDA's review of pending submissions. We cannot predict the full impact of this decision on us or the medical device industry in general. Further, changes in the leadership of the FDA and other federal agencies under the new Trump administration can result in changes in the agencies' operations and policies, which may impact our product development plans and timelines.

Modifications to our current and our future products may require new 510(k) clearances or premarket approvals, or may require us to cease marketing or recall the modified products until clearances are obtained.

An element of our strategy is to continue to upgrade our robotic exoskeleton platform to incorporate new software and hardware enhancements. Any modification to a 510(k)-cleared device, including our EksoNR, Ekso Indego Therapy, and Ekso Indego Personal, that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, design, or manufacture, requires a new 510(k) clearance or, possibly, a PMA. The FDA requires every manufacturer to make this determination in the first instance based on the final guidance document issued by the FDA in October 2017 addressing when to submit a new 510(k) application due to modifications to 510(k)-cleared devices and a separate guidance document on when to submit a new 510(k) application due to software changes to 510(k)-cleared devices. Although largely aligned with the FDA's longstanding guidance document issued in 1997, the 2017 guidance includes targeted changes intended to provide additional clarity on when a new 510(k) application is needed. The FDA may review our determinations regarding whether new clearances or approvals are necessary, and may not agree with our decisions. If the FDA disagrees with our determinations for any future changes, or prior changes to previously marketed products, as the case may be, we may be required to cease marketing or to recall the modified products until we obtain clearance or approval, and we may be subject to significant regulatory fines or penalties.

We may introduce new products with enhanced features and extended capabilities from time to time. The products may be subject to various regulatory processes, and we may need to obtain and maintain regulatory approvals in order to sell our new products. If a potential purchaser of our products believes that we plan to introduce a new product in the near future or if a potential purchaser is located in a country where a new product that we have introduced has not yet received regulatory approval, planned purchases may be deferred or delayed. As a result, new product introductions may adversely impact our financial results.

We must obtain certain regulatory approvals in the EU, which could be costly and time-consuming and subject us to unanticipated delays or prevent us from marketing certain devices.

In the EU, we are required to comply with the EU MDR and obtain CE Certificates of Conformity in order to affix the CE Mark and market medical devices. As of December 31, 2025, our EksoNR product had yet been approved under the EU MDR. We have submitted an application to obtain CE Certificates of Conformity in order to affix the CE Mark to EksoNR. Such application may be delayed or denied. Specifically, changes in regulatory policy for the approval or CE marking of a medical device during the period of product development and regulatory agency review or notified body review of each submitted new application may cause delays or rejections. In March 2023, the European Commission extended the original compliance dates for the EU MDR. As a result, the EU MDR transitional period deadline for our products was set to December 31, 2028. Failure to comply with the EU MDR requirements by the EU MDR transitional period deadline would prevent us from generating revenue from sales of our products in the EU, which could adversely affect our business, results of operations and financial condition.

Our failure to meet strict post-market regulatory requirements with respect to our products could require us to pay fines, incur other costs or even close our facilities.

If we, or our suppliers, fail to comply with the FDA's QMSR, which went into effect in February 2026, or other applicable foreign regulations, our manufacturing or distribution operations could be delayed or shut down and our revenue could suffer. Our manufacturing and design processes and those of our third-party component suppliers are required to comply with the FDA's QMSR, which covers procedures and documentation of the design, testing, production, control, quality assurance, labeling, packaging, storage and shipping of our products in the United States.

We are also subject to similar state requirements and licenses, and to ongoing ISO 13485 compliance in our operations, including design, manufacturing, and service. In addition, we must engage in extensive recordkeeping and reporting and must make available our facilities and records for periodic unannounced inspections by governmental agencies, including the FDA, state authorities, and applicable agencies in other countries. These regulatory requirements and changes to the requirements may significantly increase our production costs and may even prevent us from making our products in amounts sufficient to meet market demand. If we change our approved manufacturing process, the FDA may need to review the process before it may be used. The FDA enforces the QMSR through periodic announced and unannounced inspections of manufacturing facilities. Failure to comply with regulatory requirements such as QMSR may result in changes to labeling, restrictions on such products or manufacturing processes, withdrawal of the products from the market, voluntary or mandatory recalls, a requirement to repair, replace or refund the cost of any medical device we manufacture or distribute, fines, suspension of regulatory approvals, product seizures, injunctions or the imposition of civil or criminal penalties which would adversely affect our business, operating results and prospects.

The QMSR, which incorporates by reference the quality management system requirements of ISO 13485:2016, went into effect on February 2, 2026. If we or any of our suppliers or contractors fail to meet the regulatory requirements or a regulatory inspection, our operations could be disrupted and our manufacturing interrupted. Failure to take timely and adequate corrective action in response to an adverse regulatory inspection could result in, among other things, a shutdown of our manufacturing or product distribution operations, significant fines, suspension of marketing clearances and approvals, seizures or recalls of our device, operating restrictions and criminal prosecutions, any of which would cause our business to suffer.

Federal, state and non-U.S. regulations regarding the manufacture and sale of medical devices are subject to future changes. The complexity, timeframes and costs associated with obtaining marketing clearances are unknown. Although we cannot predict the impact, if any, these changes might have on our business, the impact could be material.

We can provide no assurance that we will continue to remain in material compliance with the QMSR, which went into effect in February 2026, replacing the QSR. If the FDA or any applicable agencies inspect any of our facilities and discover compliance problems, we may have to cease manufacturing and product distribution until we can take the appropriate remedial steps to correct the audit findings. Taking corrective action may be expensive, time consuming and a distraction for management and if we experience a delay at our manufacturing facility, we may be unable to produce our products, which would harm our business.

We may be subject to fines, penalties or injunctions if we are determined to be promoting the use of our products for unapproved or "off-label" uses.

Any cleared or approved product may be promoted only for its indicated uses and our promotional materials must comply with FDA and other applicable laws and regulations. We believe that the specific use for which our products are marketed fall within the scope of the indications for use that have been cleared by the FDA. However, if the FDA determines that our promotional materials or training constitutes promotion of an unapproved use, it could request that we modify our promotional materials or subject us to regulatory or enforcement actions, including the issuance of an untitled letter, a warning letter, injunction, seizure, civil fine and criminal penalties. It is also possible that other federal, state or foreign enforcement authorities might take action if they consider our promotional or training materials to constitute promotion of an unapproved use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement. In that event, our reputation could be damaged and adoption of the products would be impaired.

We may be subject to adverse medical device reporting obligations, voluntary corrective actions or agency enforcement actions.

Under the FDA's medical device reporting or EU MDR regulations, we are required to report to the FDA any incident in which our product may have caused or contributed to a death or serious injury or in which our product malfunctioned and, if the malfunction were to recur, would likely cause or contribute to death or serious injury. For example, we have been informed of a limited number of events with respect to our EksoNR device that have been determined to be reportable pursuant to the EU MDR regulations. In each case, the required EU MDR report was filed with the FDA.

In addition, all manufacturers bringing medical devices to market in the European Economic Area are legally bound to report any incident that led or might have led to the death or serious deterioration in the state of health of a patient, user or other person, and which the manufacturer's device is suspected to have caused, to the competent authority in whose jurisdiction the incident occurred. In such case, the manufacturer must file an initial report with the relevant competent authority, which would be followed by further evaluation or investigation of the incident and a final report indicating whether further action is required. The events described above that were reported to the FDA were also reported to the relevant EU regulatory authorities.

We are also required to follow detailed recordkeeping requirements for all Company-initiated medical device corrections and removals, and to report such corrective and removal actions to the FDA if they are carried out in response to a risk to health and have not otherwise been reported under the MDR regulations. The FDA and similar foreign governmental authorities also have the authority to require the recall of commercialized products in the event of material deficiencies or defects in design, labeling or manufacture of a product or in the event that a product poses an unacceptable risk to health. Depending on the corrective action we take to redress a product's deficiencies or defects, the FDA may require, or we may decide, that we will need to obtain new approvals or clearances for the device before we may market or distribute the corrected device. Seeking such approvals or clearances may delay our ability to replace the recalled devices in a timely manner. Moreover, if we do not adequately address problems associated with our devices, we may face additional regulatory enforcement action, including adverse publicity, FDA warning letters, product seizure, injunctions, administrative penalties, or civil or criminal fines. We may also be required to bear other costs or take other actions that may have a negative impact on our sales as well as face significant adverse publicity or regulatory consequences, which could harm our business, including our ability to market our products in the future.

Any adverse event involving our products could result in future voluntary corrective actions, such as recalls or customer notifications, or agency action, such as inspection or enforcement action. Recalls of our products, or agency actions relating to our failure to comply with our reporting or recordkeeping obligations, could harm our reputation and financial results.

Failure to comply with anti-kickback and fraud regulations could result in substantial penalties and changes in our business operations.

Although we do not provide healthcare services, submit claims for third-party reimbursement, or receive payments directly from Medicare, Medicaid or other third-party payers for our products, we are subject to healthcare fraud and abuse regulation and enforcement by federal, state and foreign governments, which could significantly impact our business. These laws may constrain the business and financial arrangements and relationships through which we conduct our operations, including how we research, market, sell and distribute any product for which we have obtained regulatory approval, or for which we obtain regulatory approval in the future. The principal U.S. federal laws implicated include, but are not limited to, those that prohibit, among other things, (i) filing, or causing to be filed, false or improper claims for federal payment, known as the false claims laws, (ii) payment, solicitation or receipt of unlawful inducements, directly or indirectly, for the referral of business reimbursable under federally-funded health care programs, known as the anti-kickback laws, and (iii) health care service providers from seeking reimbursement for providing certain services to a patient who was referred by a physician who has certain types of direct or indirect financial relationships with the service provider, known as the Stark law. Many states have similar laws that apply to reimbursement by state Medicaid and other government funded programs as well as in some cases to all payers.

Efforts to ensure that our business arrangements will comply with applicable healthcare laws and regulations will involve substantial costs. We are subject to the risk that a person or government could allege we have engaged in fraud or other misconduct, even if none occurred. It is possible that governmental and enforcement authorities will conclude that our business practices do not comply with current or future statutes, regulations or case law interpreting applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of the laws described above or any other governmental regulations that apply to us now or in the future, we may be subject to penalties, including civil and criminal penalties, damages, fines, disgorgement, exclusion from governmental health care programs, additional integrity oversight and reporting obligations, contractual damages, reputational harm and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our financial results.

Changes in law or regulation could make it more difficult and costly for us to manufacture, market and distribute our products or obtain or maintain regulatory approval of new or modified products.

From time to time, legislation is drafted and introduced in Congress that could significantly change the statutory provisions governing the regulatory approval, manufacture and marketing of regulated devices. In addition, FDA regulations and guidance are often revised or reinterpreted by the FDA in ways that may significantly affect our business and our products. Any new regulations or revisions or reinterpretations of existing regulations may impose additional costs or lengthen review times of future products. In addition, FDA regulations and guidance are often revised or reinterpreted by the agency in ways that may significantly affect our business and our products. Elections could result in significant changes in, and uncertainty with respect to, legislation, regulation and government policy that could significantly impact our business and the health care industry. It is impossible to predict whether legislative changes will be enacted or FDA regulations, guidance or interpretations changed, and what the impact of such changes, if any, may be. For example, recent changes in FDA leadership and policies under President Trump's administration, including potential reforms and shifts in regulatory focus, may adversely impact our business and compliance requirements.

Any change in the laws or regulations that govern the clearance and approval processes relating to our current and future products could make it more difficult and costly to obtain clearance or approval for new products, or to produce, market, and distribute existing products. Significant delays in receiving clearance or approval, or the failure to receive clearance or approval, for any new products would have an adverse effect on our ability to expand our business.

Healthcare changes in the United States and other countries, including recently enacted legislation reforming the U.S. healthcare system, could have a negative impact on our future operating results.

In the United States and some foreign jurisdictions, there have been a number of legislative and regulatory proposals to change the health care system in ways that could affect our ability to sell our products profitably. For example, in 2010, the ACA was enacted into law. The legislation seeks to reform the United States healthcare system. It is far-reaching and is intended to expand access to health insurance coverage, improve quality and reduce costs over time. We expect the law will have a significant impact upon various aspects of our business operations. The ACA reduces Medicare and Medicaid payments to hospitals, clinical laboratories and pharmaceutical companies, and could otherwise reduce the volume of medical procedures. These factors, in turn, could result in reduced demand for our products and increased downward pricing pressure. It is also possible that the ACA will result in lower reimbursements.

Since its enactment, there have been numerous judicial, administrative, executive, and legislative challenges to certain aspects of the ACA, and we expect there will be additional challenges in the future. In June 2021, the U.S. Supreme Court held that Texas and other challengers had no legal standing to challenge the ACA, dismissing the case on procedural grounds without specifically ruling on the constitutionality of the ACA. Thus, the ACA will remain in effect in its current form. It is possible that the ACA will be subject to judicial or Congressional challenges in the future. It is unclear how any such challenges and healthcare measures promulgated by the new Trump administration will impact the ACA, our business, financial condition and results of operations.

However, it is possible that such initiatives could have an adverse effect on our ability to obtain approval and/or successfully commercialize products in the United States in the future. For example, any changes that reduce, or impede the ability to obtain, reimbursement for the type of products we intend to commercialize in the United States (or our products more specifically, if approved) could adversely affect our business plan to introduce our products in the United States.

Other legislative changes have been proposed and adopted in the United States since the ACA was enacted. For example, in August 2011, the Budget Control Act of 2011, among other things, created measures for spending reductions by Congress. A Joint Select Committee on Deficit Reduction, tasked with recommending a targeted deficit reduction of at least \$1.2 trillion for the years 2012 through 2021, was unable to reach required goals, thereby triggering the legislation's automatic reduction to several government programs. This includes aggregate reductions of Medicare payments to providers of up to 2% per fiscal year, which went into effect in April 2013 and will remain in effect through 2032 unless additional Congressional action is taken.

In June 2024, the U.S. Supreme Court overruled the Chevron doctrine, which gave deference to regulatory agencies' statutory interpretations in litigation against federal government agencies, such as the FDA where the law is ambiguous. This Supreme Court decision may invite more stakeholders to bring lawsuits against the FDA to challenge longstanding decisions and policies of the FDA and other federal agencies, which could undermine the FDA's or any other U.S. government agency's authority, lead to uncertainties in the industry, and disrupt the FDA's and other U.S. government agencies' normal operations, any of which could impact our business or the medical device industry in general. Further, changes in the leadership of the FDA and other federal agencies under the current administration can result in changes in the agencies' operations and policies, which may impact our product development plans.

Government payers, such as CMS as well as insurers, have increased their efforts to control the cost, utilization and delivery of healthcare services. From time to time, the United States Congress has considered and implemented changes in the CMS fee schedules in conjunction with budgetary legislation. Reductions of reimbursement by Medicare or Medicaid for our products or changes in coverage policies, such as adding requirements for payment, or prior authorizations, may be implemented from time to time. Reductions in the reimbursement rates and changes in payment policies of other third-party payers may occur as well. Changes in federal, state, local and third-party payer regulations or policies may have a material adverse impact on the demand for our products and on our business. Actions by agencies regulating insurance or changes in other laws, regulations, or policies may also have a material adverse effect on our business, financial condition and results of operations. Legislative or regulatory reforms may make it more difficult and costly for us to obtain regulatory authorizations for our planned or future products and to manufacture, market and distribute our products after authorization is obtained.

Additional changes may affect our business, including those governing enrollment in federal healthcare programs, reimbursement changes, fraud and abuse enforcement, and expansion of new programs, such as Medicare payment for performance initiatives.

These initiatives, as well as other healthcare reform measures that may be adopted in the future, may result in more rigorous coverage criteria and additional downward pressure on the price that we receive for any approved product. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payors. The implementation of cost containment measures or other healthcare reforms could result in reduced demand for our product candidates or additional pricing pressures and may prevent us from being able to generate revenue, attain profitability, or commercialize our products.

Finally, future elections in the United States could result in significant changes in, and uncertainty with respect to, legislation, regulation, implementation of Medicare and/or Medicaid, and government policy that could significantly impact our business and the healthcare industry. The President and the executive branch of the federal government have a significant impact on the implementation of the provisions of the ACA, and the current or future administrations could make changes impacting the implementation and enforcement of the ACA, which could harm our business, operating results and financial condition. If we are slow or unable to adapt to any such changes, our business, operating results and financial condition could be adversely affected.

Failure to comply with HIPAA or the HITECH Act and implementing regulations could result in significant penalties.

Numerous federal and state laws and regulations, including HIPAA and the HITECH Act, govern the collection, dissemination, security, use and confidentiality of patient-identifiable health information. HIPAA and the HITECH Act require us to comply with standards for the use and disclosure of such protected health information within our company and with third parties. The Privacy Standards and Security Standards under HIPAA establish a set of basic national privacy and security standards for the protection of individually identifiable health information by health plans, healthcare clearinghouses and certain healthcare providers, referred to as covered entities, and the business associates with whom such covered entities contract for services. Notably, whereas HIPAA previously directly regulated only these covered entities, the HITECH Act, which was signed into law in 2009, makes certain of HIPAA's privacy and security standards directly applicable to covered entities' business associates. Both covered entities and business associates are subject to significant civil and criminal penalties for failure to comply with the Privacy Standards and Security Standards under HIPAA.

HIPAA requires healthcare providers like us to develop and maintain policies and procedures with respect to protected health information that is used or disclosed, including the adoption of administrative, physical and technical safeguards to protect such information from unauthorized disclosure. The HITECH Act expanded the notification requirement for breaches of patient-identifiable health information, restricts certain disclosures and sales of patient-identifiable health information and provides a tiered system for civil monetary penalties for HIPAA violations. The HITECH Act also increased the civil and criminal penalties that may be imposed against covered entities, business associates and possibly other persons and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorney fees and costs associated with pursuing federal civil actions. The 2013 final HITECH omnibus rule modified the breach reporting standard in a manner that made more data security incidents qualify as reportable breaches. Additionally, certain states have adopted comparable privacy and security laws and regulations, some of which may be more stringent than HIPAA.

If we are determined to be out of compliance with existing or new laws and regulations related to patient health information, we could be subject to criminal or civil sanctions. New health information standards, whether implemented pursuant to HIPAA, the HITECH Act, congressional action or otherwise, could have a significant effect on the manner in which we handle healthcare related data and communicate with payors, and the cost of complying with these standards could be significant.

Any liability from a failure to comply with the requirements of HIPAA or the HITECH Act could adversely affect our results of operations and financial condition. The costs of complying with privacy and security related legal and regulatory requirements are burdensome and could have a material adverse effect on our results of operations.

Regulations requiring the use of "standard transactions" for healthcare services issued under HIPAA may negatively affect our profitability and cash flows.

Pursuant to HIPAA, final regulations have been implemented to improve the efficiency and effectiveness of the healthcare system by facilitating the electronic exchange of information in certain financial and administrative transactions while protecting the privacy and security of the information exchanged.

The HIPAA transaction standards are complex, and subject to differences in interpretation by third-party payors. For instance, some third-party payors may interpret the standards to require us to provide certain types of information, including demographic information not usually provided to us by physicians. As a result of inconsistent application of transaction standards by third-party payors or our inability to obtain certain billing information not usually provided to us by physicians, we could face increased costs and complexity, a temporary disruption in accounts receivable and ongoing reductions in reimbursements and net revenue. Changes and updates to HIPAA transaction standards could prove technically difficult, time-consuming or expensive to implement, all of which could harm our business.

We are subject to evolving laws, regulations, and other obligations related to privacy, data protection, and information security, and our actual or perceived failure to comply with such obligations could harm our reputation, subject us to significant fines and liability or otherwise adversely affect our business, financial condition, and operating results.

The regulatory frameworks for privacy, data protection, and information security issues worldwide are rapidly evolving and likely to remain uncertain for the foreseeable future. The U.S. federal and various state, local, and foreign government bodies and agencies have adopted or are considering adopting laws and regulations governing the collection, distribution, use, disclosure, storage, security, and other processing of information relating to individuals.

For example, California adopted the California Consumer Privacy Act (the "CCPA"), which became effective in January 2020. The CCPA established a privacy framework for covered businesses, including an expansive definition of personal information and data privacy rights for California residents. The CCPA includes a framework with potentially severe statutory damages and private rights of action. Additionally, the California Privacy Rights Act (the "CPRA"), was approved by California voters in the November 2020 election and went into effect on January 1, 2023. The CPRA significantly modifies the CCPA, potentially resulting in further uncertainty. Other states have begun to propose and enact laws relating to privacy and information security matters, many of which are comprehensive privacy statutes similar to the CCPA. Further, other states have enacted laws that cover specific topics, such as the use and collection of biometric information or the collection, use, disclosure, and/or other processing of health-related information, some of which contain private rights of action. The U.S. federal government also is contemplating federal privacy legislation, and the U.S. Department of Justice has issued rules restricting certain bulk transfers of sensitive personal information.

The collection and use of health data and other personal data is governed in the EU by the General Data Protection Regulation (the "GDPR"), which imposes substantial obligations upon companies and rights for individuals, and by certain EU member state-level legislation. Failure to comply with the GDPR may result in fines up to the greater of €20,000,000 or 4% of the total worldwide annual turnover of the preceding financial year. The UK has implemented legislation similar to the GDPR, referred to as the UK GDPR, which provides for fines of up to the greater of £17.5 million or 4% of global turnover. Many other jurisdictions globally are considering or have enacted legislation providing for local storage of data or otherwise imposing privacy, data protection, and information security obligations in connection with the collection, use, and other processing of personal data. As a general matter, compliance with laws, regulations, contractual obligations, and other actual and asserted obligations, such as industry standards, and any rules or guidance from self-regulatory organizations, relating to privacy, data protection, and data security that apply, or are asserted to apply, to our operations can be rigorous and time-intensive, may result in substantial costs, and may necessitate changes to our policies and practices, which may compromise our growth strategy, adversely affect our ability to acquire customers, and otherwise adversely affect our business, results of operations, and financial condition.

With laws, regulations, and other obligations relating to privacy, data protection, and information security imposing new and relatively burdensome obligations, and with substantial uncertainty over the interpretation and application of these and other obligations, we may face challenges in addressing their requirements and making necessary changes to our policies and practices. We also may incur significant costs and expenses in an effort to do so. Additionally, if third parties we work with, such as contractors or service providers, violate applicable laws or regulations or our policies, such violations may also put our data at risk and could in turn have an adverse effect on our business. Any failure or perceived failure by us or our contractors or service providers to comply with our applicable policies or notices, our contractual or other obligations to third parties, or any of our other actual or asserted legal obligations relating to privacy, data protection, or information security, may result in governmental investigations or enforcement actions, litigation, claims, and other proceedings, harm our reputation, and could result in significant liability. Any such event may adversely affect our business, operating results, and financial condition.

We are subject to cybersecurity risks to our systems, infrastructure, and technology, and data processed by us or third-party vendors.

Our business and operations involve the collection, storage, transmission, and other processing of personal data and certain other sensitive and proprietary data. Numerous organizations have disclosed breaches of their information security systems and other information security incidents, some of which have involved sophisticated and highly targeted attacks. We have been and may in the future be a target for cybersecurity attacks designed to disrupt our operations or to attempt to gain access to our systems, data processed or maintained in our business, trade secrets, or other proprietary information or financial resources. Many of our personnel work remotely all or part of the time, which increases certain security risks. In addition, certain attacks may be state-sponsored or supported by significant financial and technological resources, making them even more difficult to detect, remediate and otherwise respond to. The risk of state-supported and geopolitical-related cybersecurity attacks is believed to be heightened in connection with the conflicts in Ukraine and the Middle East and any related political or economic responses and counter-responses.

We are at risk for interruptions, outages, and breaches of our operational systems, including business, financial, accounting, product development, data processing or production processes, as well as our security systems, in-product software and technology, and customer data. We use third parties to process some data on our behalf, and they face similar security risks. Because techniques used to obtain unauthorized access to or to sabotage information systems change frequently and may not be known until launched against a target, we and the third parties on which we rely may be unable to anticipate or prevent these attacks, react in a timely manner or implement adequate preventive measures, and we may face delays in our detection or remediation of, or other responses to, security breaches and other privacy-and security-related incidents. Such incidents could materially disrupt our systems, result in loss of intellectual property and misappropriation of trade secrets or other proprietary or competitively sensitive information, compromise the confidentiality, security, and integrity of our information, including employees' personal information, and information of customers or others, jeopardize the security of our facilities, or affect the performance of our products. The loss, corruption, or unavailability of clinical trial data from completed or future clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the impacted data.

Although we have implemented and are in the process of implementing additional systems and processes that are designed to protect our data and systems within our control, prevent data loss, and prevent other security breaches and incidents, these measures cannot guarantee security. The systems and infrastructure used in our business may be vulnerable to cyberattacks or security breaches or incidents, and third parties may be able to access data, including personal data and other sensitive and proprietary data or other sensitive and proprietary data, or such data otherwise may be subject to unauthorized use, disclosure, unavailability, modification, or other processing. Employee error, malfeasance or other errors in the storage, use or transmission of any of these types of data could result in an actual or perceived privacy or security breach or other security incident.

Any security breach or security incident impacting our systems or infrastructure, or data we or third parties on which we rely maintain or otherwise process, or any outages or other disruptions to systems used in our business, could interrupt our operations and result in the loss of or improper access to, or acquisition or disclosure of, data or a loss of intellectual property protection. Any such breach or incident, or the perception it has occurred, also may harm our reputation and competitive position, harm our product development and regulatory approval efforts, reduce demand for our products, damage our relationships with customers, partners, collaborators or others, and result in claims, demands, litigation, regulatory investigations and proceedings and significant legal, regulatory and financial exposure. Any such event may adversely affect our business, operating results, and financial condition. We expect to incur significant costs in an effort to detect and prevent privacy and security breaches and other privacy-and security-related incidents, and may face increased costs and requirements to expend substantial resources in the event of an actual or perceived privacy or security breach or other incident.

While we maintain insurance that may cover certain liabilities in connection with certain disruptions, security breaches, and incidents, our insurance policies may not be adequate to compensate us for the potential losses arising from any disruption in or, failure or security breach or incident of or impacting our systems or third-party systems where information important to our operations or product development is stored or processed. In addition, such insurance may not be available to us in the future on economically reasonable terms, or at all. Further, our insurance may not cover all claims made against us and could have high deductibles in any event, and defending a suit, regardless of its merit, could be costly and divert management attention.

Product Liability Risks

Our products may become subject to voluntary or involuntary recall.

The FDA and similar foreign governmental authorities have the authority to require the recall of commercialized products in the event of material deficiencies or defects in design or manufacture or in the event that a product poses an unacceptable risk to health. In addition, manufacturers may, under their own initiative, recall a product if any material deficiency in a device is found. A government-mandated or voluntary recall by us could occur as a result of an unacceptable risk to health, component failures, manufacturing errors, design or labeling defects or other deficiencies and issues.

When a medical human exoskeleton is used by a paralyzed individual to walk, the individual relies completely on the exoskeleton to hold them upright. There are many exoskeleton components that, if they were to fail catastrophically, could cause a fall resulting in severe injury or death of the patient. Certain of our competitors have reported injuries caused by the malfunction of human exoskeleton devices (in at least one case to the FDA). Injuries caused by the malfunction or misuse of human exoskeleton devices, even where such malfunction or misuse occurs with respect to one of our competitor's products, could cause regulatory agencies to implement more conservative regulations on the medical human exoskeleton industry, which could significantly increase our operating costs.

Similarly, when an industrial exoskeleton is used by a healthy individual - for example to operate heavy machinery overhead - malfunction of the device at an inopportune moment could result in severe injury or death of the person using the device. Such occurrences could result in regulatory action on the part of OSHA or its foreign counterparts.

Any future recalls of any of our products could divert managerial and financial resources, impair our ability to manufacture our products in a cost-effective and timely manner, and have an adverse effect on our reputation, results of operations and financial condition. In some circumstances, such adverse events could also cause delays in new product approvals. We may also be required to bear other costs or take other actions that may have a negative impact on our future sales and our ability to generate profits.

In addition, personal injuries relating to the use of our products could also result in product liability claims being brought against us. Any product liability claim brought against us, with or without merit, could result in substantial damages, be costly and time-consuming to defend and could increase our insurance rates or prevent us from securing insurance coverage in the future.

Our product liability insurance may not adequately cover potential claims or recalls.

The testing, manufacture, marketing and sale of medical devices and industrial products entail the inherent risk of liability claims or product recalls. Although we maintain product liability insurance, the coverage is subject to deductibles and limitations, and may not be adequate to cover future claims. A successful product liability claim or product recall could inhibit or prevent the successful commercialization of our products, cause a significant financial burden on us, or both, which in either case could have a material adverse effect on our business and financial condition.

Warranty claims and our accelerated maintenance program results in additional operating costs to us.

Sales of our EksoNR, Ekso Indego Therapy and Ekso Indego Personal products generally include a one-year warranty for parts and services in the United States and a one- to three-year warranty in EMEA and APAC. We also generally provide customers with an option to purchase an extended warranty for up to an additional four years. The costs associated with such warranties, including any warranty-related legal proceedings, could have a material adverse effect on our results of operations, cash flows and liquidity. As we enhance our product and in an effort to build our brand and drive adoption, we have elected to incur increased service expenses related to an accelerated maintenance program, field corrections and the implementation of technological improvements developed subsequent to many of our units being placed into service, sometimes outside of its warranty and contractual obligations. Continuation of these activities could have a material adverse effect on our results of operations, cash flows and liquidity.

Risks Related to Ownership of Common Stock

You will be diluted from future issuances of our equity securities, including in strategic transactions or future financings, from compensatory equity awards and exercises of outstanding warrants, and such issuances, or perception that such issuances may occur, could depress the market price of our common stock.

Future operating or business decisions will cause dilution to our existing stockholders. For example, we will issue a substantial amount of equity securities or securities exercisable or convertible into equity securities in connection with strategic transactions or for financing purposes, including through one or more registered or unregistered offerings. Furthermore, a substantial majority of the outstanding shares of our common stock are freely tradable without restriction or further registration under the Securities Act so long as we are generally current on our reporting obligations under the Exchange Act, unless these shares are owned or purchased by "affiliates" as that term is defined in Rule 144 under the Securities Act. We will also make equity grants under one or more employee equity incentive plan or our employee stock purchase plan or issue common stock as matching contributions to our employees under our 401(k) Plan. You will also be subject to dilution from the conversion of shares of Series B Preferred Stock, the exercise or settlement of outstanding options or restricted stock units under the Restated 2014 Plan, and from the exercise of our warrants. In addition, sales or issuances of a substantial number of shares of our common stock, or other equity-related securities in the public markets, or the perception that such sales or issuances could occur, including in connection with a potential strategic transaction, could depress the market price of our common stock.

We may not achieve profitability in the near term or at all, and historically we have not been profitable. Management has historically financed the Company's operations through external financings, from both equity and debt financings, like our Private Placement, our registered offerings under our effective shelf registration statement, and entering into the B. Riley Promissory Note, for example. To the extent our cash on hand does not provide sufficient capital for us to achieve profitability, or we are unable to maintain profitability once initially achieved, we expect we will need to raise additional capital through future financings. To the extent we decide to conduct a financing in the future, the form of such financing may include one or more of the following: (i) registered offerings of shares of our common stock, (ii) sales of shares of our common stock under an "at the market offering" program, (iii) issuing shares of our common stock upon the exercise of warrants at reduced exercise prices, (iv) incurring indebtedness with one or more financial institutions, (v) sale of product line or technology, (vi) the factoring of trade receivables, and (vii) one or more strategic transactions. Additional funding may not be available to us on acceptable terms, or at all, or we may be required to seek other more costly or time-consuming methods. Any failure to raise capital as and when needed could have a negative impact on our financial condition and on our ability to pursue our business plans and strategies.

The ability of our Board of Directors to issue additional stock may prevent us from making more difficult transactions, including a sale or merger.

Our Board of Directors is authorized to issue up to 10 million shares of preferred stock with powers, rights and preferences designated by it. Shares of voting or convertible preferred stock could be issued, or rights to purchase such shares could be issued, to create voting impediments or to frustrate persons seeking to effect a takeover or otherwise gain control of us. The ability of the Board of Directors to issue such additional shares of preferred stock, with rights and preferences it deems advisable, could discourage an attempt by a party to acquire control of us by tender offer or other means. Such issuances could therefore deprive stockholders of benefits that could result from such an attempt, such as the realization of a premium over the market price for their shares in a tender offer or the temporary increase in market price that such an attempt could cause. Moreover, the issuance of such additional shares of preferred stock to persons friendly to the Board of Directors could make it more difficult to remove incumbent officers and directors from office even if such change were to be favorable to stockholders generally.

For example, as of January 22, 2026, we had 5,852 shares of Series B Preferred Stock outstanding, which are convertible into 711,922 shares of common stock. The Series B Preferred Stock ranks senior to our common stock. The Series B Preferred Stock has, and any future senior securities we may issue may have, priority upon liquidation. The shares of Series B Preferred Stock are convertible into shares of common stock, have no stated maturity, and will remain outstanding indefinitely unless converted into common stock. The Series B Preferred Stock will be convertible at the holders' option into common stock at an initial conversion price of \$8.22 per share, as adjusted for any stock dividends, splits, or other similar events. Holders of Series B Preferred Stock are prohibited from converting shares of Series B Preferred Stock into shares of common stock if, as a result of such conversion, such holder, together with its affiliates, would beneficially own in excess of 9.99% of the then-combined voting power of all of our voting securities outstanding immediately after giving effect to such conversion. Subject to limited exceptions, holders of Series B Preferred Stock may not transfer or execute any short sales involving the Series B Preferred Stock and shares of common stock issuable upon conversion of the Series B Preferred Stock until the earlier of (x) six (6) months following the closing of the Private Placement and (y) two trading days after we consummate a change of control.

In addition, for so long as any shares of Series B Preferred Stock are outstanding, the Company may not take any of the following actions without the affirmative vote of the holders of a majority of the then outstanding shares of the Series B Preferred Stock: (i) alter, waive or change adversely the powers, preferences or rights given to the Series B Preferred Stock or alter or amend the Certificate of Designation, (ii) authorize, create or issue any class of stock ranking as to dividends, redemption or distribution of assets upon a Liquidation (as defined in the Certificate of Designation) senior to, or otherwise pari passu with, the Series B Preferred Stock, (iii) increase or decrease the authorized number of shares of Series B Preferred Stock, or (iv) amend its articles of incorporation or bylaws or file any articles of amendment, certificate of designation, preferences, limitations and relative rights of any series of preferred stock in any manner that adversely affects any rights given to the Series B Preferred Stock regardless of whether any such action shall be by means of amendment to its articles of incorporation or by merger, consolidation or otherwise.

The purchasers of the shares of our Series B Preferred Stock also have certain contractual rights. For example, we are obliged to file a registration statement under the Securities Act by no later than June 1, 2026 registering the resale of the shares of common stock receivable upon conversion of the Series B Preferred Stock.

The rights of the Series B Preferred Stock, as well as the rights we may provide in issuing shares of preferred stock in the future, may adversely affect the voting power or value of our common stock.

We have never paid and do not intend to pay cash dividends.

Cash dividends have never been declared or paid on our common stock, and we do not anticipate such a declaration or payment for the foreseeable future. We expect to use future earnings, if any, to fund business growth. Therefore, stockholders will not receive any funds absent a sale of their shares of common stock. If we do not pay dividends, our common stock may be less valuable because a return on investment will only occur if our stock price appreciates.

The market price of our common stock has been, and may continue to be, highly volatile.

During the period from our initial listing on Nasdaq on August 9, 2016 through December 31, 2025, the closing price of our common stock fluctuated from a high of \$1,397.25 per share to a low of \$2.82 per share (on a split-adjusted basis), and our stock price continues to fluctuate. The market price of our common stock may continue to fluctuate significantly in response to numerous factors, some of which are beyond our control, such as our ability to grow our revenue and customer base; the announcement of new products or product enhancements by us or our competitors; developments concerning regulatory oversight and approvals; variations in our and our competitors' results of operations; changes in earnings estimates or recommendations by securities analysts, if our common stock is covered by analysts; successes or challenges in our collaborative arrangements or alternative funding sources; developments in the rehabilitation and industrial robotics markets; the results of product liability or intellectual property lawsuits; future issuances of common stock or other securities; the addition or departure of key personnel; announcements by us or our competitors of acquisitions or divestments, investments or strategic alliances; and general market conditions and other factors, including factors unrelated to our operating performance or otherwise disclosed herein.

Trading of our common stock is limited, which may affect our stock price.

Trading of our common stock is currently conducted on Nasdaq. The liquidity of our common stock is limited, not only in terms of the number of shares that can be bought and sold at a given price, but also as it may be adversely affected by delays in the timing of transactions and low coverage by research analysts and the media, if at all. These factors may result in different prices for our common stock than might otherwise be obtained in a more liquid market and could also result in a larger spread between the bid and asked prices for our common stock. In addition, without a large public float, our common stock is less liquid than the stock of companies with broader public ownership, and, as a result, the trading prices of our common stock may be more volatile. In the absence of an active public trading market, an investor may be unable to liquidate his or her investment in our common stock. Trading of a relatively small volume of our common stock may have a greater impact on the trading price of our stock than would be the case if our public float were larger. Additionally, sales by stockholders of substantial amounts of our shares of common stock, the issuance of new shares of common stock by us or the perception that these sales may occur in the future could materially and adversely affect the market price of our common stock, and you may lose all or a portion of your investment in our common stock.

If we do not continue to satisfy the Nasdaq continued listing requirements, our common stock could be delisted from Nasdaq.

The listing of our common stock on the Nasdaq Capital Market is contingent on our compliance with Nasdaq's conditions for continued listing, including a rule requiring our common stock to maintain a minimum closing bid price of \$1.00 per share. On December 12, 2024, we received a written notice (the "Notice") from the Nasdaq Listing Qualifications staff of The Nasdaq Stock Market LLC ("Nasdaq") informing us that because the minimum bid price of our common stock listed on the Nasdaq was below \$1.00 over the previous 30 consecutive business days, we did not meet the minimum bid price requirement for continued listing on the Nasdaq under Nasdaq Listing Rule 5550(a)(2) (the "Minimum Bid Price Requirement"). Before the opening of the stock market on June 2, 2025, we effected a 1-for-15 reverse split of our common stock (the "Reverse Stock Split"). As a result, all common stock share amounts included in this filing have been retroactively reduced by a factor of fifteen, rounded up to the nearest whole share, and all common stock per share amounts have been increased by a factor of fifteen, with the exception of our common stock par value and our authorized shares. Amounts affected include common stock outstanding, restricted stock units, common stock underlying stock options, and warrants. The Reverse Stock Split was effected in order to raise the per share trading price of our common stock above \$1.00 and regain compliance with the Minimum Bid Price Requirement. On June 13, 2025, we regained compliance with the Minimum Bid Price Requirement.

In the event our common stock is no longer listed for trading on Nasdaq, our trading volume and share price may decrease and we may experience further difficulties in raising capital which could materially affect our operations and financial results. Further, delisting from Nasdaq could also have other negative effects, including potential loss of confidence by partners, lenders, suppliers and employees and could also trigger various defaults under our financing arrangements and other outstanding agreements. Finally, delisting could make it harder for us to raise capital and sell securities. You will experience future dilution as a result of future equity offerings, including in strategic transactions or future financings. For example, in order to raise additional capital, we will issue a substantial amount of equity securities or securities exercisable or convertible into equity securities in connection with strategic transactions or for financing purposes, including through one or more registered or unregistered offerings.

We are a “smaller reporting company” and the reduced reporting requirements applicable to such companies may make our common stock less attractive to investors.

We are a “smaller reporting company” as defined in Item 10(f)(1) of Regulation S-K, which allows us to take advantage of certain exemptions from various disclosure requirements available specifically to smaller reporting companies. For example, we may continue to use reduced executive compensation disclosure obligations, and, provided we are also a “non-accelerated filer,” we will not be obligated to follow the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act. We cannot predict or otherwise determine if investors will find our securities less attractive as a result of our reliance on exemptions as a smaller reporting company and/or non-accelerated filer. If some investors find our securities less attractive as a result, there may be a less active trading market for our common stock and the price of our common stock may be more volatile.

Item 1B. UNRESOLVED STAFF COMMENTS

None.

Item 1C. CYBERSECURITY

Risk Management and Strategy

We perform a formal risk assessment each year. As part of the Company's risk assessment, we consider the potential for cybersecurity threats, including but not limited to interruptions, outages and breaches to its operational and financial systems. We have policies, processes, internal controls and tools to assess, identify, and manage material risks from potential cybersecurity threats. We utilize a combination of cybersecurity awareness training, manual processes, specialized software and automated tools, and third-party assessments to build our cybersecurity program. We engage third-party service providers, with significant information technology and cybersecurity experience, to assist with designing, implementing and managing our information technology infrastructure and cybersecurity program. We are also currently developing a cybersecurity incident response plan that establishes a formal framework for responding to cybersecurity incidents, including defining what constitutes a reportable cybersecurity incident; establishing specific escalation and communication channels; identifying parties responsible for managing and responding to each incident; and other preparedness and response activities.

Governance

The Audit Committee of our Board of Directors (the "Audit Committee") provides oversight over our internal control program, including the adequacy and effectiveness of our information technology infrastructure and cybersecurity program. Each quarter, management provides updates to the Audit Committee regarding its internal control program, including any significant changes to its information technology infrastructure or cybersecurity program. Management also reports any material risks from cybersecurity threats to the Audit Committee. Management periodically provides the Audit Committee with updates on cybersecurity risks and/or trends.

Our management team, specifically the chief executive officer and the chief financial officer, are responsible for the day-to-day administration of our business operations, including our risk management of cybersecurity risks. Management is responsible for the design and implementation of policies, processes and internal controls to manage our cybersecurity risks. Our management team regularly meets with their information technology resources, including its third-party service providers, to ensure that we are appropriately positioned to manage our cybersecurity risks. Our management team also sponsors periodic cybersecurity awareness training for employees.

As of the date of this Annual Report on Form 10-K, we are not aware of any cybersecurity threats that have materially affected or are reasonably likely to materially affect us, including our business strategy, results of operations or financial condition. For further discussion of the cybersecurity risks, see "Part I—Item 1A. Risk Factors," specifically the risks titled "*We are subject to cybersecurity risks to our systems, infrastructure, and technology, and data processed by us or third-party vendors.*" No matter how well designed or implemented our internal controls are, we will not be able to anticipate all cybersecurity threats, and we may not be able to implement effective preventive or detective measures against cybersecurity threats. While we maintain insurance that may cover certain liabilities in connection with certain disruptions, security breaches, and incidents, there can be no guarantee that our insurance coverage will be adequate to compensate us for the potential losses.

Item 2. PROPERTIES

Our principal executive office is currently located at 101 Glacier Point, Suite A, San Rafael, California, 94901, where we lease approximately 17,000 square feet. We currently lease an office in Brecksville, Ohio to support the service of the Ekso Indego Therapy and Ekso Indego Personal product lines. Outside of the United States, we lease approximately 3,000 square feet of office space at Friesenweg 20, 22763 Hamburg, Germany for our European headquarters.

We do not own any real property.

Item 3. LEGAL PROCEEDINGS

From time to time, we are subject to legal proceedings and claims arising in the ordinary course of business. Based on our current knowledge, we believe that the amount or range of reasonably possible losses will not, either individually or in the aggregate, have a material adverse effect on our business, results of operations, or financial condition.

The results of any litigation cannot be predicted with certainty, and an unfavorable resolution in any legal proceedings could materially affect our future business, results of operations, or financial condition. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources, and other factors. For additional information, please refer to Note 15. *Commitments and Contingencies* in our notes to the consolidated financial statements.

Item 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

Item 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information and Dividend Policy

Our common stock has been traded on the Nasdaq Capital Market under the symbol "EKSO" since August 9, 2016. Prior to August 9, 2016, our common stock was eligible for quotation and traded on the OTC Market. The quotation of our common stock on the OTC market began on or about January 16, 2014. The closing price of EKSO stock as of February 20, 2026 was \$11.18.

As of February 20, 2026, we had approximately 173 stockholders of record of our common stock. This number does not include stockholders whose shares are held in investment accounts by other entities. We believe that the actual number of stockholders is greater than the number of holders of record.

We have never declared or paid cash dividends on our common stock and do not intend to pay cash dividends in the foreseeable future. Payment of future dividends, if any, will be at the discretion of our board of directors after taking into account various factors, including our financial condition, operating results, restrictions imposed by financing arrangements, if any, legal and regulatory restrictions on the payment of dividends, current and anticipated cash needs and other factors the board of directors deems relevant.

Securities Authorized for Issuance Under Equity Compensation Plans

See Item 12, "Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters" of this Annual Report on Form 10-K for information regarding securities authorized for issuance under equity compensation plans.

Unregistered Sales of Equity Securities

None.

Issuer Purchases of Equity Securities

None.

Item 6. RESERVED

Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of our financial condition and results of operations together with the consolidated financial statements and the related notes included elsewhere in this Annual Report on Form 10-K. This discussion and other parts of this Annual Report on Form 10-K contain forward-looking statements that involve risks and uncertainties, such as statements of our plans, objectives, expectations and intentions, which are based on the beliefs of our management, as well as assumptions made by, and information currently available to, our management. Our actual results could differ materially from those discussed in or implied by these forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in the section of this Annual Report on Form 10-K titled "Risk Factors." For a discussion related to the results of operations for 2024 compared to 2023, refer to "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our 2024 Annual Report on Form 10-K filed with the SEC on March 3, 2025.

Overview

Our Business

We design, develop, and market exoskeleton and complementary products that augment human strength, endurance, and mobility. The primary end market for our exoskeleton technology is healthcare, where our technology primarily serves people with physical disabilities or impairments in both physical rehabilitation and mobility. The majority of our sales are generated from our Enterprise Health products, which include the sales of products and services related to neurorehabilitation in clinical settings. We also provide products and services from our Personal Health market to individual users.

In addition to our current products and services, we continue to explore business development initiatives to fuel growth and long-term value in our existing markets.

Enterprise Health Market

Our sales priority for Enterprise Health customers involves the education of clinical and executive stakeholders on the economic and clinical value of our robotic exoskeleton portfolio, including the EksoNR and the Ekso Indego Therapy devices. In tandem, we continue to leverage our EksoNR and Ekso Indego customer base to educate and mentor strategic target centers that specialize in stroke, traumatic brain injury ("TBI"), multiple sclerosis ("MS"), and spinal cord injury ("SCI") rehabilitation and treatment in specific geographies.

Within our Enterprise Health market we also sell our EVO product to commercial and industrial companies that are focused on solving ergonomic challenges for their workers. These challenges range from injury prevention, fatigue reduction, and/or improved worker productivity. Sales of EVO are focused on applications that involve repetitive work at shoulder height and above. While EVO is a general-purpose product, we currently target specific vertical markets, including aerospace, automotive, general manufacturing, and certain construction trades.

Starting in late 2025, we began marketing the MediTouch BalanceTutor to our Enterprise Health customers under an exclusive distribution agreement with MediTouch. The BalanceTutor rehabilitation system includes a patented multidirectional perturbation treadmill and multiple force and movement sensors that allow patients impacted by impaired balance to react to unanticipated disturbances while standing or walking. We believe that the BalanceTutor offers treatment options that are complementary to our rehabilitation exoskeletons and that the two can be used in combination for many patients. We expect to begin the sales and distribution of the BalanceTutor in early 2026.

Personal Health Market

Within the Personal Health market, we serve individual users with the Ekso Indego Personal, which is intended to provide overground ambulation in community and home settings. The primary use case for Ekso Indego Personal is for users with SCI. For this user population, confinement to a wheelchair can cause severe physical and psychological deterioration. As a result, the secondary medical consequences of paralysis can include difficulty with bowel and urinary tract function, osteoporosis, loss of lean mass, gain in fat mass, insulin resistance, diabetes, and heart disease. The cost of treating these conditions is substantial.

On April 11, 2024, CMS approved a payment level of approximately \$91,000 for Medicare reimbursement of the Ekso Indego Personal, which took effect on April 1, 2024. CMS reimbursement creates the possibility that we will see increased demand for this device as we are able to more economically serve the larger U.S. patient population suffering from SCI. Specifically, as of December 31, 2025, according to the National Spinal Cord Injury Statistical Center ("NSCISC") in their 2025 SCI Data Sheet, approximately, an estimated 309,000 individuals are currently living with SCI and another 18,000 suffer from new SCI injuries each year. According to the NSCISC in their SCI Model Systems 2024 Annual Statistical Report, approximately 57% of individuals with SCI are enrolled in Medicare or Medicaid within five years post-injury.

With Medicare reimbursement approved, we began selling products to individuals in this market through Durable Medical Equipment suppliers ("DMEs"). DMEs typically resell products from DME manufacturers, like us, to individual users. DMEs are responsible for the Medicare reimbursement process, which requires a physician's prescription and evidence of medical necessity to be submitted to and approved by Medicare before reimbursement is provided.

Throughout 2025, we continued to make progress on developing the go-to-market program for our Personal Health products. Users of this technology are individuals living with an SCI who will either self-pay, or work through the currently established reimbursement programs involving worker's compensation, VA, or Medicare. As in previous years, VA and worker's compensation claims are well defined but traditionally are lower volumes. For Medicare, we have continued to develop our channel partner program consisting of O&P and DME partners, and through the year ended December 31, 2025, our partners saw an increased number of Medicare claims submitted and reimbursed. To date, most reimbursements have involved an appeals process, but for newer claims, reimbursements are occurring much earlier than was the case for initial claims submitted in the previous year. As this category of product is relatively new within CMS, we have taken a measured approach with respect to the volume and timing of CMS reimbursement submissions, focusing on continued refinement and improvement of our candidate screening and submission documentation. The improvements in this process have resulted in an increase in our partners' CMS reimbursement submissions. In support

of this effort, to date we have signed agreements with National Seating & Mobility for selling exclusivity into the Complex Rehabilitation Technology segment, with Bionic Prosthetics & Orthotics Group, a respected O&P provider serving 14 states, and recently with Ottobock Patient Care, a national provider of O&P services, and we continue to develop partnerships and pilots with other regional and national O&P suppliers that we believe will bear fruit in 2026 and beyond. In addition to this work, we have ramped up our direct marketing efforts and continue to develop and grow a sales backlog for the Ekso Indego Personal device. As of December 31, 2025, we had over 50 people who we believe qualify for potential reimbursement. We anticipate that many of these individuals will have their claims submitted to CMS by our partners over the next 12 months, though we expect our processes and procedures to continue to be refined as we continue to scale this sales channel over time. Given this ramp, we expect the majority of our revenue in 2026 will continue to come from Enterprise Health sales, but with Personal Health product sales contributing more quarter over quarter.

Another key part of our growth strategy is seeking insurance coverage beyond CMS and seeking additional indications of use for our products. We believe that sales of our Personal Health products have the potential to be a significant growth driver for us as we work to gain coverage by other insurance providers, expand the products' indications of use beyond SCI and optimize our reimbursement submission processes.

Nomad is currently for sale in limited volumes in the Personal Health market for use in a non-Company-sponsored single clinical study. Subject to clinical and patient feedback from clinical trials, we expect to begin the general commercialization process for Nomad in late 2026.

Recent Developments

On January 22, 2026, we issued and sold (i) an aggregate of 5,852 shares of Series B Preferred Stock convertible into an aggregate of 711,922 shares of common stock issuable upon conversion of the Series B Preferred Stock at an initial conversion price of \$8.22 per share and (ii) warrants (the "2026 Warrants"), which are exercisable to purchase up to an aggregate of 355,960 shares of our common stock at an exercise price of \$8.22 per share of common stock (the "Private Placement"). The net proceeds of the Private Placement are expected to be approximately \$5.3 million, after deducting placement agent fees and expenses and other estimated offering expenses payable by us. We intend to use the net proceeds from the Private Placement for working capital and general corporate purposes.

Business Combination

On February 15, 2026, we entered into a Contribution and Exchange Agreement (the “Contribution Agreement”) with APLD Intermediate HoldCo LLC, a Delaware limited liability company (“APLD Intermediate”), APLD ChronoScale HoldCo LLC, a Delaware limited liability company and a wholly owned subsidiary of APLD Intermediate (“Contributor”), each a wholly owned direct or indirect subsidiary of Applied Digital Corporation, a Nevada corporation, and Applied Digital Cloud Corporation, a Nevada corporation, which at the time of the Closing (as defined below), will be a wholly owned subsidiary of Contributor (“Cloud”), for purposes of consummating a business combination (the “Business Combination”), as a result of which (i) Cloud will become our wholly owned subsidiary, (ii) we will, immediately after the consummation of the Business Combination (the “Closing”), continue as the parent of the combined company, and (iii) we will change our name to ChronoScale Corporation.

Subject to the satisfaction or waiver of the conditions set forth in the Contribution Agreement, Contributor will contribute all of its right, title and interest in and to 1,200 shares of the common stock of Cloud, constituting 100% of the issued and outstanding equity of Cloud, to us in exchange for 138,216,820 newly issued shares of our common stock (the “Exchanged Shares”). As a result of and upon the consummation of the Business Combination, Contributor is expected to own approximately 97% of the combined company’s outstanding equity before giving effect to the other transactions contemplated by the Contribution Agreement.

The Contribution Agreement provides that the Closing is subject to certain conditions, including, among other things: (i) stockholder approval of the Business Combination as set forth in the Contribution Agreement and related proposals; (ii) an Information Statement or a Proxy Statement must be cleared by the SEC and sent to our stockholders in accordance with Regulation 14A under the Securities and Exchange Act of 1934, as amended, and in the case of the Information Statement, such mailing must be at least twenty (20) calendar days prior to Closing; (iii) no order or law shall have been entered, adopted, enacted, issued, promulgated or enforced, in each case, by a governmental entity that prevents, enjoins, prohibits, restrains or makes illegal the consummation of the Business Combination or the other transactions contemplated by the Contribution Agreement; (iv) all requisite approvals or waivers as required by the terms of the Contribution Agreement shall have been obtained; (v) we shall have cash and cash equivalents equal to at least \$15,000,000; and (vi) our Second Amended and Restated Articles of Incorporation (the “Second Restated Articles”) shall have been duly adopted by all necessary corporate action on our part, filed with the Secretary of State of the State of Nevada, and shall be in full force and effect as of immediately prior to the Closing.

The obligation of each party to consummate the Business Combination is also conditioned upon (i) performance and compliance by the other party in all material respects with its pre-Closing obligations and covenants under the Contribution Agreement; (ii) the accuracy of the representations and warranties of the other party as of the Closing (subject to customary materiality qualifiers); (iii) in both Cloud’s and our case, the absence of a continuing material adverse effect with respect to the other party; (iv) in Cloud’s case, that (a) a private placement transaction for gross proceeds of an amount to be determined by APLD Intermediate and on terms acceptable to APLD Intermediate, shall have been consummated concurrently with the Closing (the securities to be issued in such private placement transaction, the “PIPE Securities”), (b) certain third-party consents as required by the terms of the Contribution Agreement shall have been obtained, (c) the Nasdaq listing application shall have been submitted and approved, (d) the Investor Rights Agreement (the “Investor Rights Agreement”) between us and Contributor shall be in full force and effect at Closing, and (e) certain tail insurance policies as described in the Contribution Agreement have been bound, paid for and in effect. See “Part I—Item 1A. Risk Factors,” specifically the risks under the heading “Risks Related to the Proposed Business Combination,” for more information.

We are continuing to explore one or more strategic transactions with certain third parties with respect to our medical device business. There can be no assurances that any such transaction will occur, and we expect to continue executing on our growth strategy during this process. We have not set a timetable for the strategic review process, and we do not intend to provide updates until we determine that disclosure is appropriate or required.

Economic and Industry Trends

Our revenue is highly dependent on market demand for our exoskeleton products. This market demand is influenced by many factors including the level of awareness of robotic exoskeleton rehabilitation among the rehabilitation clinics with significant stroke, ABI, and SCI populations, the levels of reimbursements our customers will be able to receive, the level of reimbursement we will be able to receive from Medicare on claims related to our Ekso Indego Personal, as well as conditions relating to overall economic growth and general business activity. Difficult and challenging economic conditions, including an increasingly inflationary environment and federal funding and policy changes, have led to increased price-based competition. In particular, the effects of such increasing price-based competition have had an especially significant impact on certain products that we offer, including the EksoNR and Ekso Indego Therapy in the United States, which have a lengthy sale and purchase order cycle because they are major capital expenditure items and generally require the approval of senior management at purchasing institutions. The timing of executing sales contracts with large hospital networks can be unpredictable, which has and may continue to impact the timing and amounts of device sales. Furthermore, we do business in the Americas, EMEA and APAC, which results in our business being impacted by changes in the strength of the local currencies relative to the U.S. Dollar.

See “Part I—Item 1A. Risk Factors,” specifically the risk titled “Coverage policies and reimbursement levels of third-party payers, including Medicare or Medicaid, may impact sales of our products,” for more information.

Results of Operations

Consolidated Results of Operations: December 31, 2025 compared to the year ended December 31, 2024 (dollars in thousands):

	Years ended December 31,		Change	% Change
	2025	2024		
Revenue	\$ 12,799	\$ 17,925	\$ (5,126)	(29)%
Cost of revenue	5,954	8,414	(2,460)	(29)%
Gross profit	6,845	9,511	(2,666)	(28)%
<i>Gross profit %</i>	53%	53%		
Operating expenses:				
Sales and marketing	7,154	7,308	(154)	(2)%
Research and development	3,031	3,874	(843)	(22)%
General and administrative	9,986	8,789	1,197	14%
Total operating expenses	20,171	19,971	200	1%
Loss from operations	(13,326)	(10,460)	(2,866)	27%
Other income (expense), net:				
Interest expense, net	(309)	(269)	(40)	15%
Gain on revaluation of warrant liabilities	1	474	(473)	(100)%
Loss on modification of warrant	—	(109)	109	(100)%
Unrealized gain (loss) on foreign exchange	1,965	(965)	2,930	(304)%
Other expense, net	(26)	(1)	(25)	*
Total other income (expense), net	1,631	(870)	2,501	(287)%
Net loss	\$ (11,695)	\$ (11,330)	\$ (365)	3%
(*) Not meaningful				

Revenue

Revenue decreased \$5.1 million, or 29%, for the year ended December 31, 2025, compared to the same period of 2024. The decrease in revenue was primarily driven by a decrease in the volume of Enterprise Health device sales in the EMEA region, partially offset by an increase in the volume of Personal Health device sales in the Americas region.

Gross Profit and Gross Margin

Gross profit decreased \$2.7 million, or 28%, for the year ended December 31, 2025, compared to the same period of 2024, driven by a decrease in revenue associated with our Enterprise Health devices, partially offset by an increase in revenues associated with our Personal Health device and reduction in service costs.

Gross margin remained flat at approximately 53% for the year ended December 31, 2025, compared to a consistent gross margin of 53% for the same period in 2024

Operating Expenses

Sales and marketing expenses decreased \$0.2 million, or 2%, for the year ended December 31, 2025, compared to the same period of 2024. The decrease was primarily due to lower headcount, lower payroll expense related to discretionary payroll and from the receipt of the employee retention credits ("ERC"), partially offset by a loss on impairment of our indefinite-lived trade name intangible asset and severance expense.

Research and development expenses decreased \$0.8 million, or 22%, for the year ended December 31, 2025, compared to the same period of 2024, primarily due to lower headcount, lower payroll expense from the receipt of the ERC and lower payroll expense related to discretionary payroll, partially offset by severance expense.

General and administrative expenses increased \$1.2 million, or 14%, for the year ended December 31, 2025, compared to the same period of 2024, primarily due to higher legal and audit costs, higher payroll expense related to discretionary payroll and due to a loss on impairment of a finite-lived intangible asset, partially offset by the receipt of the ERC.

Total Other Income (Expense), Net

Interest expense, net increased 15% for the year ended December 31, 2025, compared to the same period of 2024. This increase is primarily related to interest expense related to the B. Riley Promissory Note and lower interest income from cash deposits, partially offset by lower interest expense related to the Parker Hannifin Promissory Note and interest income related to receiving late ERC payments.

Loss on modification of warrant of \$0.1 million for the year ended December 31, 2024 was due to the reduction of the exercise price of the May 2019 Warrants, in connection with the January 2024 Offering. There was no comparable amount for the year ended December 31, 2025.

Gain on revaluation of warrant liabilities was de minimis for the year ended December 31, 2025 as compared to a gain on revaluation of warrant liabilities of \$0.4 million for the year ended December 31, 2024, and was associated with the revaluation of warrants issued in 2019, 2020, and 2021. Gains and losses on revaluation of warrants are primarily driven by changes in our stock price, stock price volatility, time to maturity, and the risk-free interest rate.

Unrealized gain on foreign exchange was \$2.0 million for the year ended December 31, 2025, compared to unrealized loss on foreign exchange of \$1.0 million for the same period of 2024, primarily due to foreign currency exchange rate fluctuations producing unrealized gains and losses on our inter-company monetary assets and liabilities.

Liquidity and Capital Resources

As of December 31, 2025, \$1.2 million of cash was held domestically and by our foreign subsidiaries. Cash consisted of bank deposits with third-party financial institutions, none of which was restricted.

As of December 31, 2025, we had working capital of \$5.4 million, compared to working capital of \$11.3 million as of December 31, 2024. The decrease in working capital was primarily due to a lower cash balance and a higher convertible promissory note balance, partially offset by a higher inventory balance, a higher prepaid expenses and other current assets balance, a lower accrued liabilities balance, and a lower deferred revenues, current balance.

We have funded our operations primarily through the issuance and sale of equity securities and bank debt.

On January 22, 2026, we issued and sold (i) an aggregate of 5,852 shares of Series B Preferred Stock convertible into an aggregate of 711,922 shares of common stock issuable upon conversion of the Series B Preferred Stock at an initial conversion price of \$8.22 per share and (ii) the 2026 Warrants, which are exercisable to purchase up to an aggregate of 355,960 shares of our common stock at an exercise price of \$8.22 per share of common stock. The net proceeds of the Private Placement are expected to be approximately \$5.3 million, after deducting placement agent fees and expenses and other estimated offering expenses payable by us. We intend to use the net proceeds from the Private Placement for working capital and general corporate purposes.

On October 30, 2025, we issued and sold an aggregate of 769,490 shares of our common stock in a registered direct offering (the "October 2025 Offering") at an offering price of \$4.81 per share. We received net proceeds of approximately \$3.2 million in the October 2025 Offering, after deducting the placement agent fees and offering expenses paid by us. We used the net proceeds from the October 2025 Offering for general corporate purposes, which included research and development activities, selling, general and administrative costs, pursuing strategic initiatives, and meeting our other working capital needs. On October 30, 2025, in connection with the October 2025 Offering, we issued to Lake Street Capital Markets, LLC, a warrant (the "October 2025 Placement Agent Warrant") to purchase up to 15,389 shares of our common stock, at an exercise price equal to \$4.81 per share.

[Table of Contents](#)

In October 2020, we entered into an At The Market Offering Agreement (the “ATM Agreement”) with H.C. Wainwright & Co., LLC (the “Agent”), under which we may issue and sell shares of our common stock, from time to time, to or through the Agent. Offers and sales of shares of common stock by us through the Agent may be made by any method deemed to be an “at the market offering” as defined under SEC Rule 415 or in privately negotiated transactions, subject to certain conditions. Such shares may be offered pursuant to the registration statement on Form S-3 (File No. 333-272607) (the “Registration Statement”), which was declared effective by the SEC on June 20, 2023, and a related prospectus supplement filed with the SEC on July 28, 2023 (the “ATM Prospectus”). Pursuant to the Registration Statement and the ATM Prospectus, shares having an aggregate offering price of up to \$5.0 million may be offered and sold, subject to certain SEC rules limiting the number of shares of our common stock that we may sell under the Registration Statement. During the year ended December 31, 2025, we sold 238,154 shares of common stock under the ATM Agreement at an average price of \$4.34, for aggregate proceeds of \$0.9 million, net of commission and issuance costs. On October 28, 2025, we terminated the ATM Prospectus. As a result, we expensed deferred issuance costs of \$125 thousand related to the ATM Agreement during the year ended December 31, 2025.

Cash and Restricted Cash

The following table summarizes the sources and uses of cash for the periods stated (in thousands):

	Years ended December 31,	
	2025	2024
Cash and restricted cash, beginning of year	\$ 6,493	\$ 8,638
Net cash used in operating activities	(11,801)	(9,846)
Net cash used in investing activities	(188)	(37)
Net cash provided by financing activities	6,629	7,769
Effect of exchange rate changes on cash	36	(31)
Cash and restricted cash, end of year	\$ 1,169	\$ 6,493

Net Cash Used in Operating Activities

Net cash used in operating activities increased by \$2.0 million for the year ended December 31, 2025, compared to the same period of 2024, primarily due to lower revenues, partially offset by cost savings in supply chain, manufacturing, and service, efficiencies in operating activities including headcount reductions, and the receipt of the ERC.

Net Cash Used in Investing Activities

Net cash used in investing activities increased by \$0.2 million for the year ended December 31, 2025, compared to the same period of 2024, primarily due to the purchase of manufacturing equipment.

Net Cash Provided by Financing Activities

Net cash provided by financing activities of \$6.6 million for the year ended December 31, 2025 was related to net proceeds of \$3.2 million from the October 2025 Offering, after deducting the transaction expenses, net proceeds of \$1.9 million from the B. Riley Promissory Note, after deducting the transaction expenses, net proceeds of \$3.9 million from the March 2025 Inducement Warrant, after deducting the transaction expenses, and \$0.9 million from sales of our common stock under our ATM Agreement, net of commission and issuance costs, which were partially offset by \$2.0 million of the payoff of our BoC Loan Agreement and \$1.3 million of principal payments towards the Parker Hannifin Promissory Note.

Net cash provided by financing activities of \$7.8 million for the year ended December 31, 2024, was related to net proceeds of approximately \$5.0 million from the September 2024 Offering after deducting the underwriting discount and commissions and offering expenses paid by us, net proceeds of approximately \$3.9 million from the January 2024 Offering after deducting placement agent fees and offering expenses, proceeds of approximately \$0.1 million from shares of common stock sold under the ATM Agreement, partially offset by approximately \$1.3 million of principal payments towards the Parker Hannifin Promissory Note.

Material Cash Requirements and Going Concern

Our material cash requirements include the following items, some of which are represented in the table of Contractual Obligations and Commitments: (1) employee wages, benefits and incentives, (2) the procurement of raw materials and components to support the manufacturing and sale of our products, (3) expenditures for the ongoing improvement and development of existing and new technologies, (4) debt repayments (for additional information see Note 9. *Notes Payable, net* in the notes to our consolidated financial statements included elsewhere in the Annual Report on Form 10-K), and (5) operating lease payments (for additional information see Note 10. *Lease Obligations* in the notes to our consolidated financial statements included elsewhere in the Annual Report on Form 10-K).

We expect that our operating cash requirements in the near term will continue to exceed cash provided by operations. As described in Note 1. *Organization: Liquidity and Going Concern* of the notes to our consolidated financial statements, management believes that substantial doubt exists about our ability to meet cash requirements 12 months from the issuance of such financial statements, and such substantial doubt is not alleviated by our plans. We are seeking additional financing and evaluating financing alternatives in the near term in order to meet our cash requirements for the next 12 months. Management currently estimates that the Company's cash on hand as of December 31, 2025, in addition to the net proceeds from the Private Placement, will fund its operations until the end of the second quarter of 2026.

We do not expect, nor do our historical operating results suggest, that cash flows generated from operations will be sufficient to meet our material cash requirements in the long term. Management expects that our historical reliance on external financing, from both equity and debt financings, will continue to provide the capital necessary to meet its material cash requirements in the long term. Management has not yet determined the form such additional financing may take, but management expects that the most likely forms include one or more of the following: (i) underwritten offerings of shares of our common stock, (ii) issuing shares of our common stock upon the exercise of warrants at reduced exercise prices, (iii) incurring indebtedness with one or more financial institutions, (iv) sale of product line or technology, and (v) the factoring of trade receivables.

Contractual Obligations and Commitments

The following table summarizes our outstanding contractual obligations as of December 31, 2025, and the effect those obligations are expected to have on our liquidity and cash flows in future periods (in thousands):

	Payments Due By Period			
	Total	Less than one year	1-3 Years	3-5 Years
B. Riley Promissory Note	\$ 2,400	\$ 2,400	\$ —	\$ —
Parker Hannifin Promissory Note	2,187	1,250	937	—
Facility operating leases	630	467	152	11
Purchase obligations	874	874	—	—
Total	\$ 6,091	\$ 4,991	\$ 1,089	\$ 11

Refer to Note 9. *Notes Payable, net* in our notes to the consolidated financial statements for additional information regarding our promissory notes, and Note 15. *Commitments and Contingencies* in our notes to the consolidated financial statements for additional information regarding our contractual obligations and lease commitments.

Off-Balance Sheet Arrangements

As of December 31, 2025, we did not have any significant off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of SEC Regulation S-K promulgated under the Exchange Act.

Critical Accounting Estimates

Our discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these consolidated financial statements requires us to make estimates, judgments and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses, and the related disclosure of contingent assets and liabilities. We base our estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances. Our estimates form the basis for our judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates. Our most critical accounting estimates include:

- the standalone selling prices used to allocate the contract consideration to the individual performance obligations in our device sales arrangements, which impact revenue recognition;
- the unobservable inputs and assumptions used by management in estimating the fair value of our warrant liabilities, which impacts net income or loss;
- the provision for credit losses on accounts receivable;
- the valuation of inventory, which impacts gross profit margins;
- the estimates made regarding the recoverability of our net deferred tax asset, which impacts our financial condition;
- the fair value of the tangible and intangible assets acquired and liabilities assumed in our business combination;
- future warranty costs;
- accounting for leases; and
- useful lives assigned to long-lived assets.

Standalone Selling Prices

Our device sales arrangements contain multiple products and services, most often including the device(s) and service, both of which we have identified as distinct performance obligations. Revenue is allocated to each performance obligation based on its relative standalone selling price. Standalone selling prices are based on observable prices at which we separately sell the products or services. If a standalone selling price is not directly observable, then we estimate the standalone selling prices considering market conditions and entity-specific factors including, but not limited to, features and functionality of the products and services, geographies, type of customer, and gross margin targets. Changes in the relative standalone selling price between devices and service can have an impact on how transaction prices are allocated between revenue and deferred revenue.

Warrant Liabilities

We use the Black-Scholes option-pricing model to value our warrant liabilities at each reporting period, which requires the input of highly subjective assumptions, most notably the estimated volatility of our common stock over the expected term. We use our historical common stock volatility to estimate expected volatility over the warrant terms. Management also made uncertain estimates regarding the likelihood and timing of certain future events for application of the Lattice Model for the valuation of certain warrants. Changes in these assumptions could have potential material impacts on the estimated fair value of warrant liabilities.

Provision for Credit Losses on Accounts Receivable

We carry accounts receivable at invoiced amounts less an allowance (or "provision") for credit losses. We review accounts receivables for collectability and determine an allowance for credit losses. The allowance for credit losses on accounts receivables reflects the Company's best estimate of probable losses inherent in the accounts receivable balance based on historical bad debt expense, the aging of the accounts, known troubled accounts, customer payment history, and other currently available evidence.

Inventory Valuation

Inventory is stated at the lower of cost or net realizable value. Cost is computed using the standard cost method which approximates actual cost on a first-in, first-out basis. The cost basis of our inventory is reduced for any products that are considered excessive or obsolete based upon assumptions about future demand and market conditions. If actual future demand or market conditions are less favorable than those projected by management, additional inventory write-downs may be required, which could have a material adverse effect on the results of our operations.

Deferred Tax Asset

We estimate a valuation allowance in consideration of the realizability of our net deferred tax assets, primarily based on our assessment of the timing, likelihood and amounts of potential future income during which such items become deductible. It is inherently difficult and subjective to estimate such amounts, as we must determine the probability of various possible outcomes and estimate future amounts. Management does not believe it is more likely than not that we will generate future income in a time frame and amount sufficient to realize our net deferred tax assets. Changes in management's estimate of future income in the timeframe during which the temporary differences and carryforwards comprising our deferred tax assets become deductible could result in a material impact to our financial position including the recognition of a net deferred tax asset.

Assets Acquired and Liabilities Assumed in Business Combinations

We allocate the fair value of the purchase price of an acquisition to the tangible and intangible assets acquired and liabilities assumed based on their estimated fair values. Such valuations require management to make significant estimates and assumptions, especially with respect to intangible assets. Significant estimates in valuing certain intangible assets include, but are not limited to, the amount and timing of projected future cash flows based on expected future growth rates and margins, discount rate used to determine the present value of these cash flows, future changes in technology and royalty for similar brand licenses, and asset lives. Management's estimates of fair value are based upon assumptions believed to be reasonable, but which are inherently uncertain and unpredictable, and as a result, actual results may differ from estimates. Allocation of purchase consideration to identifiable assets and liabilities affects our amortization expense, as acquired finite-lived intangible assets are amortized over the useful life, whereas any indefinite-lived intangible assets, including goodwill, are not amortized. When applicable, during the measurement period, which may be up to one year from the acquisition date, we may record adjustments to the assets acquired and liabilities assumed, with the corresponding offset to goodwill. Upon the conclusion of the measurement period, any subsequent adjustments are included in the consolidated statement of operations.

Future Warranty Costs

Sales of devices generally include an initial warranty for parts and services for one year in the Americas, two years in EMEA, and one to three years in the APAC region. A liability for the estimated cost of product warranty is established at the time revenue is recognized based on the historical experience of known product failure rates and expected material and labor costs to provide warranty services. Specific additional warranty accruals may be made if unforeseen technical problems arise. Alternatively, if estimates are determined to be greater than the actual amounts necessary, a portion of the liability may be reversed in future periods. At the end of each reporting period, we estimate our future warranty costs related to products sold during the period. This liability represents our best estimate of the costs we will incur to fulfill warranty obligations for products sold during the period. At least annually, we review and update our estimates based on actual warranty claims experience.

Accounting for Leases

In accordance with ASC 842, Leases, at the inception of an arrangement, we determine whether the arrangement is or contains a lease based on the unique facts and circumstances present, generally based on whether we have the right to obtain substantially all of the economic benefits from the use of an identified asset and whether we have the right to direct the use of an identified asset in exchange for consideration, which relates to an asset which we do not own. Operating lease liabilities and their corresponding right-of-use assets are recorded based on the present value of lease payments over the expected lease term. The interest rate implicit in lease contracts is typically not readily determinable. As such, we utilize our incremental borrowing rate to determine the present value of the future lease payments, which is a hypothetical rate based on our understanding of what our credit rating would be to borrow and resulting interest we would pay to borrow on a collateralized basis over a similar term an amount equal to the lease payments in a similar economic environment. Certain adjustments to the right-of-use asset may be required for items, such as initial direct costs paid or incentives received. Lease payments may be fixed or variable; however, only fixed payments are included in our lease liability. Variable lease payments may include costs such as common area maintenance, utilities, or other costs. Variable lease payments are recognized in operating expenses in the period in which the obligation for those payments is incurred.

Useful Lives Assigned to Long-Lived Assets

The useful life of an asset represents the period during which the asset is expected to contribute directly or indirectly to future cash flows. We estimate the useful lives of the Company's long-lived assets based on various factors, including the expected period of economic benefit of the asset in use, our intended use of the asset, economic factors such as asset obsolescence and technological advances, any limitations imposed by legal, regulatory, or contractual requirements, and industry norms. These assumptions affect the timing and amount of depreciation expense, which could have a material adverse effect on the results of our operations.

Accounting Policies

An accounting policy is considered to be critical if it requires an accounting estimate to be made based on assumptions about matters that are highly uncertain at the time the estimate is made, and if different estimates that reasonably could have been used, or changes in the accounting estimate that are reasonably likely to occur, could materially impact the consolidated financial statements. We believe that our critical accounting policies reflect the more significant estimates and assumptions used in the preparation of the consolidated financial statements. Refer to Note 2 *Summary of Significant Accounting Policies and Estimates* in the notes to our consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

Recent Accounting Pronouncements

See Note 2. *Summary of Significant Accounting Policies and Estimates—Recent Accounting Pronouncements* in the notes to our consolidated financial statements for a discussion of new accounting pronouncements.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Foreign Currency Risk

We report our financial results in United States dollars; however, we conduct business in foreign countries. For U.S. reporting purposes, we translate all assets and liabilities of our non-U.S. subsidiaries at the period-end exchange rate, equity at historical exchange rates, and revenue and expenses at the average exchange rates in effect during the periods. The net effect of these translation adjustments is shown in the accompanying consolidated financial statements as a component of stockholders' equity.

Currently, we sell our products mainly in U.S. dollars, Euros, and Singapore dollars in our company entities in the Americas, EMEA, and APAC regions, respectively. We generate a portion of our revenue and collect receivables in foreign currencies other than the functional currencies of our company entities and, as such, we have foreign currency exposure. Future fluctuations in the foreign exchange rates of these currencies can result in foreign exchange gains and losses that may impact our financial results. In the past, we have not hedged our exposures to foreign currencies or entered into any other derivative instruments and we have no current plans to do so. For the year ended December 31, 2025, sales denominated in foreign currencies were approximately 42% of total revenue. A hypothetical 10% increase in the United States dollar exchange rate used would have resulted in a \$0.5 million decrease to revenues for 2025.

Interest Rate Risk

Our exposure to market rate risk for changes in interest rates related primarily to our term loan. On September 12, 2025, we paid off the entire amount of \$2,000 of our secured term loan agreement to Banc of California using the \$2,000 of restricted cash. Refer to Note 9. *Notes Payable, net — BoC Term Loan* in our notes to the consolidated financial statements for additional information regarding the term loan. Prior to the term loan payoff, the loan's variable interest rate was charged at the greater of the variable rate of interest announced by the lender as its "prime rate" then in effect or 4.50%. As of December 31, 2025, we have no outstanding variable-rate debt, and therefore, we are no longer exposed to significant interest rate risk.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Table of Contents

The following consolidated financial statements are filed as part of this Annual Report on Form 10-K

	Page Number
Report of Independent Registered Public Accounting Firm	38
Consolidated Balance Sheets as of December 31, 2025 and 2024	40
Consolidated Statements of Operations and Comprehensive Loss for the years ended December 31, 2025 and 2024	41
Consolidated Statements of Stockholders' Equity for the years ended December 31, 2025 and 2024	42
Consolidated Statements of Cash Flows for the years ended December 31, 2025 and 2024	43
Notes to Consolidated Financial Statements	44

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors of
Ekso Bionics Holdings, Inc.:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Ekso Bionics Holdings, Inc. and subsidiaries (collectively, the “Company”) as of December 31, 2025 and 2024, the related consolidated statements of operations and comprehensive loss, stockholders’ equity, and cash flows for each of the two years in the period ended December 31, 2025, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2025 and 2024, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2025, in conformity with accounting principles generally accepted in the United States of America.

Going Concern

The accompanying consolidated financial statements have been prepared assuming that the entity will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has an accumulated deficit at December 31, 2025 and, since inception, has suffered significant operating losses and negative cash flows from operations. The Company expects to generate operating losses and negative operating cash flows in the future and will require additional funding to support the Company’s planned operations which raises substantial doubt about its ability to continue as a going concern. Management’s plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Revenue Recognition – Transaction Price Allocation for Contracts with Customers Containing Multiple Performance Obligations

Description of the Matter

As described in Note 2 to the consolidated financial statements, the Company’s contracts with customers may contain multiple performance obligations, which are accounted for separately if they are distinct. In such cases, the transaction price is then allocated to the distinct performance obligations based on the relative standalone selling price and revenue is recognized when the distinct performance obligation is satisfied. The Company’s device revenue is recognized at the point in time that the customer takes control of the device, generally upon shipment, and subscription and service revenues are recognized over time as the services are performed.

Auditing the Company’s revenue recognition was challenging, specifically related to the identification and determination of the distinct performance obligations, the allocation of the transaction price to the identified performance obligations, and the timing of revenue recognition. Certain arrangements required judgment to determine the distinct performance obligations, how the transaction price was allocated to the identified performance obligations, and the appropriate timing of revenue recognition.

How We Addressed the Matter in Our Audit

We obtained an understanding and evaluated the design of the Company's process and controls to determine the distinct performance obligations, allocation of the transaction price to the identified performance obligations, and the timing of revenue recognition.

Among the procedures we performed to test the determination of the distinct performance obligations, allocation of the transaction price to the identified performance obligations, and the timing of revenue recognition, we read executed contracts and purchase orders to understand the rights and obligations conveyed in the contractual arrangement, evaluated management's assessment of the performance obligations and whether they were distinct, determined the reasonableness of the standalone selling price used by management in the allocation of the transaction price to the performance obligations, and tested the timing of revenue recognition for a sample of individual sales transactions. We evaluated the accuracy of the Company's accounting conclusions, specifically related to the identification and determination of distinct performance obligations, allocation of the transaction price to the identified performance obligations, and the timing of revenue recognition.

Impairment Analysis of Indefinite-Lived Intangible Assets and Long-Lived Assets

Description of the Matter

As described in Notes 2 and 8 to the consolidated financial statements, the Company's indefinite-lived intangible assets are tested for impairment annually, or as deemed necessary if potential indicators of impairment exist. The Company also reviews its long-lived assets for impairment at least annually or whenever events or changes in circumstances indicate that the carrying value of the assets may not be recoverable. Management makes critical assumptions and estimates in completing impairment assessments of its indefinite-lived intangible asset and long-lived assets. The Company's cash flow projections include assumptions such as future sales and operating margin growth rates, economic forecasts, discount rates and the royalty rate. During the year ended December 31, 2025, the Company recorded an impairment loss on the trade name of \$570,000 in the consolidated statements of operations and comprehensive loss.

The Company's impairment analysis related to its indefinite-lived intangible asset and long-lived assets requires a high degree of judgment and is subject to change based on various quantitative and qualitative factors. A high degree of auditor judgment and an increased extent of effort were required when performing audit procedures to evaluate the reasonableness of management's estimates and assumptions related to the future sales and operating margin growth rates as well as the selection of discount rates and the royalty rate, which included the need to involve our valuation specialists.

How We Addressed the Matter in Our Audit

We obtained an understanding of and evaluated the design of controls relating to the Company's impairment review process. We evaluated the significant accounting policies relating to the Company's impairment analyses, as well as management's application of the policies, for appropriateness and reasonableness.

We obtained the Company's impairment analyses and performed testing procedures on the underlying data and assumptions that were used in management's analyses. To test the estimated fair values of the assets, we performed audit procedures that included, among other things, assessing methodologies used to determine the fair values and testing the significant assumptions discussed above and the accuracy of the underlying data used by the Company. For example, we evaluated management's forecasted revenue growth rates used in the fair value estimates by comparing those assumptions to the historical results of the Company and current industry, market and economic forecasts. Additionally, we involved a valuation specialist to assist in evaluating the valuation methodologies and the significant assumptions such as discount rates and the royalty rate, as well as testing the mathematical accuracy of the calculations.

/s/ WithumSmith+Brown, PC

We have served as the Company's auditor since 2010.

San Francisco, California
February 23, 2026

PCAOB ID Number 100

Ekso Bionics Holdings, Inc.
Consolidated Balance Sheets
(In thousands, except par value amounts)

	December 31,	
	2025	2024
Assets		
Current assets:		
Cash	\$ 1,169	\$ 4,493
Restricted cash	—	2,000
Accounts receivable, net of allowances of \$27 and \$33, respectively	7,308	7,238
Inventories	4,822	4,571
Prepaid expenses and other current assets	750	541
Total current assets	14,049	18,843
Property and equipment, net	1,288	1,577
Right-of-use assets	532	788
Intangible assets, net	3,500	4,580
Goodwill	431	431
Other assets	311	433
Total assets	\$ 20,111	\$ 26,652
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 1,431	\$ 1,552
Accrued liabilities	1,779	2,352
Deferred revenues, current	1,727	1,956
Convertible promissory note, net	2,008	—
Notes payable, current	1,250	1,250
Lease liabilities, current	441	427
Total current liabilities	8,636	7,537
Deferred revenues	1,414	1,920
Notes payable, net	798	3,854
Lease liabilities	147	452
Warrant liabilities	—	1
Other non-current liabilities	89	181
Total liabilities	11,084	13,945
Commitments and contingencies (Note 15)		
Stockholders' equity:		
Convertible preferred stock, \$0.001 par value; 10,000 shares authorized; no shares issued and outstanding as of December 31, 2025 and 2024	—	—
Common stock, \$0.001 par value; 141,429 shares authorized; 3,559 and 1,480 shares issued and outstanding as of December 31, 2025 and 2024, respectively	37	22
Additional paid-in capital	272,078	262,203
Accumulated other comprehensive (loss) income	(692)	957
Accumulated deficit	(262,396)	(250,475)
Total stockholders' equity	9,027	12,707
Total liabilities and stockholders' equity	\$ 20,111	\$ 26,652

See accompanying notes to consolidated financial statements

Ekso Bionics Holdings, Inc.
Consolidated Statements of Operations and Comprehensive Loss
(In thousands, except per share amounts)

	Years ended December 31,	
	2025	2024
Revenue	\$ 12,799	\$ 17,925
Cost of revenue	5,954	8,414
Gross profit	<u>6,845</u>	<u>9,511</u>
Operating expenses:		
Sales and marketing	7,154	7,308
Research and development	3,031	3,874
General and administrative	9,986	8,789
Total operating expenses	<u>20,171</u>	<u>19,971</u>
Loss from operations	(13,326)	(10,460)
Other income (expense), net:		
Interest expense, net	(309)	(269)
Gain on revaluation of warrant liabilities	1	474
Loss on modification of warrant	—	(109)
Unrealized gain (loss) on foreign exchange	1,965	(965)
Other expense, net	(26)	(1)
Total other income (expense), net	<u>1,631</u>	<u>(870)</u>
Net loss	(11,695)	(11,330)
Foreign currency translation adjustments	(1,649)	801
Comprehensive loss	<u>\$ (13,344)</u>	<u>\$ (10,529)</u>
Net loss per share applicable to common shareholders, basic and diluted	<u>\$ (4.91)</u>	<u>\$ (8.43)</u>
Weighted average number of shares outstanding, basic and diluted	<u>2,426</u>	<u>1,344</u>

See accompanying notes to consolidated financial statements

Ekso Bionics Holdings, Inc.
Consolidated Statements of Stockholders' Equity
(In thousands)

	Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance as of December 31, 2023	—	\$ —	990	\$ 15	\$ 251,580	\$ 156	\$ (239,145)	\$ 12,606
Net loss	—	—	—	—	—	—	(11,330)	(11,330)
Issuance of common stock and warrants under:								
Equity financing, net	—	—	411	6	9,014	—	—	9,020
Exercise of Pre-Funded Warrants	—	—	22	—	—	—	—	—
Issuance of common stock under:								
Equity incentive plan	—	—	46	1	—	—	—	1
Matching contribution to 401(k) plan	—	—	11	—	237	—	—	237
Stock-based compensation	—	—	—	—	1,372	—	—	1,372
Foreign currency translation adjustments	—	—	—	—	—	801	—	801
Balance as of December 31, 2024	—	\$ —	1,480	22	262,203	957	(250,475)	12,707
Net loss	—	—	—	—	—	—	(11,695)	(11,695)
Issuance of common stock and warrants under:								
Equity financing, net	—	—	1,661	12	7,940	—	—	7,952
Deemed dividend in connection with warrant inducement	—	—	—	—	226	—	(226)	—
Exercise of Pre-Funded Warrants	—	—	171	2	—	—	—	2
Issuance of common stock under:								
Equity incentive plan	—	—	210	—	—	—	—	—
Matching contribution to 401(k) plan	—	—	37	1	235	—	—	236
Stock-based compensation	—	—	—	—	1,474	—	—	1,474
Foreign currency translation adjustments	—	—	—	—	—	(1,649)	—	(1,649)
Balance as of December 31, 2025	—	\$ —	3,559	\$ 37	\$ 272,078	\$ (692)	\$ (262,396)	\$ 9,027

See accompanying notes to consolidated financial statements

Ekso Bionics Holdings, Inc.
Consolidated Statement of Cash Flows
(In thousands)

	Years ended December 31,	
	2025	2024
Operating activities		
Net loss	\$ (11,695)	\$ (11,330)
Adjustments to reconcile net loss to net cash used in operating activities		
Depreciation and amortization	1,573	1,608
Loss on impairment of intangible assets	750	—
Changes in provision for credit losses on accounts receivable	(50)	171
Common stock contribution to 401(k) plan	151	257
Stock-based compensation expense	1,474	1,373
Gain on revaluation of warrant liabilities	(1)	(474)
Loss on modification of warrant	—	109
Unrealized (gain) loss on foreign currency transactions	(1,965)	965
Changes in operating assets and liabilities:		
Accounts receivable	446	(1,967)
Inventories	(275)	257
Prepaid expenses and other assets current and noncurrent	(187)	329
Accounts payable	(137)	(288)
Accrued, lease and other current and noncurrent liabilities	(1,102)	(599)
Deferred revenues	(783)	(257)
Net cash used in operating activities	<u>(11,801)</u>	<u>(9,846)</u>
Investing activities		
Acquisition of property and equipment	(188)	(37)
Net cash used in investing activities	<u>(188)</u>	<u>(37)</u>
Financing activities		
Principal payments under note payable	(1,250)	(1,250)
Retirement of term loan	(2,000)	—
Proceeds from issuance of common stock, net	4,098	9,019
Proceeds from exercise of warrants, net	3,856	—
Proceeds from issuance of convertible promissory note, net	1,925	—
Net cash provided by financing activities	<u>6,629</u>	<u>7,769</u>
Effect of exchange rate changes on cash	36	(31)
Net decrease in cash	<u>(5,324)</u>	<u>(2,145)</u>
Cash and restricted cash at beginning of the year	6,493	8,638
Cash and restricted cash at end of the year	<u>\$ 1,169</u>	<u>\$ 6,493</u>
Supplemental disclosure of cash flow activities		
Cash paid for interest	\$ 118	\$ 182
Cash paid for income taxes	<u>\$ 5</u>	<u>\$ 8</u>
Supplemental disclosure of non-cash activities		
Deemed dividend in connection with warrant inducement	\$ 226	\$ —
Share issuance for common stock contribution to 401(k) plan	\$ 236	\$ 238
Transfer of inventory to property and equipment	\$ 77	\$ 199
Initial recognition of operating lease liabilities and right of use assets	\$ 153	\$ 180

See accompanying notes to consolidated financial statements

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

1. Organization

Description of Business

Ekso Bionics Holdings, Inc. (the "Company") designs, develops, and markets exoskeleton and complementary products that augment human strength, endurance and mobility. The primary end market for our exoskeleton technology is healthcare, where our technology primarily serves people with physical disabilities or impairments in both physical rehabilitation and mobility. The Company has marketed devices that (i) enable individuals with neurological conditions affecting gait, including acquired brain injury ("ABI") and multiple sclerosis ("MS"), and spinal cord injury ("SCI") to rehabilitate and to stand and walk in neurorehabilitation settings and, for patients with a SCI, for home and community use, (ii) assist individuals with a broad range of upper extremity impairments, and (iii) allow industrial workers to perform difficult repetitive work for extended periods. Founded in 2005, the Company is headquartered in the San Francisco Bay Area and listed on the Nasdaq Capital Market under the symbol "EKSO".

Unless otherwise indicated, all dollar and share amounts included in these notes to the consolidated financial statements are in thousands.

All common stock share and per share amounts have been adjusted to reflect the one-for-fifteen reverse stock split effected on June 2, 2025. See Note 11. *Capitalization and Equity Structure – Reverse Stock Split* for additional information.

Liquidity and Going Concern

As of December 31, 2025, the Company had an accumulated deficit of \$262,396. The Company has incurred significant operating losses and negative cash flows from operations since inception. During the year ended December 31, 2025, the Company used \$11,801 of cash in its operations. Cash on hand as of December 31, 2025 was \$1,169.

Our expectation to generate operating losses and negative operating cash flows in the future and the need for additional funding to support our planned operations raise substantial doubt regarding our ability to continue as a going concern for a period of one year after the date that the consolidated financial statements are issued. Management intends to raise funds through one or more financings in the near term in order to meet our cash requirements for the next 12 months. However, due to several factors, including those outside management's control, there can be no assurance that the Company will be able to complete such financings on acceptable terms or in amounts sufficient to continue operating the business under the operating plan. As part of the financing strategy, management is simultaneously pursuing strategic partnerships, delaying or abandoning certain product development projects, cost reduction efforts for our products, and refocusing sales efforts to accelerate revenue growth above historical results. We have concluded the likelihood that our plan to successfully reduce expenses to align with our available cash, while reasonably possible, is less than probable. Accordingly, we have concluded that substantial doubt exists about our ability to continue as a going concern for a period of at least 12 months from the date of issuance of these consolidated financial statements. Management currently estimates that the Company's cash on hand as of December 31, 2025, in addition to the net proceeds from the Private Placement (as defined below), will fund its operations until the end of the second quarter of 2026.

The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the ordinary course of business. The consolidated financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result from the outcome of the uncertainties described above.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

2. Summary of Significant Accounting Policies and Estimates

Basis of Presentation and Consolidation

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States ("U.S. GAAP").

The consolidated financial statements include the financial statements of Ekso Bionics Holdings, Inc. and its subsidiaries. All significant intercompany transactions and balances have been eliminated in consolidation.

Use of Estimates

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the balance sheet, and the reported amounts of revenues and expenses during the reporting period. For the Company, these estimates include, but are not limited to, intangible and tangible assets acquired and liabilities assumed in business combinations, revenue recognition, deferred revenue, the provision for credit losses on accounts receivable, the valuation of warrants, employee equity awards, and phantom performance-based restricted stock units, future warranty costs, accounting for leases, useful lives assigned to long-lived assets, valuation of inventory, realizability of deferred tax assets, and contingencies. Actual results could differ from those estimates.

Foreign Currency

The assets and liabilities of foreign subsidiaries and equity investments, where the local currency is the functional currency, are translated from their respective functional currencies into U.S. dollars at the rates in effect at the balance sheet date and revenue and expense amounts are translated at average rates during the period, with resulting foreign currency translation adjustments recorded in accumulated other comprehensive income as a component of stockholders' equity. Gains and losses from the re-measurement of balances denominated in currencies other than the entities' functional currencies, are recorded in other expense, net in the accompanying consolidated statements of operations and comprehensive loss.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

Accumulated Other Comprehensive (Loss) Income

The Company's accumulated other comprehensive (loss) income consists of the accumulated net unrealized gains or losses on foreign currency translation adjustments. The change in accumulated other comprehensive (loss) income presented on the consolidated balance sheets as of December 31, 2025 and 2024, is reflected in the table below net of tax:

	Accumulated Other Comprehensive Income
Balance as of December 31, 2023	\$ 156
Net unrealized gain on foreign currency translation	801
Balance as of December 31, 2024	957
Net unrealized loss on foreign currency translation	(1,649)
Balance as of December 31, 2025	\$ (692)

Concentration of Credit Risk and Other Risks and Uncertainties

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash and accounts receivable.

The Company's cash balances held in domestic banks are deposited into accounts at various financial institutions with each balance under the \$250 Federal Deposit Insurance Corporation ("FDIC") insurance limit. The Company has significant cash balances at foreign financial institutions that regularly exceed the applicable country cash deposit insurance limits of approximately \$100 at each of the Company's two foreign banks. Any foreign exchange loss incurred or a lack of access to such funds could have a significant adverse impact on the Company's financial condition, results of operations, and cash flows.

The Company extends credit to customers in the normal course of business. Concentrations of credit risk with respect to accounts receivable exist to the full extent of amounts presented in the consolidated financial statements. The Company does not require collateral from its customers to secure accounts receivable. Accounts receivable are derived from the sale of products shipped and services performed for customers primarily located in the U.S., Europe, and Asia. Invoices are aged based on contractual terms with the customer.

Many of the sales contracts with customers outside of the U.S. are settled in a foreign currency other than the U.S. dollar. The Company does not enter into any foreign currency hedging agreements and is susceptible to gains and losses from foreign currency fluctuations. To date, the Company has not experienced significant gains or losses upon settling contracts denominated in a foreign currency.

The Company had one customer with an accounts receivable balance totaling 10% or more of the Company's total accounts receivable as of December 31, 2025 (29%), as compared with two customers as of December 31, 2024 (17% and 17%).

The Company had two customers with sales of 10% or more of the Company's total revenue for the year ended December 31, 2025 (16% and 10%), as compared with one customer for the year ended December 31, 2024 (17%).

Accounts Receivable and Allowance for Credit Losses

The Company carries accounts receivable at invoiced amounts less an allowance (or "provision") for credit losses. The Company reviews accounts receivables for collectability and determines an allowance for potential credit losses. The allowance for credit losses on accounts receivables reflects the Company's best estimate of probable losses inherent in the accounts receivable balance based on historical bad debt expense, the aging of the accounts, known troubled accounts, customer payment history, and other currently available evidence. Payment terms and conditions vary by contract type, although terms generally include a requirement of payment within 30 to 120 days. Accounts receivables are charged off after all reasonable means to collect the full amount, including litigation where appropriate, have been exhausted. The Company has not experienced material losses related to accounts receivable during the years ended December 31, 2025 and 2024. The Company's accounts receivable balances, net of allowances, as of December 31, 2025, 2024, and 2023 were \$7,308, \$7,238 and \$5,645, respectively.

Inventories

Inventories are recorded at the lower of cost or net realizable value. Cost is computed using the standard cost method, which approximates actual cost on a first-in, first-out basis. Materials from vendors are received and recorded as raw materials. Once the raw materials are incorporated in the fabrication of the product, the related value of the component is recorded as work in progress ("WIP"). Direct and indirect labor and applicable overhead costs are also allocated and recorded to WIP inventory. Finished goods are comprised of completed products that are ready for customer shipment. The Company periodically evaluates the carrying value of inventory on hand for potential excess amounts over sales and forecasted demand. Excess and obsolete inventories identified, if any, are recorded as an inventory impairment charge within the consolidated statements of operations and comprehensive loss. The Company's estimate of write-downs for excess and obsolete inventory is based on a detailed analysis which includes on-hand inventory and purchase commitments in excess of forecasted demand. Subsequent disposals of inventories are recorded as a reduction of inventory.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

Inventories consisted of the following:

	December 31,	
	2025	2024
Raw materials	\$ 3,593	\$ 3,551
Work in progress	102	177
Finished goods	1,127	843
Inventories	<u>\$ 4,822</u>	<u>\$ 4,571</u>

Leases

The Company records its leases in accordance with the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 842, *Leases*. At the inception of an arrangement, the Company determines whether the arrangement is or contains a lease based on the unique facts and circumstances present. Operating lease liabilities and their corresponding right-of-use assets are recorded based on the present value of lease payments over the expected lease term. The interest rate implicit in lease contracts is typically not readily determinable. As such, the Company utilizes its incremental borrowing rate, which is the rate incurred to borrow on a collateralized basis over a similar term an amount equal to the lease payments in a similar economic environment. Certain adjustments to the right-of-use asset may be required for items, such as initial direct costs paid or incentives received.

Lease expense is recognized over the expected lease term on a straight-line basis. Operating leases are recognized on the balance sheet as right-of-use assets, lease liabilities current and lease liabilities non-current.

Leases with an initial term of 12 months or less are not recorded on the balance sheet. The Company recognizes the lease expense for such leases on a straight-line basis over the lease term.

Property and Equipment, net

Property and equipment are stated at cost less accumulated depreciation and are depreciated on a straight-line basis over the estimated useful lives of the assets, generally ranging from three to 10 years. Leasehold improvements are amortized over the shorter of the estimated useful life or the related term of the lease. The costs of repairs and maintenance are expensed when incurred, while expenditures for refurbishments and improvements that significantly add to the productive capacity or extend the useful life of an asset are capitalized.

The Company assesses the impairment of long-lived assets whenever events or changes in circumstances indicate that their carrying value may not be recoverable from the estimated future cash flows expected to result from the Company's use or eventual disposition. If estimates of future undiscounted net cash flows are insufficient to recover the carrying value of the assets, the Company will record an impairment loss in the amount by which the carrying value of the assets exceeds the fair value. If the assets are determined to be recoverable, but the useful lives are shorter than originally estimated, the Company will depreciate or amortize the net book value of the assets over the newly determined remaining useful lives. None of the Company's property and equipment were impaired as of December 31, 2025 and 2024. No impairment loss has been recognized in the years ended December 31, 2025 and 2024.

Goodwill

The Company records goodwill when the purchase price of an acquisition exceeds the fair value of the net tangible and identified intangible assets acquired. The Company performs an annual impairment assessment, or more frequently if indicators of potential impairment exist, which includes evaluating qualitative and quantitative factors to assess the likelihood of an impairment of goodwill. Such indicators include, but not limited to, material departures from projected sales volume, deteriorating gross margins, and uncertainties regarding continued commercialization as a result of changing business strategies.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

Intangible Assets

Other intangible assets include developed technology, acquired intellectual property, and customer relationships, in the case of finite-lived intangibles, and trade names in the case of indefinite-lived intangibles. Finite-lived intangibles are amortized over their estimated useful lives and are tested for impairment at least annually or whenever events or changes in circumstances indicate that the carrying value of the assets may not be recoverable. Indefinite-lived intangible assets are tested for impairment annually, or as deemed necessary if potential indicators of impairment exist. Such indicators include, but not limited to, material departures from projected sales volume, deteriorating gross margins, and uncertainties regarding continued commercialization as a result of changing business strategies.

Warrant Valuation

The Company generally accounts for warrants issued in connection with equity financings as a component of equity, unless the warrants include a conditional obligation to issue a variable number of shares or there is a deemed possibility that it may need to settle the warrants in cash.

Where there is a possibility that the Company may have to settle warrants in cash, it estimates the fair value of the issued warrants as a liability at each reporting date and records changes in the estimated fair value as a non-cash gain or loss in the consolidated statements of operations and comprehensive loss. The fair values of these warrants have been determined using the Black-Scholes option-pricing model (the "Black-Scholes Model") and the Binomial Lattice model (the "Lattice Model"). The Black-Scholes Model requires inputs, such as the expected volatility, expected term, exercise price, risk-free interest rate, and the value of the underlying security. The Lattice Model provides for assumptions regarding expected volatility, expected term, exercise price, risk-free interest rates, the value of the underlying security, and the probability of and likely timing of a specific event within the period to maturity. These values are subject to a significant degree of the Company's judgment. In addition to the aforementioned inputs, the Company's common stock price represents a significant input that affects the valuation of the warrants.

Phantom Performance-based Restricted Stock Valuation

On November 5, 2025, the Company issued phantom performance-based restricted stock units ("Phantom PSUs") to its executive officers in order to assist in retention, drive stockholder growth, and achieve the Company's strategic goals. Each award of the Phantom PSUs is scheduled to vest upon achievement of each of the following two performance requirements within the five-year period following the date of grant, in each case subject to the applicable executive officers' continued employment through the applicable date of achievement: (i) the occurrence of a change in control, and (ii) achievement of a stock price of at least \$7.50.

As of both the grant date and December 31, 2025, the Company determined that the change in control condition, or triggering event, of the Phantom PSUs was not probable. If the change in control condition is deemed to be probable as of a future reporting date, the Company would account for the Phantom PSUs as a liability due to their settlement in cash, based on the estimated fair value measured at each reporting date, in accordance with ASC 718, *Compensation—Stock Compensation*. Subsequently, the Company would record changes in the estimated fair value as a component of operating expenses in the consolidated statements of operations and comprehensive loss. As long as the Company considers the change in control condition to be probable as of the reporting date, the Phantom PSUs will be remeasured at fair value until settlement, which are to be settled in cash only.

The fair values of these Phantom PSUs will be determined using the Monte Carlo simulation model. The Monte Carlo simulation model requires inputs, such as the expected volatility, expected term, risk-free interest rate, and the value of the underlying security. The Monte Carlo simulation model provides for assumptions regarding expected volatility, expected term, risk-free interest rates, the value of the underlying security, and the probability of and likely timing of a specific event within the expected term. These values are subject to a significant degree of the Company's judgment. The Company's common stock price represents a significant input that affects the valuation of the Phantom PSUs. Changes in these assumptions could have potential material impacts on the estimated fair value of the Phantom PSU liabilities.

When the triggering events are determined to be probable, the fair values, representing the expected cash settlement of the Phantom PSUs, will be included as a component of operating expenses, under the captions "General and administrative" and "Research and development," in the consolidated statement of operations and comprehensive loss, and the corresponding liability will be included as a component of Accrued liabilities in the consolidated balance sheets.

Going Concern

The Company assesses its ability to continue as a going concern in accordance with ASC 205-40, *Presentation of Financial Statements – Going Concern*. The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. Refer to Note 1, *Organization – Liquidity and Going Concern* for additional information regarding the Company's assessment of its ability to continue as a going concern.

Revenue Recognition

The Company records its revenue in accordance with ASC 606, *Revenue from Contracts with Customers*. Revenue is recognized upon transfer of control of promised products or services to customers in an amount that reflects the consideration the Company expects to receive in exchange for those products or services. The Company enters into contracts that can include various combinations of products and services, which when capable of being distinct, are accounted for as separate performance obligations. Revenue recognition is evaluated based on the following five steps: (i) identification of the contract with the customer; (ii) identification of the performance obligations in the contract; (iii) determination of the transaction price; (iv) allocation of the transaction price to the performance obligations in the contract; and (v) recognition of revenue when or as a performance obligation is satisfied.

For multiple-element arrangements, revenue is allocated to each performance obligation based on its relative standalone selling price. Standalone selling prices are determined based on observable prices at which the Company separately sells its products or services. If a standalone selling price is not directly observable, judgment is made to estimate the selling price based on market conditions and entity-specific factors including cost plus analyses, features and functionality of the product and/or services, the geography of the Company's customers, and type of customer. Any discounts or other reductions to the transaction price are allocated proportionately to all performance obligations within the multiple-element arrangement. The Company periodically validates the stand-alone selling price for performance obligations by evaluating whether changes in the key assumptions used to determine the stand-alone selling prices will have a significant effect on the allocation of transaction price between multiple performance obligations.

The Company generally does not grant a right of return for its products. The Company exercised judgement to determine that a product return reserve was not required as of December 31, 2025 and 2024, as historical returns activity have not been material and the Company's expectations and estimates regarding future returns have not changed.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

Research and Development

Research and development costs consist of costs incurred for internal research and development activities. These costs primarily include salaries and other personnel-related expenses, contractor fees, prototype materials, facility costs, supplies, and depreciation of equipment associated with the design and development of new products prior to the establishment of their technological feasibility. Such costs are expensed as incurred.

Income Taxes

The Company accounts for income taxes using the asset and liability method. Under this method, income tax expense or benefit is recognized for the amount of taxes payable or refundable for the current year and for deferred tax liabilities and assets for the future tax consequences of events that have been recognized in the Company's consolidated financial statements or tax returns. The Company accounts for any income tax contingencies in accordance with accounting guidance for income taxes. The measurement of current and deferred tax assets and liabilities is based on provisions of currently enacted tax laws. The effects of any future changes in tax laws or rates have not been considered.

For the preparation of the Company's consolidated financial statements included herein, the Company estimates its income taxes and tax contingencies in each of the tax jurisdictions in which it operates prior to the completion and filing of its tax returns. This process involves estimating actual current tax expense together with assessing temporary differences resulting from differing treatment of items, such as deferred revenue, for tax and accounting purposes. These differences result in net deferred tax assets and liabilities. The Company must then assess the likelihood that the deferred tax assets will be realizable, and to the extent they believe that realizability is not likely, the Company must establish a valuation allowance. In assessing the need for any additional valuation allowance, the Company considers all the evidence available to it, both positive and negative, including historical levels of income, legislative developments, expectations and risks associated with estimates of future taxable income, and ongoing prudent and feasible tax planning strategies.

Stock-based Compensation

The Company measures stock-based compensation expense for restricted stock units ("RSUs") and performance stock units ("PSUs") made to employees and directors based on the Company's closing stock price on the date of grant and recognizes the value on a straight-line basis over the requisite service periods of the awards. The Company's Phantom PSUs are discussed in the *Phantom Performance-based Restricted Stock Valuation* above in this Note 2.

The Company records compensation expense for service-based awards on a straight-line basis over the requisite service period, which is generally the vesting period of the award. For awards with performance-based conditions, at the point that it becomes probable that the performance conditions will be met, the Company records a cumulative catch-up of the expense from the grant date to the current date, and then amortizes the remainder of the expense over the remaining service period. Management evaluates when the achievement of a performance-based condition is probable based on the expected satisfaction of the performance conditions as of the reporting date. The amount of stock-based compensation expense recognized during a period is based on the value of the portion of the awards that are ultimately expected to vest. The Company accounts for forfeitures as they occur.

The Company measures stock-based compensation expense for stock options granted to employees and directors based on the estimated fair value of the award on the date of grant and recognizes the fair value on a straight-line basis over the requisite service periods of the awards. The Company determines the fair value of stock options on the date of grant using the Black-Scholes Model, which is affected by the Company's stock price and assumptions regarding a number of subjective variables. These variables include, but are not limited to, the Company's stock price, volatility over the term of the awards, and actual and projected employee stock option exercise behaviors. Due to the lack of sufficient historical exercise data to provide a reasonable basis upon which to estimate expected term, the Company adopted the simplified method of estimating the expected term pursuant to SEC Staff Accounting Bulletin Topic 14. On this basis, the Company estimated the expected term of options granted by taking the average of the vesting term and the contractual term of the option.

The Company has, from time to time, modified the terms of its stock options and RSUs to certain employees and directors. The Company accounts for the incremental compensation cost, which is the excess of the fair value of the modified award on the date of modification over the fair value of the original award immediately before the modification, as an expense for vested awards or over the remaining service (vesting) period for unvested awards.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

Employee Retention Credit

On March 27, 2020, in response to the COVID-19 pandemic, the U.S. Congress enacted the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”). The CARES Act, along with other subsequent federal acts that extended the aid, allowed eligible employers to claim employee retention credits (“ERC”) for qualified wages paid after March 12, 2020 and before January 1, 2022. We qualified for credits under the provisions of the CARES Act for the entire period subsequent to January 1, 2021, through June 30, 2021. The Company elected to account for the ERC as a government grant. As there is no authoritative guidance under U.S. GAAP on accounting for grants to for-profit business entities from government entities, the Company accounts for government assistance by analogy to International Accounting Standards Topic 20, Accounting for Government Grants and Disclosure of Government Assistance (“IAS 20”). Under IAS 20, government grants are recognized when there is reasonable assurance that the grant will be received and that all conditions related to the grant will be met.

We received ERCs of \$523 in August 2025, of which \$454 was recorded as an offset to the related employee payroll expenses as a component of operating expenses, under the captions "Sales and marketing," "Research and development," and "General and administrative," and \$69 was recorded under the caption "Interest expense, net" in the consolidated statement of operations and comprehensive loss for the year ended December 31, 2025. These credits, due to the uncertainty of eventual receipt following claims made, were not recognized until receipt. There can be no assurance that the Company's ERCs received may not be examined by the Internal Revenue Service, and if examined, possibly challenged as to a portion or all of the benefit received, which if required to be returned, would have an adverse impact on the Company's liquidity.

Accounting Pronouncements Adopted in 2025

For the year ended December 31, 2025, the Company adopted Accounting Standards Update (“ASU”) No. 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures (“ASU 2023-09”) on a prospective basis. This standard improves the transparency of income tax disclosures by requiring consistent categories and greater disaggregation of information in the effective tax rate reconciliation and income taxes paid disaggregated by jurisdiction. It also includes certain other amendments to improve the effectiveness of income tax disclosures. The adoption of this new standard did not have a material impact on the Company's consolidated financial statements and related consolidated disclosures. Refer to Note 14. *Income Taxes* for additional information regarding the adoption of ASU 2023-09.

Recent Accounting Pronouncements

In December 2025, the FASB issued ASU No. 2025-11, Interim Reporting (Topic 270): Narrow-Scope Improvements (“ASU 2025-11”), which clarifies interim disclosure requirements and the applicability of Topic 270. The guidance will be effective for interim periods beginning after December 15, 2027, with early adoption permitted. Upon adoption, the guidance can be applied prospectively or retrospectively. The Company is currently in the process of evaluating the impact of this pronouncement on its related consolidated financial statements and disclosures and does not expect to early adopt.

In July 2025, the FASB issued ASU No. 2025-05, Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses for Accounts Receivable and Contract Assets (“ASU 2025-05”), which provides a practical expedient for estimating expected credit losses for current accounts receivable and current contract assets. ASU 2025-05 is effective for fiscal years beginning after December 15, 2025, and interim periods within those annual reporting periods, with early adoption permitted. ASU 2025-05 should be applied prospectively. The Company does not expect the adoption of ASU 2025-05 to have a material impact on its consolidated financial statements and related consolidated disclosures.

In November 2024, the FASB issued ASU No. 2024-03, Income Statement—Reporting Comprehensive Income—Expense Disaggregation Disclosures (Subtopic 220-40): Disaggregation of Income Statement Expenses (“ASU 2024-03”), which requires disclosure about the types of costs and expenses included in certain expense captions presented on the income statement. The new disclosure requirements are effective for the Company’s fiscal years beginning after December 15, 2026, and interim periods beginning after December 15, 2027, with early adoption permitted. The Company is currently in the process of evaluating the impact of this pronouncement on its related consolidated disclosures and does not expect to early adopt.

3. Net Loss Per Share of Common Stock

Basic net loss per share of common stock is computed using the weighted average number of shares of common stock outstanding during the period. Diluted net loss per share is computed, when applicable, using the weighted average number of shares of common stock, adjusted to include conversion of "in-the-money" stock options and warrants for common stock and release of common stock in connection with restricted stock units during the period, net of tax as follows:

	Years ended December 31,	
	2025	2024
Numerator:		
Net loss applicable to common stockholders	\$ (11,695)	\$ (11,330)
Adjustment for deemed dividend (*)	(226)	-
Adjusted net loss used for basic and diluted calculation	\$ (11,921)	\$ (11,330)
Denominator:		
Weighted-average number of common shares, basic and diluted	2,426	1,344
Net loss per common share:		
Basic and diluted	<u>\$ (4.91)</u>	<u>\$ (8.43)</u>

(*) Deemed dividend represents the Company's incremental fair value of the Inducement Warrant over the gross proceeds received, which reduces income available to common stockholders used for the basic and diluted net loss per common share calculation. Refer to Note

12.

Capitalization and Equity Structure — Warrants for additional information regarding the Inducement Warrant.

The following table sets forth potential shares of common stock that are

not included in the calculation of diluted net loss per common share because to do so would be anti-dilutive as of the end of each period presented:

	Years ended December 31,	
	2025	2024
Options to purchase common stock	11	12
Restricted stock units	86	68
B. Riley Promissory Note conversion option	488	—
Warrants for common stock	807	866
Total common stock equivalents	<u>1,392</u>	<u>947</u>

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

4. Fair Value Measurement

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. Three levels of inputs, of which the first two are considered observable and the last unobservable, may be used to measure fair value which are the following:

- **Level 1**—Quoted prices in active markets for identical assets or liabilities. The Company considers a market to be active when transactions for the asset occur with sufficient frequency and volume to provide pricing information on an ongoing basis.
- **Level 2**—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- **Level 3**—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. The valuation of Level 3 investments requires the use of significant management judgments or estimation.

The Company’s fair value hierarchies for its financial assets and liabilities which require fair value measurement on a recurring basis are as follows:

	<u>Total</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
<u>December 31, 2025</u>				
Liabilities				
Warrant liabilities	\$ —	\$ —	\$ —	\$ —
<u>December 31, 2024</u>				
Liabilities				
Warrant liabilities	\$ 1	\$ —	\$ —	\$ 1

During the years ended December 31, 2025 and 2024, there were no transfers between Level 1, Level 2, or Level 3 assets or liabilities reported at fair value on a recurring basis and the valuation techniques used did not change compared to the Company’s established practice.

The following table sets forth a summary of the changes in the fair value of Company’s Level 3 financial liabilities during the years ended December 31, 2025 and 2024, which were measured at fair value on a recurring basis:

	Warrant Liability
Balance as of December 31, 2023	\$ 366
Gain on revaluation of warrants issued in 2021, June 2020, December 2019, and May 2019 equity financings	(474)
Loss on modification of warrant	109
Balance as of December 31, 2024	\$ 1
Gain on revaluation of warrants issued in 2021, June 2020, December 2019, and May 2019 equity financings	(1)
Balance as of December 31, 2025	—

Refer to Note 2. *Summary of Significant Accounting Policies and Estimates – Phantom Performance-based Restricted Stock Valuation* for additional information regarding the valuation of Phantom PSUs, and Note 12. *Capitalization and Equity Structure – Warrants* for additional information regarding the valuation of warrants.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

5. Revenue

The Company's revenue is primarily generated through the sale and subscription of the EksoNR, Ekso Indego Therapy, and Ekso Indego Personal devices, along with the sale of support and maintenance contracts. Revenue from device product sales is recognized at the point in time when control of the product transfers to the customer. Transfer of control generally occurs upon shipment from the Company's facility for sales of these devices. Support and maintenance contracts extend coverage beyond the Company's standard warranty agreements ranging from 12 to 48 months. Revenue is recognized evenly over the term of the contracts. Revenue from medical device subscriptions is recognized evenly over the contract term, typically over 24 months.

Deferred Revenue

Deferred revenue is comprised mainly of unearned revenue related to extended support and maintenance contracts, but also includes other offerings for which the Company has been paid in advance and earns revenue when the Company transfers control of the product or service.

Deferred revenue consisted of the following:

	December 31, 2025	December 31, 2024
Deferred extended maintenance and support	\$ 2,907	\$ 3,669
Deferred device and advances	234	207
Total deferred revenues	3,141	3,876
Less current portion	(1,727)	(1,956)
Deferred revenues, non-current	<u>\$ 1,414</u>	<u>\$ 1,920</u>

Deferred revenue activity consisted of the following for the years ended December 31, 2025 and December 31, 2024:

	Year Ended December 31, 2025	Year Ended December 31, 2024
Beginning balance	\$ 3,876	\$ 4,162
Deferral of revenue	1,746	3,331
Recognition of deferred revenue	(2,481)	(3,617)
Ending balance	<u>\$ 3,141</u>	<u>\$ 3,876</u>

The Company expects to recognize approximately \$1,727 of the deferred revenue during 2026, \$833 in 2027, and \$581 thereafter.

In addition to deferred revenue, the Company has a non-cancellable backlog of \$554 expected to be recognized across 2026 and 2027, which includes customer orders received but not fulfilled and other ancillary products and services of \$322, and contracts for subscription units of \$232.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

Disaggregation of Revenue

The following table disaggregates the Company's revenue by major source for the year ended December 31, 2025:

	Total
Device revenue	\$ 9,241
Service and support	2,918
Subscriptions	358
Parts and other	282
	<u>\$ 12,799</u>

The following table disaggregates the Company's revenue by major source for the year ended December 31, 2024:

	Total
Device revenue	\$ 13,323
Service and support	3,121
Subscriptions	527
Parts and other	954
	<u>\$ 17,925</u>

The Company operates in the following regions: (1) Americas, (2) Europe, the Middle East, and Africa region ("EMEA"), and (3) Asia Pacific region ("APAC"). Individual countries with revenue greater than 10% of total revenue for the year ended December 31, 2025 and 2024 are disclosed separately from the regional totals. Geographic information for revenue based on location of customers is as follows:

	Years ended December 31,	
	2025	2024
United States	\$ 7,430	\$ 9,712
Other	72	421
Americas	<u>7,502</u>	<u>10,133</u>
France	1,430	3,006
Other	2,362	2,936
EMEA	<u>3,792</u>	<u>5,942</u>
APAC	<u>1,505</u>	<u>1,850</u>
	<u>\$ 12,799</u>	<u>\$ 17,925</u>

6. Property and Equipment, net

Property and equipment, net consisted of the following:

	Estimated Life (Years)	December 31,	
		2025	2024
Company-owned device fleet	1-5	\$ 2,606	\$ 2,572
Molds and other tools	5-10	1,500	1,424
Machinery and equipment	3-7	437	380
Leasehold improvement	Lease term	194	194
Software	3-5	191	234
Furniture and office equipment	3-7	114	114
		<u>5,042</u>	<u>4,918</u>
Accumulated depreciation and amortization		(3,754)	(3,341)
Property and equipment, net		<u>\$ 1,288</u>	<u>\$ 1,577</u>

Depreciation expense of Property and equipment, net totaled \$563 and \$658 for the years ended December 31, 2025 and 2024, respectively.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

7. Accrued Liabilities

Accrued liabilities consisted of the following:

	December 31,	
	2025	2024
Salaries, benefits and related expenses	\$ 1,198	\$ 1,684
Device warranty	363	474
Other	218	194
Total	<u>\$ 1,779</u>	<u>\$ 2,352</u>

Warranty

Sales of devices generally include an initial warranty for parts and services for one year in the Americas, two years in the EMEA, and one to three years in the APAC. Warranty costs are reflected in the consolidated statements of operations and comprehensive loss as a component of costs of revenue. The current portion of the device warranty liability is classified as a component of Accrued liabilities, while the long-term portion of the device warranty liability is classified as a component of Other non-current liabilities in the consolidated balance sheets. A reconciliation of the changes in the device warranty liability for the years ended December 31, 2025 and 2024 is as follows:

	December 31,	
	2025	2024
Balance at beginning of the period	\$ 655	\$ 566
Additions for estimated future expense	468	730
Incurring costs	(671)	(641)
Balance at end of the period	<u>\$ 452</u>	<u>\$ 655</u>
Current portion	\$ 363	\$ 474
Long-term portion	89	181
Total	<u>\$ 452</u>	<u>\$ 655</u>

8. Goodwill and Intangible Assets

On December 5, 2022, the Company acquired the Human Motion Control ("HMC") business unit from Parker Hannifin Corporation ("Parker") (together, the "HMC Acquisition"). The assets acquired from the business unit included intellectual property rights associated with the Ekso Indego Personal, Ekso Indego Therapy, Nomad, and future potential products in the orthotics and prosthetics space.

Goodwill

The Company accounted for the acquisition as a business combination in accordance with ASC 805, Business Combinations, by applying the acquisition method, and accordingly, the purchase price was allocated to the assets acquired and liabilities assumed based on their fair values at the acquisition date. The excess of the purchase price over the net assets acquired of \$431 was recorded as goodwill. The goodwill recognized is attributed primarily to expected synergies of HMC with the Company.

The Company determined no impairment existed for goodwill for the years ended December 31, 2025 and 2024.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

Intangible Assets

The following table summarizes the components of gross intangible assets, accumulated amortization, and net carrying values for definite- and indefinite-lived intangible asset balances as of December 31, 2025 and 2024.

	December 31, 2025			December 31, 2024				
	Gross Carrying Amount	Accumulated Amortization	Impairment	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Impairment	Net Carrying Amount
Developed technology	\$ 2,310	\$ (887)	—	\$ 1,423	\$ 2,310	\$ (598)	—	\$ 1,712
Trade name	2,310	N/A	(570)	1,740	2,310	N/A	—	2,310
Intellectual property	460	(29)	(180)	251	460	(6)	—	454
Customer relationships	140	(54)	—	86	140	(36)	—	104
Total intangible assets	\$ 5,220	\$ (970)	\$ (750)	\$ 3,500	\$ 5,220	\$ (640)	\$ —	\$ 4,580

Definite-lived intangible assets are amortized over their estimated lives using the straight-line method, which is estimated as eight years for developed technology, 12 years for intellectual property, and eight years for customer relationships. The acquired trade name was estimated to have an indefinite life, and consequently, no amortization expense was recorded.

In the fourth quarter of 2025, the Company completed its annual quantitative impairment analysis for its indefinite-lived trade name and finite-lived intangible assets. The quantitative impairment analysis for the Company's trade name asset consists of a comparison of the fair value of the asset to the carrying value of the asset as of the impairment testing date. The Company estimates the fair value of the trade name asset using the relief-from-royalty method, a form of the income approach, which the Company believes is an appropriate and widely used valuation method of such assets in nature. The trade name asset represents the Company's identity and brand recognition associated with the products acquired in the HMC Acquisition. The valuation method is based on the assumption that, in lieu of ownership, a firm would be willing to pay a royalty in order to exploit the related benefits of the asset class. Significant estimates in valuing the Company's trade name asset include, but are not limited to, the amount and timing of projected future cash flows based on expected future growth rates and margins, discount rate used to determine the present value of these cash flows, and royalty rate for similar brand licenses. The fair value derived from the relief-from-royalty method is measured as the discounted cash flow savings realized from owning such trade names and not being required to pay a royalty for their use. Based on the impairment test completed, the Company concluded that the carrying value of the trade name asset exceeded its estimated fair value due to downward revisions to the Company's short-term and long-term revenue forecasts, and as a result, recognized a \$570 impairment loss for its trade name asset in the period, which reduced the asset balance to \$1,740 as of December 31, 2025. The impairment loss is included as a component of operating expenses, under the caption "Sales and marketing," in the consolidated statement of operations and comprehensive loss for the year ended December 31, 2025.

Based on the impairment tests completed in the fourth quarter of 2025 for the Company's finite-lived intangible assets, including its developed technology assets, the Company concluded that the estimated fair value of such assets exceeded its carrying value, and as a result, no impairment loss was recognized in the period.

The Company had a Knee License Agreement with Vanderbilt University ("Vanderbilt") to maintain exclusive rights to patents on the Company's behalf (the "License Agreement"). On April 16, 2025, the Company executed a Termination Agreement with Vanderbilt of the License Agreement (the "Termination Agreement"). Per the Termination Agreement, the Company is no longer required to pay 3.75% of net sales for its Swing-Assist Microprocessor-Controlled Knee ("SA-MPK") licensed patent products and a minimum annual royalty of \$75 due on or before July 31, 2028 and \$100 per year thereafter until February 15, 2041. Under the Termination Agreement, should, to the extent Vanderbilt successfully licenses the rights of the SA-MPK technology to a third-party, Vanderbilt will pay the Company 50% of Vanderbilt's share of any net revenues attributable to the rights received from such future license agreement until \$100 has been paid to the Company. As a result of the overall uncertainty of the future revenues, the Company performed an impairment assessment of the intangible asset as of March 31, 2025. In estimating the fair value of the asset, the Company utilized the undiscounted cash flow model, dependent on the primary assumption of forecasted revenues from the quoted market price of the Termination Agreement, which led to a \$180 impairment loss recognized for the asset in the period, and reduced the asset balance to \$0. The impairment loss is included as a component of operating expenses, under the caption "General and administrative," in the consolidated statement of operations and comprehensive loss for the year ended December 31, 2025.

The Company determined no impairment existed for its definite- and indefinite-lived intangible assets for the year ended December 31, 2024.

The estimated future amortization expenses related to definite-lived intangible assets as of December 31, 2025 were as follows:

Fiscal Year	Amount
2026	\$ 330
2027	330
2028	330
2029	330
2030	307
Thereafter	133
Total	\$ 1,760

Amortization expense related to the acquired definite-lived intangible assets was \$330 and \$312 for the years ended December 31, 2025 and 2024, respectively, and was included as a component of operating expenses and cost of revenue in the consolidated statement of operations and comprehensive loss.

9. Notes Payable, net
B. Riley Promissory Note

On September 12, 2025, the Company entered into a Secured Promissory Note and Security Agreement (the "B. Riley Promissory Note") with B. Riley Commercial Capital, LLC ("B. Riley") as lender. The B. Riley Promissory Note provides for a secured term loan in an aggregate principal amount of up to \$2,000. The Company used the net proceeds from the B. Riley Promissory Note for working capital for operations and other general corporate purposes. The loan matures on the earlier of the receipt of at least \$2,400 in net proceeds from the sale of the equity interests of the Company from new equity investors (a "Qualified Financing") or September 14, 2026 (the "Maturity Date"). Borrowings under the B. Riley Promissory Note bear interest at the rate of 10% per annum, which shall be payable in full on the Maturity Date. On the Maturity Date, the Company shall pay to B. Riley an exit fee in the amount of 10% of the original principal amount of the loan, which shall in the aggregate be \$200

(the "Exit Fee"). The Company may prepay the obligations under the B. Riley Promissory Note at any time in whole or in part. In connection with such prepayment, the Company must pay all accrued but unpaid interest on such portion of the principal prepaid, all interest that would have accrued through the Maturity Date on such principal amount prepaid and the portion of the Exit Fee applicable to such principal amount prepaid. B. Riley may elect to convert the obligations under the B. Riley Promissory Note, including the principal, interest, and Exit Fee, into equity securities of the Company in connection with a Qualified Financing at the purchase price per share paid by the lead investor thereunder.

The obligations under the B. Riley Promissory Note are required to be guaranteed by Ekso Bionics, Inc., a Delaware corporation and subsidiary of the Company (the "Subsidiary"), and secured by substantially all of the personal property of the Company and the Subsidiary. The B. Riley Promissory Note also contains customary affirmative and negative covenants, including negative covenants limiting the ability of the Company and the Subsidiary to, among other things, incur debt, grant liens, dispose of assets, and make certain restricted payments, in each case, subject to limitations and exceptions set forth in the B. Riley Promissory Note. As of December 31, 2025, the Company was compliant with all covenants.

The B. Riley Promissory Note contains various customary events of default that include, among others, non-payment of principal, interest or fees, breach of covenants, inaccuracy of representations and warranties, cross defaults to certain other indebtedness, cross default to contractual obligations, occurrence of a material adverse effect, bankruptcy and insolvency events, material judgments, and events constituting a change of control, subject to thresholds and cure periods as set forth in the B. Riley Promissory Note. Upon the occurrence and during the continuance of an event of default, B. Riley may accelerate the Company's obligations under the B. Riley Promissory Note (including the Exit Fee and all interest that would have been due on the Maturity Date) and may exercise certain other rights and remedies provided for under the B. Riley Promissory Note, the other loan documents and applicable law. Under certain circumstances, a default interest rate will apply on all obligations during the existence of an event of default under the B. Riley Promissory Note at a per annum rate equal to 5% above the otherwise applicable interest rate.

The Company recorded the B. Riley Promissory Note of \$2,000 in its consolidated balance sheets under the caption Convertible promissory note, net.

The Company recognized \$76 in debt issuance costs, which were recorded as a discount to the Convertible promissory note.

The following table presents the principal amount, debt discount, and carrying value of the Company's B. Riley Promissory Note as of December 31, 2025, which were classified as current:

	<u>December 31, 2025</u>
Principal	\$ 2,000
Less: unamortized debt premium and Exit Fee	8
Net carrying amount	<u>\$ 2,008</u>

The effective interest rate for the period from the date of issuance through December 31, 2025 was 23.4%. The debt issuance costs are amortized to interest expense using the effective interest method over the life of the loan. Since the Exit Fee is mandatory, it was included in the cash flows used to apply the effective interest method and will result in an additional liability of \$200 upon loan repayment. The following table sets forth the total interest expense recognized for the year ended December 31, 2025:

	<u>Year Ended December 31, 2025</u>
Contractual interest expense	\$ 60
Accretion of debt discount and Exit Fee	83
Total interest expense	<u>\$ 143</u>

As of December 31, 2025, the B. Riley Promissory Note had accrued interest of \$60.

The Company evaluated the B. Riley Promissory Note and determined that certain redemption features met the definition of an embedded derivative liability that are required to be bifurcated from the host instrument. However, since the conversion option did not include a discount on the price per share or have a fixed conversion price, and the full interest and Exit Fee are guaranteed regardless of the timing of the event, the fair value of the compound embedded derivative was determined to have no value. Therefore, no derivative liability was recorded.

BoC Term Loan

In August 2020, the Company entered into a loan agreement (the "BoC Loan Agreement") with Pacific Western Bank, which merged with the Banc of California (the "Lender") in 2024. The Company received a loan in the principal amount of \$2,000 (the "BoC Term Loan") that bore interest on the outstanding daily balance at a rate equal to the greater of: (a) 0.50% above the variable rate of interest announced by the Lender as its "prime rate" then in effect; or (b) 4.50%. The BoC Loan Agreement created a first priority security interest with respect to substantially all assets of the Company, including proceeds of intellectual property, but expressly excluding intellectual property itself.

The Company was required to pay accrued interest on the current loan on the 13th day of each month through and including August 13, 2023, at which time the unpaid principal and accrued and unpaid interest was due and payable in full. On August 17, 2023, the Company entered into an amendment to the BoC Loan Agreement, extending the maturity date to August 13, 2026 with interest-only payments until such date, having daily borrowings bearing interest at a variable annual rate equal to the greater of the Lender's "prime rate" then in effect and 4.50%, and caused the Company to maintain all of its depository, operating, and investment accounts with the Lender. The Company determined this amendment constituted a loan modification under ASC 470, and used the updated imputed interest rate to recalculate debt discounts, debt issuance costs and final payment to be amortized over the new term.

On September 12, 2025, in connection with the entry into the B. Riley Promissory Note, the Company paid off all obligations under and terminated the BoC Loan Agreement. The BoC Loan Agreement contained a liquidity covenant, which required that the Company maintain cash in accounts of the Lender or subject to control agreements in favor of the Lender in an amount equal to at least the outstanding balance of the BoC Term Loan, which was \$2,000. It also contained a primary depository covenant, which restricted the Company from having more than \$1,000 held in subsidiary bank accounts outside of the United States. As of September 12, 2025, these covenants were terminated.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

The debt issuance costs and debt discounts combined with the stated interest resulted in an effective interest rate of 7.21% and 8.55% for the years ended December 31, 2025 and 2024, respectively. The debt issuance costs and debt discounts were amortized to interest expense using the effective interest method over the life of the loan. Interest expense for the BoC Term Loan totaled \$108 and \$171 for the years ended December 31, 2025 and 2024, respectively.

Parker Hannifin Promissory Note

In connection with the HMC Acquisition, on December 5, 2022, the Company delivered a \$5,000 unsecured, subordinated promissory note (the "Parker Hannifin Promissory Note") to Parker. The Parker Hannifin Promissory Note, which is subordinate to the B. Riley Promissory Note, bears no interest with principal payable in sixteen equal installments due on the last day of each quarter, which commenced on December 31, 2023 and matures on September 30, 2027.

The Parker Hannifin Promissory Note, upon the occurrence of an event of default, allows for the levying of interest equal to the lesser of (a) 5% per annum and (b) the maximum interest rate permitted under applicable law on the then entire outstanding principal balance, and also for the acceleration of all outstanding liabilities and obligations, making them immediately payable. Under the terms of the Parker Hannifin Promissory Note, the following occurrences constitute a default, and could, upon written notice or declaration by Parker, allow for the levying of interest and or the acceleration of principal outstanding: (i) failure to pay any amount of the principal when due and payable, (ii) the dissolution of the Company (including the declaration of bankruptcy), and (iii) the acquisition of the Company by another entity or the sale of substantially all of its assets to another entity.

The Company recorded the Parker Hannifin Promissory Note of \$4,055 in its consolidated balance sheets under the captions Notes payable, current and Notes payable, net, estimating an implicit discount rate of 7.5% via reference to the interest charged on the Company's BoC Term Loan and other relevant economic factors present at the execution date of the Parker Hannifin Promissory Note. The amortization of debt discounts resulted in an effective interest rate of 7.93% and 7.79% for the years ended December 31, 2025 and 2024, respectively. The debt discount is amortized to interest expense using the effective interest method over the life of the loan. Interest expense on the Parker Hannifin Promissory Note was \$190 and \$271 for the years ended December 31, 2025 and 2024, respectively.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

The following table presents scheduled principal payments of the Parker Hannifin Promissory Note as of December 31, 2025:

Period	Amount
2026	\$ 1,250
2027	937
Total principal payments	2,187
Less debt discount	(139)
Note payable, net	\$ 2,048
Current portion	1,250
Long-term portion	798
Note payable, net	\$ 2,048

10. Lease Obligations

The Company's operating lease agreement for its headquarters and manufacturing facility in San Rafael, California (the "San Rafael Lease") commenced in July 2022 and expires in November 2026, and it provides the Company with the option to renew for an additional three-year period at the prevailing market rate at the time of extension.

The San Rafael Lease constitutes an operating lease under ASC 842, and the Company estimates the lease term as July 2022 through November 2026. The option to extend for a three-year period lacks significant economic incentives and disincentives, which would make exercise reasonably certain. Fixed lease payments for identified lease components over the identified term have been discounted at the Company's estimated incremental borrowing rate as of the date of contract execution and are reflected in the consolidated balance sheets under the captions Lease liabilities, current and Lease liabilities, and the corresponding right of use asset is reflected in the consolidated balance sheets under the caption Right-of-use assets. Non-lease components, such as common area maintenance costs, are excluded from the lease liability calculation and expensed as incurred. The Company records a straight-line monthly rent expense for the San Rafael Lease equal to the sum of all fixed lease payments divided by the number of months in the lease term.

The Company's operating lease agreement for its service facility in Brecksville, Ohio (the "Ohio Lease") commenced in June 2024 and expires in July 2027, and it provides the Company with the option to renew for an additional three-year period at the prevailing market rate at the time of extension. In July 2024, the Company relocated from its Macedonia, Ohio facility to the new Brecksville, Ohio facility.

The Company has determined that the Ohio Lease constitutes an operating lease under ASC 842 and estimates the lease term as July 2024 through July 2027. The option to extend for a three-year period lacks significant economic incentives and disincentives, which would make exercise reasonably certain. Fixed lease payments for identified lease components over the identified term were discounted at the Company's estimated incremental borrowing rate and are reflected in the consolidated balance sheets under the captions Lease liabilities, current and Lease liabilities, and the corresponding right of use asset is reflected in the consolidated balance sheets under the caption Right-of-use assets. Non-lease components, such as operating costs, are excluded from the lease liability calculation and expensed as incurred. The Company records a straight-line monthly rent expense for the Ohio Lease equal to the sum of all fixed lease payments divided by the number of months in the lease term.

In March 2025, the Company entered into an operating lease agreement for its new distribution and service facility in Ratingen, Germany (the "Ratingen Lease"), which commenced in May 2025 and expires in April 2030. In May 2025, the Company moved its administrative office from Hamburg, Germany, which serves EMEA, to this new facility.

The Ratingen Lease constitutes a lease under ASC 842, and the Company estimates the lease term as May 2025 through April 2030. Fixed lease payments for identified lease components over the identified term were discounted at the Company's estimated incremental borrowing rate and are reflected in the consolidated balance sheets under the captions Lease liabilities, current and Lease liabilities, and the corresponding right of use asset is reflected in the consolidated balance sheets under the caption Right-of-use assets. Non-lease components, such as common area maintenance costs, are excluded from the lease liability calculation and expensed as incurred. The Company records a straight-line monthly rent expense for this lease equal to the sum of all fixed lease payments divided by the number of months in the lease term.

The Company's operating lease agreement for the former office in Hamburg, Germany (the "Hamburg Lease") commenced in May 2022 and expired in June 2025.

The Hamburg Lease constituted a lease under ASC 842, and the Company estimated the lease term as May 2022 through June 2025. Fixed lease payments for identified lease components over the identified term were discounted at the Company's estimated incremental borrowing rate and are reflected in the consolidated balance sheets under the captions Lease liabilities, current and Lease liabilities, and the corresponding right of use asset is reflected in the consolidated balance sheets under the caption Right-of-use assets. Non-lease components, such as common area maintenance costs, were excluded from the lease liability calculation and expensed as incurred. The Company recorded a straight-line monthly rent expense for this lease equal to the sum of all fixed lease payments divided by the number of months in the lease term.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

The Company's future lease payments as of December 31, 2025, which are presented as Lease liabilities, current and Lease liabilities on the Company's consolidated balance sheets, are as follows:

Period	Operating Leases
2026	\$ 467
2027	78
2028	37
2029	37
2030	11
Total lease payments	630
Less: imputed interest	(42)
Present value of lease liabilities	\$ 588
Lease liabilities, current	\$ 441
Lease liabilities	147
Total lease liabilities	\$ 588
Weighted-average remaining term (in years)	1.8
Weighted-average discount rate	8.3%

Lease expense under the Company's operating leases was \$611 and \$588, for the years ended December 31, 2025 and 2024, respectively.

11. Employee Benefit Plan

The Company administers a 401(k) retirement plan (the "401(k) Plan"), in which all employees are eligible to participate. Each eligible employee may elect to contribute to the 401(k) Plan. The Company made matching contributions in the form of shares of the Company's common stock to the 401(k) Plan in an amount equal to 50% of employee contributions (up to the statutory limit), subsequent to year-end. During the years ended December 31, 2025 and 2024, the Company issued 37 and 11 shares of common stock with a fair value of \$236 and \$237, respectively, to eligible employees' deferral accounts for the 401(k) Plan matching contribution, representing 50% of each eligible employee's elected deferral (up to the statutory limit) for the years ended December 31, 2025 and 2024. The expense for the 401(k) Plan share matching was \$151 and \$257 for the years ended December 31, 2025 and 2024, respectively.

12. Capitalization and Equity Structure

Reverse Stock Split

Before the opening of the stock market on June 2, 2025, the Company effected a 1-for-15 reverse split of its common stock (the "Reverse Stock Split"). As a result, all common stock share amounts included in this filing have been retroactively reduced by a factor of fifteen, rounded up to the nearest whole share, and all common stock per share amounts have been increased by a factor of fifteen, with the exception of the Company's common stock par value and the Company's authorized shares. Amounts affected include common stock outstanding, restricted stock units, common stock underlying stock options, and warrants.

As previously disclosed, on December 12, 2024, the Company received a written notice from the Nasdaq Listing Qualifications staff of the Nasdaq Stock Market LLC ("Nasdaq") informing the Company that because the minimum bid price for the Company's common stock listed on the Nasdaq Capital Market was below \$1.00 per share over the previous 30 consecutive business days, the Company did not meet the minimum bid price requirement for continued listing on the Nasdaq Capital Market under Nasdaq Listing Rule 5550(a)(2) (the "Minimum Bid Price Requirement"). The Reverse Stock Split was effected in order to raise the per share trading price of the Company's common stock above \$1.00 and regain compliance with the Minimum Bid Price Requirement. On June 13, 2025, the Company regained compliance with the Minimum Bid Price Requirement.

Summary

The Company's authorized capital stock as of December 31, 2025 consisted of 141,429 shares of common stock and 10,000 shares of preferred stock. As of December 31, 2025 and 2024, there were 3,559 and 1,480 shares of common stock issued and outstanding, respectively, and no shares of preferred stock issued and outstanding.

Common Stock

The holders of outstanding shares of common stock are entitled to receive dividends out of assets or funds legally available for the payment of dividends at such times and in such amounts as the Board of Directors may determine. Holders of common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders. There is no cumulative voting for the election of directors. The common stock is not entitled to preemptive rights and is not subject to conversion or redemption. Upon liquidation, dissolution or winding up of the Company, the assets legally available for distribution to stockholders are distributable ratably among the holders of the common stock after payment of liquidation preferences, if any, on any outstanding payment of other claims of creditors. Each outstanding share of common stock is duly and validly issued, fully paid, and non-assessable.

October 2025 Offering

On October 30, 2025, the Company issued and sold an aggregate of 769 shares of its common stock in a registered direct offering (the "October 2025 Offering") at an offering price of \$4.81 per share. The Company received net proceeds of approximately \$3,231 in the October 2025 Offering, after deducting the placement agent fees and offering expenses paid by the Company. The Company used the net proceeds from the October 2025 Offering for general corporate purposes, which included research and development activities, selling, general and administrative costs, pursuing strategic initiatives, and meeting its other working capital needs.

On October 30, 2025, in connection with the October 2025 Offering, the Company issued to Lake Street Capital Markets, LLC a warrant (the "October 2025 Placement Agent Warrant") to purchase up to 15 shares of the Company's common stock, at an exercise price equal to \$4.81 per share.

March 2025 Inducement Warrant Transaction

On March 17, 2025, the Company entered into a warrant inducement agreement (the "Inducement Agreement") with an existing holder (the "Investor") of one of the Company's Series A common stock purchase warrants and one of the Company's Series B common stock purchase warrants (collectively, the "Existing Investor Warrants") that the Company issued as part of the September 2024 Offering (as defined below), pursuant to which, among other things, the Investor exercised for cash its Existing Investor Warrants to purchase an aggregate of 653 shares (the "Existing Investor Warrant Shares") of common stock at a reduced exercise price of \$6.36 per share (the "Inducement Exercise"). In consideration for exercising the Existing Investor Warrants, the Company issued to the Investor a new common stock purchase warrant to purchase up to an aggregate of 700 shares of common stock (such warrant, the "Inducement Warrant" and such shares of common stock issuable upon exercise thereof, the "Inducement Warrant Shares") (collectively, the "March 2025 Inducement Warrant"). The Inducement Warrant became exercisable on May 16, 2025, the date the Company received approval from the Company's stockholders (the "Stockholder Approval Date") in accordance with the applicable rules and regulations of The Nasdaq Capital Market, and may be exercised following such date through May 16, 2030, at an exercise price of \$6.36 per share. The Company received net proceeds of approximately \$3,853 from the March 2025 Inducement Warrant, after deducting the transaction expenses paid by the Company. The Company used the net proceeds from the March 2025 Inducement Warrant for general corporate purposes, which included growth and expansion of the Company's Personal Health products as the Company worked to increase its revenue following the establishment of Medicare CMS reimbursement of the Ekso Indego Personal device, research and development activities, selling, general and administrative costs, pursuing strategic initiatives, and meeting its other working capital needs.

September 2024 Offering

On August 29, 2024, the Company entered into an underwriting agreement with Craig-Hallum Capital Group LLC as underwriter (the "Underwriter") pursuant to which the Company issued and sold, in a firm commitment underwritten public offering (the "September 2024 Offering"), 207 shares of common stock, a Pre-Funded Warrant to purchase 193 shares of common stock (the "Pre-Funded Warrant"), Series A Warrants to purchase an aggregate of 400 shares of common stock (the "Series A Warrants"), and Series B Warrants to purchase an aggregate of 400 shares of common stock (the "Series B Warrants"). The September 2024 Offering closed on September 3, 2024. The Company received net proceeds of approximately \$5,003 in the September 2024 Offering, after deducting the underwriting discount and commissions and offering expenses paid by the Company.

January 2024 Offering

On January 10, 2024, the Company entered into a securities purchase agreement with certain institutional investors to sell an aggregate of 198 shares of the Company's common stock in a registered direct offering (the "January 2024 Offering") at an offering price of \$23.25 per share. The net proceeds of the January 2024 Offering were approximately \$3,932 after deducting placement agent fees and offering expenses paid by the Company.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

At the Market Offering

In October 2020, the Company entered into an At The Market Offering Agreement (the "ATM Agreement") with H.C. Wainwright & Co., LLC (the "Agent"), under which the Company may issue and sell shares of its common stock, from time to time, to or through the Agent. Offers and sales of shares of common stock by the Company through the Agent may be made by any method deemed to be an "at the market offering" as defined under SEC Rule 415 or in privately negotiated transactions, subject to certain conditions. Such shares may be offered pursuant to the registration statement on Form S-3 (File No. 333-272607) (the "Registration Statement"), which was declared effective by the SEC on June 20, 2023, and a related prospectus supplement filed with the SEC on July 28, 2023 (the "ATM Prospectus"). Pursuant to the Registration Statement and the ATM Prospectus, shares having an aggregate offering price of up to \$5,000 may be offered and sold, subject to certain SEC rules limiting the amount of shares of the Company's common stock that may be sold by the Company under the Registration Statement. During the year ended December 31, 2025, the Company sold 238 shares of common stock under the ATM Agreement at an average price of \$4.34, for aggregate proceeds of \$867, net of commission and issuance costs. On October 28, 2025, the Company terminated the ATM Prospectus. As a result, the Company expensed deferred issuance costs of \$125 related to the ATM Agreement during the year ended December 31, 2025. During the year ended December 31, 2024, the Company sold 7 shares of common stock under the ATM Agreement at an average price of \$21.41, for aggregate proceeds of \$85, net of commission and issuance costs.

Preferred Stock

The Company may issue shares of preferred stock from time to time in one or more series, each of which will have such distinctive designation or title as shall be determined by its Board of Directors and will have such voting powers, full or limited, or no voting powers, and such preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated in such resolution or resolutions providing for the issue of such class or series of preferred stock as may be adopted from time to time by the Board of Directors.

Warrants

Warrants outstanding as of December 31, 2025 and 2024 were as follows:

Source	Exercise Price	Remaining term (Years)	December 31, 2024				December 31, 2025	
			Issued	Expired	Exercised	December 31, 2025		
Oct 2025 Placement Agent Warrant	\$ 4.81	4.8	—	15	—	—	15	
Inducement Warrant *	\$ 6.36	4.2	—	700	—	—	700	
Pre-Funded Warrant	\$ —	—	171	—	—	(171)	—	
Series A Warrants	\$ 15.00	3.7	400	—	—	(327)	73	
Series B Warrants	\$ 15.00	—	400	—	(73)	(327)	—	
2021 Warrants	\$ 192.19	0.1	18	—	—	—	18	
June 2020 Investor Warrants	\$ 77.70	—	9	—	(9)	—	—	
June 2020 Placement Agent Warrants	\$ 84.65	—	3	—	(3)	—	—	
December 2019 Warrants	\$ 121.50	—	37	—	(37)	—	—	
			<u>1,038</u>	<u>715</u>	<u>(122)</u>	<u>(825)</u>	<u>806</u>	

(*) The Inducement Warrant became exercisable upon the Stockholder Approval Date and may be exercised following such date through May 16, 2030.

825 warrants were exercised during the year ended December 31, 2025, compared to 22 warrants exercised during the same period of 2024. The weighted average exercise price of the warrants outstanding as of December 31, 2025 was \$11.31.

October 2025 Warrants

In October 2025, the Company issued the October 2025 Placement Agent Warrant, exercisable for up to 15 shares of the Company's common stock at an exercise price of \$4.81 per share. The October 2025 Placement Agent Warrant was exercisable immediately and expire on October 30, 2030.

The October 2025 Placement Agent Warrant may be exercised, at the holder's discretion, by (i) payment in full in immediately available funds for the number of shares of common stock purchased upon such exercise or (ii) if there is not an effective registration statement registering, or the prospectus contained therein is not available for the issuance of, the underlying common stock, a cashless exercise, in which case the holder would receive upon such exercise the net number of common stock determined according to the formula set forth in the October 2025 Placement Agent Warrant. However, a holder will not be entitled to exercise any portion of the October 2025 Placement Agent Warrant if the holder's ownership of the Company's common stock would exceed 4.99% (the "Beneficial Ownership Limitation"). The holder, upon notice to the Company, may increase the Beneficial Ownership Limitation to 9.99%, which increase shall not be effective until the 61st day after such notice is delivered to the Company.

In the event the Company enters into a Fundamental Transaction, as defined in the October 2025 Placement Agent Warrant, the holder of the October 2025 Placement Agent Warrant will be entitled to receive, upon exercise of these warrants, the kind of amounts of securities, cash, or other property that the holder would have received had they exercised these warrants immediately prior to such Fundamental Transaction without regard to the Beneficial Ownership Limitation contained in the October 2025 Placement Agent Warrant.

The October 2025 Placement Agent Warrant is classified as a component of stockholders' equity within additional paid-in capital and was recorded at the October 2025 Offering issuance date. The October 2025 Placement Agent Warrant is equity classified because it (i) is a freestanding financial instrument that is legally detachable and separately exercisable from the equity instruments, (ii) is immediately exercisable, (iii) does not embody an obligation for the Company to repurchase its shares, (iv) permits the holder to receive a fixed number of shares of common stock upon exercise, (v) is indexed to the Company's common stock, and (vi) meets the equity classification criteria. In addition, such October 2025 Placement Agent Warrant does not provide any guarantee of value or return.

March 2025 Inducement Warrant

In March 2025, the Company issued the Inducement Warrant to purchase up to an aggregate of 700 shares of common stock at an exercise price of \$6.36 per share. The Inducement Warrant became exercisable upon the Stockholder Approval Date and may be exercised following such date through May 16, 2030.

The Inducement Warrant may be exercised, at the holder's discretion, by (i) payment in full in immediately available funds for the number of shares of common stock purchased upon such exercise or (ii) if there is not an effective registration statement registering, or the prospectus contained therein is not available for the issuance of, the underlying common stock, a cashless exercise, in which case the holder would receive upon such exercise the net number of shares of common stock determined according to the formula set forth in the Inducement Warrant. However, a holder will not be entitled to exercise any portion of the Inducement Warrant if the holder's ownership of the Company's common stock would exceed the Beneficial Ownership Limitation. The holder, upon notice to the Company, may increase the Beneficial Ownership Limitation to 9.99%, which increase shall not be effective until the 61st day after such notice is delivered to the Company.

In the event the Company enters into a Fundamental Transaction, as defined in the Inducement Warrant, the holder will be entitled to receive, upon exercise of the Inducement Warrant, the kind of amounts of securities, cash, or other property that the holders would have received had they exercised these warrants immediately prior to such Fundamental Transaction without regard to the Beneficial Ownership Limitation contained in the Inducement Warrant. In addition, upon a Fundamental Transaction, subject to certain limitations and exceptions, the holder of the Inducement Warrant may put the Inducement Warrant back to the Company for an amount of cash equal to the Black-Scholes value of the remaining unexercised portion of the Inducement Warrant, however, if such Fundamental Transaction is not considered within control of the Company, and not approved by the Company's Board of Directors, then the holder of the Inducement Warrant would not be able to put the Inducement Warrant back to the Company for cash.

The Inducement Warrant is classified as a component of stockholders' equity within additional paid-in capital and was recorded at the March 2025 Inducement Warrant issuance date. The Inducement Warrant is equity classified because it (i) is a freestanding financial instrument that is legally detachable and separately exercisable from the equity instruments, (ii) is immediately exercisable upon stockholder approval, (iii) does not embody an obligation for the Company to repurchase its shares, (iv) permits the holders to receive a fixed number of shares of common stock upon exercise, (v) is indexed to the Company's common stock, and (vi) meets the equity classification criteria. In addition, the Inducement Warrant does not provide any guarantee of value or return.

September 2024 Warrants

In September 2024, the Company issued the Pre-Funded Warrant to purchase 193 shares of common stock, with an exercise price of \$0.001 per share, for \$2,897 in aggregate cash proceeds, which represents the September 2024 Offering price for the Company's common stock of \$15.00, less the per share exercise price. The Pre-Funded Warrant was fully exercised as of March 31, 2025.

In September 2024, the Company issued the Series A Warrants, which were exercisable for an aggregate of up to 400 shares of the Company's common stock at an exercise price of \$15.00 per share. The Series A Warrants were exercisable immediately and expire on September 4, 2029.

In September 2024, the Company issued the Series B Warrants, which are exercisable for an aggregate of up to 400 shares of the Company's common stock at an exercise price of \$15.00 per share. The Series B Warrants were exercisable immediately and expired on September 3, 2025.

The Series A Warrants may be exercised, at the holder's discretion, by (i) payment in full in immediately available funds for the number of shares of common stock purchased upon such exercise or (ii) if there is not an effective registration statement registering, or the prospectus contained therein is not available for the issuance of, the underlying common stock, a cashless exercise, in which case the holder would receive upon such exercise the net number of shares of common stock determined according to the formula set forth in the Series A Warrant. However, a holder will not be entitled to exercise any portion of the Series A Warrants if the holder's ownership of the Company's common stock would exceed the Beneficial Ownership Limitation. The holder, upon notice to the Company, may increase the Beneficial Ownership Limitation to 9.99%, which increase shall not be effective until the 61st day after such notice is delivered to the Company.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

In the event the Company enters into a Fundamental Transaction, as defined in the Series A Warrant, the holders of the Series A Warrants will be entitled to receive, upon exercise of these warrants, the kind of amounts of securities, cash, or other property that the holders would have received had they exercised these warrants immediately prior to such Fundamental Transaction without regard to the Beneficial Ownership Limitation contained in the Series A Warrant. In addition, upon a Fundamental Transaction, subject to certain limitations and exceptions, the holder of the Series A Warrant may put the warrant back to the Company for an amount of cash equal to the Black-Scholes value of the remaining unexercised portion of the Series A Warrant, however, if such Fundamental Transaction is not considered within control of the Company, and not approved by the Company's Board of Directors, then the holder of the Series A Warrant would not be able to put the Series A Warrant back to the Company for cash.

The Series A Warrants are, and the Series B Warrants were, classified as a component of stockholders' equity within additional paid-in capital and were recorded at the September 2024 Public Offering issuance date. The Series A Warrants are, and the Series B Warrants were, equity classified because they (i) are freestanding financial instruments that were legally detachable and separately exercisable from the equity instruments, (ii) are immediately exercisable, (iii) do not embody an obligation for the Company to repurchase its shares, (iv) permit the holders to receive a fixed number of shares of common stock upon exercise, (v) are indexed to the Company's common stock, and (vi) meet the equity classification criteria. In addition, such Series A Warrants do not provide any guarantee of value or return.

2021 Warrants

In February 2021, the Company issued warrants (the "2021 Warrants"), exercisable for up to 18 shares of the Company's common stock at an exercise price of \$192.19 per share. The 2021 Warrants were exercisable immediately and expire on February 11, 2026. The 2021 Warrants may be exercised, at the holder's discretion, by (i) payment in full in immediately available funds for the number of shares of common stock purchased upon such exercise or (ii) if there is not an effective registration statement registering, or the prospectus contained therein is not available for the issuance of, the underlying common stock, a cashless exercise, in which case the holder would receive upon such exercise the net number of shares of common stock determined according to the formula set forth in the 2021 Warrant. However, a holder will not be entitled to exercise any portion of the 2021 Warrants if the holder's ownership of the Company's common stock would exceed the Beneficial Ownership Limitation. The holder, upon notice to the Company, may increase the Beneficial Ownership Limitation to 9.99%, which increase shall not be effective until the 61st day after such notice is delivered to the Company.

The 2021 Warrants will be automatically exercised on a cashless basis on their expiration date. The 2021 Warrants also contain a put option, under which, if the Company enters into a Fundamental Transaction, as defined in the 2021 Warrants, the Company or any successor entity will, at the option of a holder of a 2021 Warrant, exercisable concurrently with or at any time within 30 days after the consummation of such Fundamental Transaction, purchase such holder's 2021 Warrant by paying to such holder an amount of cash equal to the Black-Scholes value of the remaining unexercised portion of such holder's 2021 Warrant within five trading days after the notice of exercise by the holder of the put option. Because of this put-option provision, the 2021 Warrants are classified as a liability and are marked to market at each reporting date.

The warrant liability related to the 2021 Warrants is measured at fair value upon issuance and at each reporting date using certain estimated inputs, which are classified within Level 3 of the fair value hierarchy. The following assumptions were used in the Black-Scholes Model to measure the fair value of the 2021 Warrants:

	December 31, 2025	December 31, 2024
Current share price	\$ 8.64	\$ 9.15
Conversion price	\$ 192.19	\$ 192.19
Risk-free interest rate	3.73%	3.94%
Expected term (years)	0.11	1.11
Volatility of stock	211.0%	106.7%

June 2020 Investor Warrants

In June 2020, the Company issued warrants (the "June 2020 Investor Warrants"), exercisable for up to 58 shares of the Company's common stock at an exercise price of \$77.70 per share. The June 2020 Investor Warrants were immediately exercisable and expired on December 10, 2025.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

The warrant liability related to the June 2020 Investor Warrants was measured at fair value at each reporting date using certain estimated inputs, which are classified within Level 3 of the fair value hierarchy. The following assumptions were used in the Black-Scholes Model to measure the fair value of the June 2020 Investor Warrants:

	<u>December 31, 2025</u>	<u>December 31, 2024</u>
Current share price	N/A	\$ 9.15
Conversion price	N/A	\$ 77.70
Risk-free interest rate	N/A	4.03%
Expected term (years)	N/A	0.94
Volatility of stock	N/A	89.7%

June 2020 Placement Agent Warrants

In June 2020, the Company issued warrants (the "June 2020 Placement Agent Warrants"), exercisable for up to 8 shares of the Company's common stock, to the placement agent for such offering. The June 2020 Placement Agent Warrants had substantially the same form as the June 2020 Investor Warrants, including the put option described above, except that they had an exercise price per share equal to \$84.65, subject to adjustment in certain circumstances, and expired on June 7, 2025.

The warrant liability related to the June 2020 Placement Agent Warrants was measured at fair value at each reporting date using certain estimated inputs, which are classified within Level 3 of the fair value hierarchy. The following assumptions were used in the Black-Scholes Model to measure the fair value of the June 2020 Placement Agent Warrants:

	<u>December 31, 2025</u>	<u>December 31, 2024</u>
Current share price	N/A	\$ 9.15
Conversion price	N/A	\$ 84.65
Risk-free interest rate	N/A	4.47%
Expected term (years)	N/A	0.44
Volatility of stock	N/A	89.7%

December 2019 Warrants

In December 2019, pursuant to a securities purchase agreement (the "December 2019 Offering"), the Company issued warrants (the "December 2019 Warrants") to purchase 37 shares of common stock. The December 2019 Warrants had an exercise price of \$121.50 per share and expired on June 21, 2025.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

The warrant liability related to the December 2019 Warrants was measured at fair value at each reporting date using certain estimated inputs, which are classified within Level 3 of the fair value hierarchy. The following assumptions were used in the Black-Scholes Model to measure the fair value of the December 2019 Warrants:

	December 31, 2025	December 31, 2024
Current share price	N/A	\$ 9.15
Conversion price	N/A	\$ 121.50
Risk-free interest rate	N/A	4.43%
Expected term (years)	N/A	0.46
Volatility of stock	N/A	89.3%

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

13. Stock-based Compensation

2014 Equity Incentive Plan

In 2014, the Board of Directors and a majority of the stockholders adopted the Company's Amended and Restated 2014 Equity Incentive Plan (the "2014 Plan"), which expired on January 31, 2024. Following such expiration and prior to the 2024 Annual Meeting of Stockholders (the "Annual Meeting"), no grants were made under the 2014 Plan. On June 6, 2024, the Company held its Annual Meeting, whereby the Board of Directors and a majority of the stockholders adopted, amended, and restated the 2014 Plan (the "Restated 2014 Plan") to extend the term of the 2014 Plan until April 15, 2034, and to increase the total number of shares of common stock authorized for issuance by 67 shares relative to the amount available for issuance at the time the 2014 Plan expired. As of December 31, 2025, the total number of shares authorized for grant under the Restated 2014 Plan is shown in the table below:

Original share pool	9
2015 increase	7
2017 increase	4
December 2017 increase (ratified in June 2018)	20
2019 increase	16
March 2020 increase	22
December 2020 increase	53
2022 increase	37
2023 increase	80
2024 increase	67
2025 increase	153
Total shares authorized for grant as of December 31, 2025	468

Under the terms of the Restated 2014 Plan, the Board of Directors may award restricted stock, restricted stock units, stock options, stock appreciation rights and dividend equivalent rights having either a fixed or variable price related to the fair market value of the shares and with an exercise or conversion privilege related to the passage of time, the occurrence of one or more events, or the satisfaction of performance criteria or other conditions or any other security with the value derived from the value of the shares.

Shares available for future grant as of December 31, 2025 under the Restated 2014 Plan was as follows:

	Shares Available For Grant
Available as of December 31, 2024	47
Share pool increase	153
Granted	(207)
Forfeited	6
Expired	1
Available as of December 31, 2025	—

Restricted Stock Units

The Company issues time-based RSUs and PSUs to employees and non-employees. Each RSU and PSU represents the right to receive one share of the Company's common stock upon vesting and subsequent settlement. PSUs vest upon achievement of performance targets based on the Company's annual operating plan. The fair values of RSUs and PSUs are determined based on the closing price of the Company's common stock on the date of grant.

Combined RSU and PSU activity for the year ended December 31, 2025 is summarized below:

	Number of Shares	Weighted Average Grant- Date Fair Value
Unvested as of December 31, 2024	68	\$ 18.27
Granted	207	\$ 5.36
Vested	(183)	\$ 9.13
Forfeited	(6)	\$ 9.88
Unvested as of December 31, 2025	86	\$ 7.22

The total grant-date fair value of RSUs and PSUs that vested during the year ended December 31, 2025 was \$1,002. As of December 31, 2025, \$286 of total unrecognized compensation expense related to unvested RSUs and PSUs was expected to be recognized over a weighted average period of 1.07 years.

Stock Options

The Board of Directors may grant stock options under the 2014 Plan at a price of not less than 100% of the fair market value of the Company's common stock on the date the option is granted. The maximum term of an incentive stock option granted to participants may not exceed ten years. Subject to the limitations discussed above, the Board of Directors determines the term and exercise or purchase price of other awards granted under the Restated 2014 Plan. The Board of Directors also determines the terms and conditions of awards, including the vesting schedule and any forfeiture provisions. Options granted under the Restated 2014 Plan vest upon the passage of time, generally four years, or upon the attainment of certain performance criteria established by the Board of Directors. The Company may grant options to purchase common stock to non-employees for advisory and consulting services. Upon exercise of a stock option, the Company issues new shares of common stock.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

A summary of the stock option activity during the year ended December 31, 2025 is presented below:

	Options Outstanding	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value
Outstanding at beginning of year	12	\$ 471.74		
Forfeited	—	\$ —		
Expired	(1)	\$ 1,796.39		
Outstanding at end of year	<u>11</u>	\$ 344.11	2.46	\$ —
Vested and expected to vest	<u>11</u>	\$ 344.11	2.46	\$ —
Exercisable at year end	<u>11</u>	\$ 344.00	2.46	\$ —

No stock options were exercised during the years ended December 31, 2025 and 2024.

As no stock options were granted during the years ended December 31, 2025 and 2024, there was no related weighted-average grant date fair value. The total grant date fair value of stock options vested during the years ended December 31, 2025 and 2024 was \$0.

As of December 31, 2025, total unrecognized compensation cost related to unvested stock options was \$0.

The following table summarizes information about stock options outstanding as of December 31, 2025:

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Number of Options	Weighted- Average Remaining Contractual Life (Years)	Weighted Average Price	Number of Options	Weighted Average Price
\$85.50 - \$85.50	3	4.04	85.50	3	85.50
\$137.25 - \$395.85	4	2.94	\$ 250.36	4	\$ 250.18
\$402.75 - \$812.25	3	2.32	\$ 475.43	3	\$ 475.67
\$900.00 - \$2,945.25	1	0.58	\$ 1,100.94	1	\$ 1,100.94
	<u>11</u>	2.86	\$ 344.11	<u>11</u>	\$ 344.00

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

Compensation Expense

Stock-based compensation is included in the consolidated statements of operations and comprehensive loss in general and administrative, research and development, or sales and marketing expenses, depending on the nature of services provided. Stock-based compensation expense related to RSUs and PSUs was recorded as follows:

	Years Ended December 31,	
	2025	2024
Sales and marketing	\$ 76	\$ 98
Research and development	47	220
General and administrative	1,351	1,055
	<u>\$ 1,474</u>	<u>\$ 1,373</u>

Employee Stock Purchase Plan

The Company has an Employee Stock Purchase Plan ("ESPP"). Under the ESPP, the Company has 2 shares of common stock reserved for issuance, subject to adjustment in the event of a stock split, stock dividend, combination, reclassification or similar event. The ESPP allows eligible employees to purchase shares of the Company's common stock at a discount through payroll deductions of up to 25% of their eligible compensation, subject to any plan limitations. The ESPP provides for six-month offering periods. At the end of each offering period, employees can purchase shares at 85% of the lower of the fair market value of the Company's common stock on the first trading day of the offering period or on the last trading day of the offering period. As of December 31, 2025, the Company had not initiated employee enrollment to the plan.

14. Income Taxes

The domestic and foreign components of pre-tax loss for the years ended December 31, 2025 and 2024 were as follows:

	Years Ended December 31,	
	2025	2024
Domestic	\$ (11,400)	\$ (11,576)
Foreign	(295)	246
Loss before income taxes	<u>\$ (11,695)</u>	<u>\$ (11,330)</u>

The Company had no current or deferred federal and state income tax expense or benefit for the years ended December 31, 2025 and 2024 because the Company generated net operating losses, and currently management does not believe it is more likely than not that the net operating losses will be realized. The Company's non-U.S. tax obligation is primarily for business activities conducted through Germany and Singapore for which taxes were included in other expenses, net for the years ended December 31, 2025 and 2024, and determined to be immaterial, and accordingly, such amounts were excluded from the following tables.

For the year ended December 31, 2025, the Company adopted ASU 2023-09 prospectively. Refer to Note 2 *Summary of Significant Accounting Policies and Estimates — Accounting Pronouncements Adopted in 2025* for additional information regarding the adoption of ASU 2023-09. A reconciliation of the U.S. federal statutory income tax rate to the Company's effective tax rate pursuant to the disclosure requirements of ASU 2023-09 for the year ended December 31, 2025, is as follows:

	Year Ended December 31,	
	2025	
U.S. federal statutory income tax rate	\$ (2,456)	21.0%
State tax, net of federal tax effect	—	—
Foreign tax effects:		
Changes in valuation allowances (Germany)	553	(4.7)
Changes in valuation allowances (Other Foreign Jurisdictions)	(22)	0.2
Prior year true-ups (Germany)	(293)	2.5
Other	(47)	0.4
Change in valuation allowance	2,194	(18.8)
Imputed interest income	154	(1.3)
Unrealized gain	(394)	3.4
Stock-based compensation	427	(3.7)
Prior year true-ups	(157)	1.3
Other	41	(0.3)
Total tax expense (benefit)	<u>\$ —</u>	<u>—%</u>

Income tax expense (benefit) for the year ended December 31, 2024 differed from the amounts computed by applying the statutory federal income tax rate of 21% to pretax loss as a result of the following:

	Year Ended December 31, 2024
Federal tax at statutory rate	21.0%
State tax, net of federal tax effect	—
Research and development credit	(0.1)
Change in valuation allowance	(13.5)
Unrealized gain on warrant	0.7
Stock-based compensation	(4.7)
Other	(2.8)
Foreign	(0.6)
Total tax expense (benefit)	<u>—%</u>

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

The tax effects of temporary differences and related deferred tax assets and liabilities as of December 31, 2025 and 2024 were as follows:

	December 31,	
	2025	2024
Deferred tax assets:		
Depreciation and other	\$ 297	\$ 119
Net operating loss carryforwards	57,646	54,001
Research and development tax credits	2,210	2,210
Accruals and reserves	245	235
Capitalized research and development costs	1,360	1,817
Deferred revenue	431	400
Stock compensation expense	648	1,028
Lease assets	82	154
Other	41	48
Deferred tax liabilities:		
Lease liabilities	(70)	(133)
Prepaid expenses	(45)	(54)
Less: Valuation allowance	(62,845)	(59,825)
Net deferred tax asset (liability)	<u>\$ —</u>	<u>\$ —</u>

The Company's accounting for deferred taxes involves the evaluation of a number of factors concerning the realizability of the Company's net deferred tax assets. The Company primarily considered such factors as the Company's history of operating losses, the nature of the Company's deferred tax assets, and the timing, likelihood and amount, if any, of future taxable income during the periods in which those temporary differences and carryforwards become deductible. The Company does not believe that it is more likely than not that the deferred tax assets will be realized; accordingly, a full valuation allowance was established and no deferred tax assets were shown in the accompanying consolidated balance sheets. The valuation allowance increased by \$3,020 and \$1,556 in the years ended December 31, 2025 and 2024, respectively.

The Tax Cuts and Jobs Act of 2017 ("TCJA") made a significant change to Section 174 that went into effect for taxable years beginning after December 31, 2021. The change eliminated the ability to currently deduct research and development costs. Instead, these costs must be capitalized and amortized. As a result, the Company capitalized research and development costs of \$3.9 million for the year ended December 31, 2024. Following the enactment of the One Big Beautiful Bill Act ("OBBA"), the mandatory capitalization requirements under Section 174 were repealed, restoring the ability to currently deduct research and development expenditures in the period incurred. Consequently, the Company did not capitalize any domestic research and development costs for the year ended December 31, 2025.

As of December 31, 2025, the Company had federal net operating loss carryforwards of \$217,045. The federal net operating loss carryforwards of \$120,792 generated before January 1, 2018 will begin to expire in 2027, and \$96,253 will carryforward indefinitely but are subject to the 80% taxable income limitation. The Company also had federal research and development tax credit carryforwards of \$2,353 that will expire beginning in 2031, if not utilized.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

As of December 31, 2025, the Company had state net operating loss carryforwards of \$135,484, which will begin to expire in 2026. The Company also had state research and development tax credit carryforwards of \$752, which have no expiration.

As of December 31, 2025, the Company had foreign net operating loss carryforwards of \$13,328. The foreign net operating loss carryforwards do not expire.

Utilization of the Company's net operating losses and credit carryforwards may be subject to annual limitations in the event of a Section 382 ownership change. Such future limitations could result in the expiration of net operating losses and credit carryforwards before utilization as a result of such an ownership change.

A reconciliation of the beginning and ending amount of unrecognized tax benefits for the years ended December 31, 2025 and 2024, were as follows:

	Years Ended December 31,	
	2025	2024
Beginning balances as of January 1, 2025 and 2024	\$ 1,836	\$ 1,894
(Decrease) of unrecognized tax benefits taken in prior years	(43)	(58)
Ending balances as of December 31, 2025 and 2024	<u>\$ 1,793</u>	<u>\$ 1,836</u>

If the Company is able to recognize these uncertain tax positions, the unrecognized tax benefits would not impact the effective tax rate if the Company applies a full valuation allowance against the deferred tax assets, as provided in the Company's current policy.

The Company had not incurred any material tax interest or penalties as of December 31, 2025. The Company does not anticipate any significant change within 12 months of this reporting date of its uncertain tax positions. The Company is subject to taxation in the United States and various state jurisdictions, Germany, and Singapore. There are no ongoing examinations by taxing authorities at this time. The Company's tax years 2007 through 2025 will remain open for examination by the federal and state authorities for three and four years, respectively, from the date of utilization of any net operating loss credits. The Company's 2020 to 2025 tax years will remain open for examination by the German tax authority for four years from the end of the year in which the applicable return was filed. The Company's 2021 to 2025 tax years will remain open for examination by the Singapore tax authority for four years from the date of the applicable assessment.

15. Commitments and Contingencies

Commitments

Material Contracts

The Company has two license agreements with the Regents of the University of California to maintain exclusive rights to certain patents. The Company is required to pay 1% of net sales of licensed medical devices sold to entities other than the U.S. government. In addition, the Company is required to pay 21% of consideration collected from any sub-licensee for the grant of the sub-license.

The Company has one license agreement with Vanderbilt University to maintain exclusive rights to patents on the Company's behalf. Under the Vanderbilt Exoskeleton License Agreement, the Company is required to pay 6% of net sales of licensed patent products and 3% of net sales of licensed software products. The minimum annual royalty for licensed products is \$250. The Vanderbilt Exoskeleton License Agreement will continue until April 29, 2038, unless sooner terminated.

Purchase Obligations

The Company purchases components from a variety of suppliers and uses contract manufacturers to provide manufacturing services for its products. Purchase obligations are defined as agreements that are enforceable and legally binding and that specify all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction.

The Company had purchase obligations primarily for purchases of inventory and manufacturing related service contracts totaling \$874 as of December 31, 2025, which are expected to be paid within one year, and \$1,263 as of December 31, 2024. Timing of payments and actual amounts paid may be different depending on the time of receipt of goods or services or changes to agreed-upon amounts for some obligations.

The Company has operating lease commitments totaling \$630 payable over the lease terms of the San Rafael Lease, the Ohio Lease and the Ratingen Lease as disclosed in Note 10. *Lease Obligations*.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

Other Contractual Obligations

The following table summarizes the Company's outstanding contractual obligations as of December 31, 2025, and the effect those obligations are expected to have on its liquidity and cash flows in future periods:

	Payments Due By Period			
	Total	Less than one year	1-3 Years	3-5 Years
B. Riley Promissory Note	\$ 2,400	\$ 2,400	\$ —	\$ —
Parker Hannifin Promissory Note	2,187	1,250	937	—
Facility operating leases	630	467	152	11
Total	\$ 5,217	\$ 4,117	\$ 1,089	\$ 11

Loss Contingencies

In the normal course of business, the Company is subject to various legal matters. In the opinion of management, the resolution of such matters will not have a material adverse effect on the Company's consolidated financial statements.

16. Segment Disclosures

Operating segments are defined as components of a public entity for which discrete financial information is available and regularly reviewed by the chief operating decision maker ("CODM") in deciding how to allocate resources and in assessing performance. The Company's CODM is its chief executive officer who reviews financial information, annual operating plans, and long-range forecasts, presented on a consolidated basis, for purposes of making operating decisions, evaluating financial performance, and allocating resources. The Company is managed as a single operating segment that primarily serves people with physical disabilities or impairments in both physical rehabilitation and mobility in the healthcare market. Managing the Company's business activities on a consolidated basis allows the Company to benefit from the value its healthcare products provide across the care continuum.

The Company's CODM uses net loss as presented on the consolidated statements of operations and comprehensive loss to measure segment loss and assesses financial performance against expectations for the Company's single reportable segment to decide how to allocate resources. Additionally, the CODM reviews and uses segment expenses included in net loss to manage the Company's operations and assess operating performance. The measure of segment assets is reported on the Company's consolidated balance sheets as total assets. The significant segment expenses regularly provided to the CODM are those presented on the consolidated statements of operations and comprehensive loss. These significant segment expenses include cost of revenue, sales and marketing, research and development and general and administrative expenses. Other segment items that are presented on the consolidated statements of operations and comprehensive loss include interest expense, net, gain on revaluation of warrant liabilities, loss on modification of warrant, unrealized gain (loss) on foreign exchange and other expense, net.

17. Related Party Transactions

There were no related party transactions during the year ended December 31, 2025.

On February 4, 2023, the Company entered into a mutual release and settlement agreement with an entity to settle and resolve any and all potential claims brought forth in connection with a consulting agreement executed between the entity and the Company in July 2017. Under the terms of the consulting agreement, the Company was required to make milestone payments for the introduction of potential partners for, and the consummation of, a strategic joint venture. A member of the Company's board of directors is affiliated with one of two entities under common control.

The total settlement amount was \$325, which was paid in cash over 14 months, with an initial payment of \$145 paid in the first 40 days and \$15 per month for the remaining 12 months. The total settlement amount was fully paid in April 2024.

18. Subsequent Events

On January 12, 2026, the Company entered into an irrevocable standby letter of credit (the "letter of credit"), established by its primary operating bank, in favor of the Company's third-party contract manufacturer, as the beneficiary, in the aggregate amount of \$250, effective January 12, 2026 and expiring on January 12, 2027, unless otherwise extended or terminated. The purpose of the letter of credit is to provide financial security to the third-party contract manufacturer for inventory procurement and manufacturing obligations. As the letter of credit requires the Company to maintain a corresponding cash deposit with its bank, as long as the letter of credit is still in effect, the full amount will be classified as Restricted cash in the Company's consolidated balance sheets beginning with the fiscal quarter ending March 31, 2026.

On January 22, 2026, the Company issued and sold (i) an aggregate of 6 shares of Series B Preferred Stock convertible into an aggregate of 712 shares of common stock issuable upon conversion of the Series B Preferred Stock at an initial conversion price of \$8.22 per share and (ii) warrants, which are exercisable to purchase up to an aggregate of 356 shares of the Company's common stock at an exercise price of \$8.22 per share of common stock (the "Private Placement"). The net proceeds of the Private Placement are expected to be approximately \$5,265, after deducting placement agent fees and expenses and other estimated offering expenses payable by the Company. The Company intends to use the net proceeds from the Private Placement for working capital and general corporate purposes.

On February 15, 2026, the Company entered into a Contribution and Exchange Agreement (the "Contribution Agreement") with APLD Intermediate HoldCo LLC, a Delaware limited liability company ("APLD Intermediate"), APLD ChronoScale HoldCo LLC, a Delaware limited liability company and a wholly owned subsidiary of APLD Intermediate ("Contributor"), each a wholly owned direct or indirect subsidiary of Applied Digital Corporation, a Nevada corporation, and Applied Digital Cloud Corporation, a Nevada corporation, which at the time of the Closing (as defined below), will be a wholly owned subsidiary of Contributor ("Cloud"), for purposes of consummating a business combination (the "Business Combination"), as a result of which (i) Cloud will become a wholly owned subsidiary of the Company, (ii) the Company will, immediately after the consummation of the Business Combination (the "Closing"), continue as the parent of the combined company, and (iii) the Company will change its name to ChronoScale Corporation.

Subject to the satisfaction or waiver of the conditions set forth in the Contribution Agreement, Contributor will contribute all of its right, title and interest in and to 1.2 shares of the common stock of Cloud, constituting 100% of the issued and outstanding equity of Cloud, to the Company in exchange for 138,217 newly issued shares of

the Company's common stock.

As a result of and upon the consummation of the Business Combination, Contributor is expected to own approximately 97% of the combined company's outstanding equity before giving effect to the other transactions contemplated by the Contribution Agreement.

The Closing is subject to certain customary mutual conditions, including, but not limited to, stockholder approval of the Business Combination as set forth in the Contribution Agreement and related proposals, which approval was obtained on February 20, 2026.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

Item 9A. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures.

Our management, with the participation of our principal executive officer and principal financial officer, conducted an evaluation of our disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) as of December 31, 2025. Based upon that evaluation, our principal executive officer and principal financial officer concluded that, as of such date, our disclosure controls and procedures were effective to ensure that information required to be disclosed in reports filed by us under the Exchange Act is recorded, processed, summarized and reported within the required time periods and is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

It should be noted that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment and makes assumptions about the likelihood of future events. There can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote. Management believes that the financial statements included in this Annual Report fairly present in all material respects our financial condition, results of operations and cash flows for the periods presented.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in the Exchange Act Rules 13a-15(f) and 15d-15(f). Our internal control system was designed to provide reasonable assurance to our management and board of directors regarding the preparation and fair presentation of published financial statements. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2025 based on the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control—Integrated Framework (2013)*. Our management believes that based on such criteria, as of December 31, 2025, our internal control over financial reporting is effective.

This Annual Report does not include an attestation report of our registered public accounting firm regarding our internal control over financial reporting. Our report was not subject to attestation by our registered public accounting firm pursuant to rules of the Securities and Exchange Commission that permits us to provide only management's report in this Annual Report on Form 10-K.

Changes in Internal Control Over Financial Reporting:

There were no changes in our internal control over financial reporting identified in connection with the evaluation required by (d) of Exchange Act Rules 13a-15 or 15d-15 that occurred during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

On February 20, 2026, stockholders holding a majority of the voting power of the Company, acting via written consent, approved the following in connection with the Business Combination:

- the Contribution Agreement and the Investor Rights Agreement, and the transactions contemplated thereby;
- the Exchanged Shares Issuance, the issuance of the PIPE Securities and any other issuances of preferred stock, common stock and securities convertible into or exercisable for common stock pursuant to subscription, purchase or similar agreements that we may enter into prior to closing of the Business Combination, including, but not limited to, for purposes of complying with Nasdaq Listing Rule 5635;
- the Second Restated Articles; and
- ChronoScale's 2026 Omnibus Equity Incentive.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

None.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

PART III

Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this Item is incorporated herein by reference from our Proxy Statement, relating to our 2026 Annual Meeting of Stockholders, under the heading “Corporate Governance,” to be filed with the SEC within 120 days of December 31, 2025.

Item 11. EXECUTIVE COMPENSATION

The information required by this Item is incorporated herein by reference from our Proxy Statement, relating to our 2026 Annual Meeting of Stockholders, under the headings “Executive Compensation” and “Director Compensation,” to be filed with the SEC within 120 days of December 31, 2025.

Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this Item is incorporated herein by reference from our Proxy Statement, relating to our 2026 Annual Meeting of Stockholders, under the heading “Ownership of our Common Stock,” to be filed with the SEC within 120 days of December 31, 2025.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this Item is incorporated herein by reference from our Proxy Statement, relating to our 2026 Annual Meeting of Stockholders, under the heading “Certain Relationships and Related Party Transactions,” to be filed with the SEC within 120 days of December 31, 2025.

Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this Item is incorporated herein by reference from our Proxy Statement, relating to our 2026 Annual Meeting of Stockholders, under the headings “Audit Committee Report” and “Audit Fees and Services,” to be filed with the SEC within 120 days of December 31, 2025.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

PART IV

Item 15. EXHIBITS, FINANCIAL STATEMENTS AND FINANCIAL STATEMENT SCHEDULES

- (a) *Financial Statements and Schedules:* The following financial statement documents are included as part of Item 8 to this Annual Report on Form 10-K:

Report of Independent Registered Public Accounting Firm

Consolidated Balance Sheets as of December 31, 2025 and 2024

Consolidated Statements of Operations and Comprehensive loss for the years ended December 31, 2025 and 2024

Consolidated Statements of Stockholders' Equity for the years ended December 31, 2025 and 2024

Consolidated Statements of Cash Flows for the years ended December 31, 2025 and 2024

Notes to the Consolidated Financial Statements

All schedules are omitted because they are not applicable or the required information is shown in the financial statements or notes thereto.

- (b) *Exhibits.* The exhibits filed with this Annual Report are set forth in the Exhibit Index.

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

Exhibit Index

Exhibit Number	Description
2.1#	Asset Purchase Agreement between the Registrant and Parker Hannifin Corporation, dated as of December 5, 2022 (incorporated by reference from Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed on December 5, 2022)
3.1	Restated Articles of Incorporation of the Registrant (incorporated by reference from Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on April 26, 2023)
3.2	Amended and Restated By-Laws of the Registrant (incorporated by reference from Exhibit 3.2 to the Registrant's Current Report on Form 8-K filed on April 26, 2023)
3.3	Certificate of Designation of the Powers, Preferences and Relative, Participating, Optional and Other Restrictions of Series B Convertible Preferred Stock (incorporated by reference from Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on January 22, 2026)
3.4	Amendment No. 1 to the Amended and Restated Bylaws of Ekso Bionics Holdings, Inc.
4.1	Form of specimen certificate (incorporated by reference from Exhibit 4.4 to the Registrant's Registration Statement on Form S-3 filed on June 23, 2015)

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

- [4.2](#) [Subordinated Promissory Note between Ekso Bionics Holdings, Inc. and Parker Hannifin Corporation, dated as of December 5, 2022 \(incorporated by reference from Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed December 5, 2022\)](#)
- [4.3*](#) [Description of Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934](#)
- [4.4](#) [Form of Series A Warrant \(incorporated by reference from Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed September 3, 2024\)](#)
- [4.5](#) [Form of Common Stock Purchase Warrant \(incorporated by reference from Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed March 17, 2025\)](#)
- [4.6](#) [Form of Common Stock Purchase Warrant \(incorporated by reference from Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on January 22, 2026\)](#)
- [4.7](#) [Form of Placement Agent Common Stock Purchase Warrant \(incorporated by reference from Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on October 30, 2026\)](#)
- [10.1](#) [Form of Registration Rights Agreement \(incorporated by reference from Exhibit 10.10 to the Registrant's Current Report on Form 8-K filed on January 23, 2014\)](#)
- [10.2†](#) [Amended and Restated 2014 Equity Incentive Plan \(incorporated by reference from Exhibit 10.4 to the Registrant's Registration Statement on Form S-1 filed July 29, 2024\)](#)
- [10.3†](#) [Amended and Restated 2014 Equity Incentive Plan Form of Phantom Performance-Based Restricted Stock Unit Agreement \(incorporated by reference from Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on November 7, 2025\)](#)
- [10.4†](#) [Form of Director Option Agreement under 2014 Equity Incentive Plan \(incorporated by reference from Exhibit 10.13 to the Registrant's Current Report on Form 8-K filed on January 23, 2014\)](#)
- [10.5†](#) [Form of Employee Option Agreement under 2014 Equity Incentive Plan \(incorporated by reference from Exhibit 10.14 to the Registrant's Current Report on Form 8-K filed on January 23, 2014\)](#)
- [10.6†](#) [Form of Restricted Stock Unit Award under Amended and Restated 2014 Equity Incentive Plan \(incorporated by reference from Exhibit 10.7 to the Registrant's Registration Statement on Form S-1 filed July 29, 2024\)](#)
- [10.7†](#) [2017 Employee Stock Purchase Plan \(incorporated by reference from Appendix A to Registrant's Proxy Statement on Schedule 14 filed on April 28, 2017\)](#)
- [10.8†](#) [Scott Davis Offer Letter dated February 22, 2021 \(incorporated by reference from Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed January 21, 2022\)](#)
- [10.9†#](#) [Jason Jones Offer Letter dated January 2, 2023 \(incorporated by reference from Exhibit 10.10 to the Registrant's Annual Report on Form 10-K filed March 3, 2025\)](#)
- [10.10†](#) [Jerome Wong Officer Offer letter, dated October 26, 2022 \(incorporated by reference from Exhibit 10.11 to the Registrant's Annual Report on Form 10-K filed March 28, 2023\)](#)
- [10.11](#) [Exclusive License Agreement, dated as of November 15, 2005, by and between The Regents of the University of California and Berkeley ExoTech, Inc., d/b/a Berkeley ExoWorks \(incorporated by reference from Exhibit 10.19 to the Registrant's Current Report on Form 8-K filed on January 23, 2014\)](#)
- [10.12](#) [Exclusive License Agreement, dated as of July 14, 2008, by and between The Regents of the University of California and Berkeley ExoTech, Inc., d/b/a Berkeley Bionics and formerly d/b/a Berkeley ExoWorks \(as amended by Amendment #1 to Exclusive License Agreement, dated as of May 20, 2009, by and between The Regents of the University of California and Berkeley Bionics\) \(incorporated by reference from Exhibit 10.20 to the Registrant's Current Report on Form 8-K filed on January 23, 2014\)](#)

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

10.13	License Agreement between Vanderbilt University and Parker Hannifin Corporation, dated as of October 15, 2012 (as amended by the first amendment dated as of June 15, 2014, the second amendment dated as of December 1, 2018, and the third amendment dated as of May 1, 2019) (incorporated by reference from Exhibit 10.14 to the Registrant's Annual Report on Form 10-K filed March 28, 2023)
10.14	License Agreement between Vanderbilt University and Parker Hannifin Corporation dated as of March 1, 2022 (incorporated by reference from Exhibit 10.15 to the Registrant's Annual Report on Form 10-K filed March 28, 2023)
10.15	Vanderbilt Assignment and Assumption Agreement between Ekso Bionics Holdings, Inc and Parker Hannifin Corporation, dated as of December 5, 2022 (incorporated by reference from Exhibit 10.16 to the Registrant's Annual Report on Form 10-K filed March 28, 2023)
10.16†	Form of Non-Employee Director Indemnification Agreement (incorporated by reference from Exhibit 10.20 to the Registrant's Quarterly Report on Form 10-Q filed on May 13, 2014)
10.17†	Form of Executive Officer Indemnification Agreement (incorporated by reference from Exhibit 10.21 to the Registrant's Quarterly Report on Form 10-Q filed on May 13, 2014)
10.18	Lease, dated July 15, 2022, between Don Tornberg and Ekso Bionics Inc. (incorporated by reference from Exhibit 10.22 to the Registrant's Annual Report on Form 10-K filed March 28, 2023)
10.19	Transitional Use Agreement, dated December 5, 2022, between Parker Hannifin Corporation and Ekso Bionics Holdings, Inc. (incorporated by reference from Exhibit 10.23 to the Registrant's Annual Report on Form 10-K filed March 28, 2023)
10.20	Warranty Lump Sum Agreement between Parker Hannifin Corporation and the Company dated September 25, 2023 (incorporated by reference from Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed October 29, 2023)
10.21	Form of Inducement Agreement to Exercise Warrants (incorporated by reference from Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed March 17, 2025)
10.22	Promissory Note and Security Agreement between Ekso Bionics Holdings, Inc. and B. Riley Commercial Capital, LLC, dated as of September 12, 2025 (incorporated by reference from Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on September 17, 2025)
10.23#	Form of Securities Purchase Agreement (incorporated by reference from Exhibit 99.1 to the Registrant's Current Report on Form 8-K filed on October 30, 2025)
10.24†	Change in Control and Severance Agreement, dated November 5, 2025, by and between the registrant and Scott G. Davis (incorporated by reference from Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed on November 7, 2025)
10.25†	Change in Control and Severance Agreement, dated November 5, 2025, by and between the registrant and Jerome Wong (incorporated by reference from Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed on November 7, 2025)
10.26†	Change in Control and Severance Agreement, dated November 5, 2025, by and between the registrant and Jason Jones (incorporated by reference from Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed on November 7, 2025)
10.27	Placement Agency Agreement, dated October 28, 2025, by and between the Company and the Placement Agent (incorporated by reference from Exhibit 99.2 to the Registrant's Current Report on Form 8-K filed on October 30, 2025)
10.28	Form of Registration Rights Agreement (incorporated by reference from Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on January 22, 2026)
10.29#	Form of Securities Purchase Agreement (incorporated by reference from Exhibit 99.1 to the Registrant's Current Report on Form 8-K filed on January 22, 2026)
10.30##	Contribution and Exchange Agreement, dated February 15, 2026, by and among Ekso Bionics Holdings, Inc., APLD ChronoScale HoldCo LLC, APLD Intermediate HoldCo LLC, and Applied Digital Cloud Corporation
19.1	Ekso Bionics Holdings, Inc. Insider Trading Policy (incorporated by reference from Exhibit 19.1 to the Registrations Annual Report on Form 10-K filed on March 3, 2025)
21.1	Subsidiaries of the Registrant (incorporated by reference from Exhibit 21.1 to the Registrant's Annual Report on Form 10-K filed March 4, 2024)
23.1*	Consent of Independent Registered Public Accounting Firm (WithumSmith+Brown, PC)
24.1	Power of attorney (included on signature page of this report)
31.1*	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as amended
31.2*	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as amended
32.1§	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2§	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
97.1	Ekso Bionics Holdings, Inc. Compensation Recovery Policy (incorporated by reference from Exhibit 97.1 to the Registrant's Annual Report on Form 10-K filed March 4, 2024)

Ekso Bionics Holdings, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts)

101	Interactive Data Files of Financial Statements and Notes.
101.ins	Inline XBRL Instant Document
101.sch	Inline XBRL Taxonomy Schema Document
101.cal	Inline XBRL Taxonomy Calculation Linkbase Document
101.def	Inline XBRL Taxonomy Definition Linkbase Document
101.lab	Inline XBRL Taxonomy Label Linkbase Document
101.pre	Inline XBRL Taxonomy Presentation Linkbase Document
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)

Certain of the exhibits and schedules to this exhibit have been omitted in accordance with Regulation S-K Item 601. The Company agrees to furnish supplementally a copy of all omitted exhibits and schedules to the Securities and Exchange Commission upon its request.

* Filed herewith

§ Furnished herewith.

† Management contract or compensatory plan or arrangement

Item 16. FORM 10-K SUMMARY

The Company has elected not to include summary information.

**DESCRIPTION OF REGISTRANT'S SECURITIES
REGISTERED PURSUANT TO SECTION 12 OF
THE SECURITIES EXCHANGE ACT OF 1934**

The following is a summary description of capital stock of Ekso Bionics Holdings, Inc. (the "Company" or "we," "us" or "our"). The following summary does not purport to be complete and is subject to and qualified in its entirety by reference to the applicable provisions of Nevada law, our articles of incorporation, as amended ("charter"), our bylaws ("bylaws") and Certificate of Designation of the Powers, Preferences and Relative, Participating, Option and Other Restrictions of the Series B Preferred Stock ("Certificate of Designation"). The description is intended as a summary and is qualified in its entirety by reference to our charter, our bylaws and our Certificate of Designation, which are included as exhibits to our Annual Report on Form 10-K and applicable provisions of Nevada law.

DESCRIPTION OF COMMON STOCK

General

Under our charter, we are authorized to issue 141,428,571 shares of common stock, par value \$0.001 per share.

Dividends. The holders of outstanding shares of common stock are entitled to receive dividends out of assets or funds legally available for the payment of dividends of such times and in such amounts as the board from time to time may determine.

Voting. Holders of common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders. There is no cumulative voting of the election of directors then standing for election.

Pre-emptive Rights, Redemption, Conversion and Sinking Fund Provisions. The common stock is not entitled to pre-emptive rights and is not subject to conversion, redemption or sinking fund provisions.

Liquidation Rights. Upon liquidation, dissolution or winding up of our Company, the assets legally available for distribution to stockholders are distributable ratably among the holders of the common stock after payment of liquidation preferences, if any, on any outstanding payment of other claims of creditors. Each outstanding share of common stock is duly and validly issued, fully paid and non-assessable.

Transfers. There are no restrictions on the transfer of our common stock except such restrictions as may be imposed by applicable securities laws.

DESCRIPTION OF PREFERRED STOCK

General

Under our charter, we are authorized to issue 10,000,000 shares of preferred stock, par value \$0.001 per share and stated value ("Stated Value") of \$1,000 per share.

Voting. Except as otherwise required by law, holders of our Series B Preferred Stock, par value \$0.001 per share ("Series B Preferred Stock") shall not be entitled to any separate voting rights and shall vote together with the holders of our common stock on an as-converted basis. Each Holder of the Series B Preferred Stock shall not be entitled to have, on an as-converted basis and in the aggregate, together with votes attributable to any other voting securities beneficially owned by such holder and such holder's affiliates, a number of votes representing more than 19.99% of the then-combined voting power of all of the voting securities of the Company outstanding as of the time of such vote.

Duration and Conversion. The Series B Preferred Stock has no stated maturity and will remain outstanding indefinitely unless converted into common stock. The Series B Preferred Stock will be convertible into shares of common stock at a conversion price of \$8.22 per share, subject to customary adjustments ("Conversion Price"). Each share of Series B Preferred Stock shall be convertible into such number of shares of common stock that results from dividing the Stated Value by the Conversion Price.

Limitations on Conversion. Holders of Series B Preferred Stock are prohibited from converting shares of Series B Preferred Stock into shares of common stock if, as a result of such conversion, such holder, together with its affiliates, would beneficially own in excess of 9.99% of the then-combined voting power of all of the voting securities of the Company outstanding immediately after giving effect to such conversion.

Protective Provisions. For so long as any shares of Series B Preferred Stock are outstanding, the Company may not take any of the following actions without the affirmative vote of the holders of a majority of the then outstanding shares of the Series B Preferred Stock: (i) alter, waive or change adversely the powers, preferences or rights given to the Series B Preferred Stock or alter or amend the Certificate of Designation, (ii) authorize, create or issue any class of stock ranking as to dividends, redemption or distribution of assets upon a Liquidation (as defined in the Certificate of Designation) senior to, or otherwise pari passu with, the Series B Preferred Stock, (iii) increase or decrease the authorized number of shares of Series B Preferred Stock, or (iv) amend its articles of incorporation or bylaws or file any articles of amendment, certificate of designation, preferences, limitations and relative rights of any series of preferred stock in any manner that adversely affects any rights given to the Series B Preferred Stock regardless of whether any such action shall be by means of amendment to its articles of incorporation or by merger, consolidation or otherwise.

Redemption. The shares of Series B Preferred Stock are redeemable at the Company's or the holder's option at the Stated Value starting on January 22, 2027. The shares of Series B Preferred Stock are also redeemable at the holder's option at the Stated Value upon a Trading Failure (as defined in the Certificate of Designation), subject to certain exceptions.

Transferability. Holders of our Series B Preferred Stock may not transfer or execute any short sales involving the Series B Preferred Stock or shares of common stock issuable upon conversion of the Series B Preferred Stock until the earlier of (x) July 22, 2026 and (y) two trading days after the Company consummates a change of control.

Anti-Takeover Provisions Under The Nevada Revised Statutes

Business Combinations

Nevada Revised Statutes ("NRS") sections 78.411 to 78.444 prohibit certain business "combinations" between certain Nevada corporations and any person deemed to be an "interested stockholder" for two years after such person first becomes an "interested stockholder" unless (i) the corporation's Board of Directors approves the combination (or the transaction by which such person becomes an "interested stockholder") in advance, or (ii) the combination is approved by the Board of Directors and sixty percent of the corporation's voting power not beneficially owned by the interested stockholder, its affiliates and associates. Furthermore, in the absence of prior approval, certain restrictions may apply even after such two-year period. For purposes of these statutes, an "interested stockholder" is any person who is (x) the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the outstanding voting shares of the corporation, or (y) an affiliate or associate of the corporation and at any time

within the two previous years was the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the then outstanding shares of the corporation. The definition of the term “combination” is sufficiently broad to cover most significant transactions between the corporation and an “interested stockholder”. Subject to certain timing requirements set forth in the statutes, a corporation may elect not to be governed by these statutes. We have not included any such provision in our articles of incorporation. The effect of these statutes may be to potentially discourage parties interested in taking control of the Company from doing so if it cannot obtain the approval of our Board of Directors.

Control Shares

Nevada law also seeks to impede “unfriendly” corporate takeovers by providing in Sections 78.378 to 78.3793 of the NRS, commonly referred to as the “Control Share Act”, that an “acquiring person” shall only obtain voting rights in the “control shares” purchased by such person to the extent approved by the other stockholders. With certain exceptions, an acquiring person is one who acquires or offers to acquire a “controlling interest” in the corporation. These statutes provide that a person acquires a “controlling interest” whenever a person acquires shares of a subject corporation that, but for the application of these provisions of the NRS, would enable that person to exercise (1) one-fifth or more, but less than one-third, (2) one-third or more, but less than a majority or (3) a majority or more, of all of the voting power of the corporation in the election of directors. Control shares include not only shares acquired or offered to be acquired in connection with the acquisition of a controlling interest, but also all shares acquired by the acquiring person within the preceding 90 days. The statute covers not only the acquiring person but also any persons acting in association with the acquiring person. The NRS control share statutes only apply to issuers that have 200 or more stockholders of record, at least 100 of whom have had addresses in Nevada appearing on the stock ledger of the corporation at all times during the 90 days immediately preceding such date; and whom do business in Nevada directly or through an affiliated corporation. At this time, we do not believe we have 100 shareholders of record who have addresses in Nevada and we do not conduct business in Nevada directly or through an affiliated corporation. Therefore, the provisions of the Control Share Act are believed not to apply to acquisitions of our shares and will not until such time as these requirements have been met. At such time as they may apply, the provisions of the Control Share Act may discourage companies or persons interested in acquiring a significant interest in or control of us, regardless of whether such acquisition may be in the interest of our shareholders.

Listing

Our common stock is listed on the Nasdaq Capital Market under the symbol “EKSO.”

Our Transfer Agent

VStock Transfer, LLC is transfer agent and registrar for our common stock.

CONTRIBUTION AND EXCHANGE AGREEMENT

BY AND AMONG

EKSO BIONICS HOLDINGS, INC.,
 APLD CHRONOSCALE HOLDCO LLC,
 APLD INTERMEDIATE HOLDCO LLC

AND

APPLIED DIGITAL CLOUD CORPORATION

DATED AS OF FEBRUARY 15, 2026

TABLE OF CONTENTS

<u>ARTICLE I.</u>		
<u>DEFINITIONS</u>	2	
1.1	<u>Definitions</u>	2
<u>ARTICLE II.</u>		
<u>CONTRIBUTION AND EXCHANGE</u>	11	
2.1	<u>Closing</u>	11
2.2	<u>Deliveries</u>	11
<u>ARTICLE III.</u>		
<u>REPRESENTATIONS AND WARRANTIES</u>	13	
3.1	<u>Representations and Warranties of Issuer</u>	13
3.2	<u>Representations and Warranties of Cloud, APLD Intermediate and Contributor</u>	34
<u>ARTICLE IV.</u>		
<u>COVENANTS AND OTHER AGREEMENTS OF THE PARTIES</u>	41	
4.1	<u>Conduct of Issuer's Business</u>	41
4.2	<u>Conduct of Cloud's Business</u>	43
4.3	<u>Access and Information</u>	44
4.4	<u>Written Consent; Information Statement; Proxy Statement</u>	44
4.5	<u>No Solicitation</u>	47
4.6	<u>Regulatory Approvals; Efforts</u>	48
4.7	<u>Securities Laws Disclosure; Publicity</u>	48
4.8	<u>Acknowledgment of Dilution</u>	48
4.9	<u>Notifications of Certain Events</u>	48
4.10	<u>Tax Matters</u>	49
4.11	<u>Transaction Litigation</u>	49
4.12	<u>Confidentiality</u>	50
4.13	<u>Nasdaq Listing of Shares</u>	50

4.14	<u>Takeover Statutes</u>	50
4.15	<u>Legend</u>	50
4.16	<u>Reservation of Common Stock</u>	51
4.17	<u>Listing of Issuer Common Stock</u>	51
4.18	<u>Directors' and Officers' Indemnification and Insurance</u>	51

ARTICLE V.
CONDITIONS TO CLOSING 52

5.1	<u>Conditions to Each Party's Obligation to Effect the Contribution</u>	52
5.2	<u>Conditions to Obligation of Issuer to Effect the Contribution</u>	52
5.3	<u>Conditions to Obligation of APLD Intermediate and Contributor to Effect the Contribution</u>	53
5.4	<u>Waiver of Conditions; Frustration of Purpose</u>	54

ARTICLE VI.
TERMINATION 54

6.1	<u>Termination or Abandonment</u>	54
6.2	<u>Effect of Termination</u>	55

ARTICLE VII.
MISCELLANEOUS 55

7.1	<u>Expenses</u>	55
7.2	<u>Entire Agreement</u>	55
7.3	<u>Notices</u>	55
7.4	<u>Amendments; Waivers</u>	56
7.5	<u>Successors and Assigns</u>	56
7.6	<u>No Third-Party Beneficiaries</u>	57
7.7	<u>Captions</u>	57
7.8	<u>Governing Law</u>	57
7.9	<u>Survival</u>	57
7.10	<u>Execution</u>	57
7.11	<u>Severability</u>	58
7.12	<u>Remedies</u>	58
7.13	<u>Non-Recourse</u>	58
7.14	<u>Construction</u>	58

Exhibits

Exhibit A: Investor Rights Agreement
Exhibit B: Form of Stock Power
Exhibit C: Restated Issuer Bylaws
Exhibit D: Restated Issuer Articles
Exhibit E: 2026 Plan

CONTRIBUTION AND EXCHANGE AGREEMENT

This CONTRIBUTION AND EXCHANGE AGREEMENT (this "Agreement") dated as of February 15, 2026, is entered into by and among Ekso Bionics Holdings, Inc., a Nevada corporation ("Issuer"), APLD Intermediate HoldCo LLC, a Delaware limited liability company ("APLD Intermediate"), APLD ChronoScale HoldCo LLC, a Delaware limited liability company and wholly owned subsidiary of APLD Intermediate ("Contributor"), and Applied Digital Cloud Corporation, a Nevada corporation and wholly owned subsidiary of APLD Intermediate ("Cloud"). Certain terms used in this Agreement are defined in Section 1.1.

WHEREAS, as of the date hereof, APLD Intermediate owns 1,200 shares of Cloud Common Stock, which constitutes all of the issued and outstanding Equity Interests of Cloud (the "Contributed Shares");

WHEREAS, prior to the Closing, Applied Parent, APLD Intermediate, Contributor, and certain other Subsidiaries of Applied Parent will engage in a series of internal restructuring transactions such that after giving effect to such transactions (collectively, the “Cloud Pre-Closing Restructuring”), Contributor will own all of the Contributed Shares;

WHEREAS, Contributor desires to contribute to Issuer, and Issuer desires to acquire from Contributor, the Contributed Shares in exchange for 138,216,820 shares of Issuer Common Stock (the “Exchanged Shares” and such contribution, the “Contribution”), on the terms and subject to the conditions set forth in this Agreement (the Contribution and other transactions contemplated by this Agreement are referred to herein as the “Transactions”);

WHEREAS, in connection with, and as a condition to the consummation of, the Transactions, Issuer intends to complete the PIPE Investment;

WHEREAS, the board of directors of Issuer (the “Issuer Board”) has unanimously determined that the terms of this Agreement and the Transactions, including the terms of the Contribution, are fair to and in the best interests of Issuer and its stockholders;

WHEREAS, the Issuer Board has unanimously approved this Agreement and the Transactions and has (i) recommended that the stockholders of Issuer approve and adopt the Agreement and approve the Transactions, and (ii) authorized that the requisite stockholder approval be obtained by written consent or at a meeting of the stockholders of Issuer, in each case in accordance with applicable Law;

WHEREAS, it is expected that promptly following, and in any event no later than the Consent Deadline, the Issuer will obtain the requisite consent of the stockholders of Issuer necessary to approve the Stockholder Proposals, and will execute and deliver, or cause to be executed and delivered, to Contributor, a true, correct and complete copy of the irrevocable written consent providing for the approval of the Stockholder Proposals, in form and substance acceptable to APLD Intermediate (the “Written Consent”); provided, that, if the Written Consent is not obtained by the Consent Deadline, APLD Intermediate may either, (i) extend the Consent Deadline, (ii) require Issuer to comply with the Meeting Procedures to seek the requisite stockholder approval of the Stockholder Proposals at a duly called meeting of the stockholders of the Issuer, including any adjournment thereof, subject to Section 4.4(c)(v) of this Agreement (the “Stockholder Meeting”) on the terms set forth in this Agreement, or (iii) terminate this Agreement;

WHEREAS, Issuer will duly file and deliver to the SEC and mail to the holders of Issuer Common Stock or Issuer Voting Stock, as applicable, (i) an information statement on Schedule 14C (the “Information Statement”) prepared pursuant to Section 14(c) of the Exchange Act, or (ii) if the Issuer has been required to comply with the Meeting Procedures, a proxy statement on Schedule 14A (the “Proxy Statement”) prepared pursuant to Section 14(a) of the Exchange Act, as applicable, regarding the Contribution and the other Transactions;

WHEREAS, the board of directors of Cloud (the “Cloud Board”), has approved this Agreement and the Transactions and has recommended that the sole stockholder of Cloud adopt and approve this Agreement and the Transactions in accordance with applicable Law;

WHEREAS, APLD Intermediate, as the sole stockholder of Cloud as of the date hereof and prior to the Cloud Pre-Closing Restructuring, has acted by written consent, which consent by its terms shall be effective immediately following the execution of this Agreement by the parties hereto to adopt this Agreement and the Transactions in accordance with applicable Law;

WHEREAS, at the Closing, as a material condition and inducement to Contributor’s willingness to enter into this Agreement and consummate the Transactions, Issuer and Contributor shall enter into an Investor Rights Agreement, in the form attached hereto as Exhibit A (the “Investor Rights Agreement”);

WHEREAS, for U.S. federal and applicable state income tax purposes, the parties intend that the Contribution shall qualify as a transaction described in Section 351(a) of the Code; and

WHEREAS, the parties desire to set forth in this Agreement the terms and conditions applicable to the Contribution and the other Transactions, including the issuance of the Exchanged Shares as consideration for the Contributed Shares and the consummation of the PIPE Investment.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Issuer, Contributor, APLD Intermediate and Cloud agree as follows:

ARTICLE I. DEFINITIONS

1.1 Definitions

. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings set forth in this Section 1.1:

“2014 Plan” means that certain Ekso Bionics Holdings, Inc. Amended and Restated 2014 Equity Incentive Plan (As of June 6, 2024), as further amended, restated, or otherwise modified from time to time.

“2026 Plan” means a new equity incentive plan of Issuer, in the form and substance attached hereto as Exhibit E, and which shall be proposed for adoption pursuant to the Stockholder Proposals.

“Acquisition Proposal” means, with respect to Issuer, any proposal, inquiry, or offer (written or oral) (A) to acquire, directly or indirectly, Issuer and/or its Subsidiaries or any portion of their respective assets (whether by merger, consolidation, recapitalization, purchase or issuance of equity securities, purchase of assets, tender offer or otherwise), (B) to make any investment in, capital contribution or loan to, or reorganization, dissolution, liquidation or recapitalization of Issuer and/or its Subsidiaries or (C) any similar transaction or business combination involving the assets of Issuer and/or its Subsidiaries or the business, equity, interests, capital stock, or assets of Issuer and/or its Subsidiaries

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

“Applied Parent” means Applied Digital Corporation, a Nevada corporation.

“Benefit Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA, whether or not subject to ERISA, and any other plan, policy, program, Contract, or arrangement providing compensation or other benefits to any current or former Issuer Service Provider (or to any dependent or beneficiary thereof) of Issuer or any Issuer Subsidiary, in each case that is maintained, sponsored or contributed to by Issuer or any Issuer Subsidiary, or under which Issuer or any Issuer Subsidiary has any obligation or liability, whether actual or contingent, including each employment, consulting, incentive, bonus, deferred compensation, profit-sharing, pension, retirement, vacation, holiday, sick pay, paid-time off, cafeteria, fringe benefit, medical, dental, disability, life insurance, other health plans, fringe benefits, retention, severance, termination, change in control, transaction bonus, stock purchase, stock option, equity appreciation, phantom equity, restricted stock, restricted stock

unit, employee stock ownership or other equity or equity-based compensation plans, policies, programs, practices or arrangements, in each case, which (x) is not sponsored and administered by a Governmental Entity and (y) is not required by Law to be provided.

“Cash and Cash Equivalents” means, as of the time of determination, without duplication and on a consolidated basis, and in each case as determined in accordance with GAAP, the fair market value (expressed in United States Dollars) of any and all unrestricted cash and cash equivalents, excluding for the avoidance of doubt any cash and cash equivalents that are not freely usable or readily available for any corporate purpose because they are subject to restrictions or limitations on use, transfer or distribution under Law. Contract or otherwise, including but not limited to amounts held on behalf of, or for the benefit of, any other Person, as security deposits or in escrow (which shall include escrow deposits), but including the amounts of any checks, drafts and wires issued prior to such time and actually received, deposited or available.

“Closing Date” means the date on which Closing occurs.

“Cloud Common Stock” means the common stock of Cloud, par value \$0.001 per share.

“Cloud Material Adverse Effect” means, with respect to Cloud, any Effect that, individually or taken together with all other Effects that have occurred prior to the date of determination of the occurrence of the Cloud Material Adverse Effect, is or is reasonably likely to be materially adverse to the business, assets, results of operations, prospects or financial condition of Cloud and its Subsidiaries, taken as a whole; provided, however, that in no event shall any of the following individually or taken together, be deemed to constitute, or be taken into account in determining whether a Cloud Material Adverse Effect has occurred or is expected to occur: (i) any failure by Cloud to meet internal or analyst revenue, earnings or other financial projections or expectations for any period, (ii) any Effect that results from changes affecting the industry in which Cloud operates, or the United States economy generally, or any Effect that results from changes affecting general worldwide economic or United States or global capital market conditions, (iii) any Effect caused by the announcement of the Transactions contemplated by this Agreement or the other Transaction Documents, (iv) political conditions, including acts of war or terrorism or natural disasters or any pandemic or epidemic, including COVID-19, (v) any action taken or omitted to be taken by Cloud at the written request or with the prior written consent of Issuer, (vi) changes in GAAP or other accounting standards (or any interpretation thereof) or (vii) changes in any Laws or other binding directives issued by any Governmental Entity or interpretations or enforcement thereof; provided, however, that (A) the exception in clause (i) shall not prevent or otherwise affect a determination that any Effect underlying such change or failure has resulted in, or contributed to, a Cloud Material Adverse Effect or that the underlying cause of such failure (unless such underlying cause would otherwise be excluded from this definition) has resulted in, or contributed to, a Cloud Material Adverse Effect and (B) with respect to clauses (ii), (iv), (vi) and (vii), such Effects, alone or in combination, may be deemed to constitute, or be taken into account in determining whether a Cloud Material Adverse Effect has occurred or would be reasonably expected to occur, but only to the extent such Effects disproportionately affect Cloud and its Subsidiaries, taken as a whole, relative to other companies operating in the same industry as Cloud and its Subsidiaries.

“Code” shall mean the Internal Revenue Code of 1986, as amended, including any successor provisions.

“Common Stock Equivalents” means any securities which would entitle the holder thereof to acquire at any time common stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, common stock.

“Company ESPP” means that certain Ekso Bionics Holdings, Inc. 2017 Employee Stock Purchase Plan, as amended, restated, or otherwise modified from time to time.

“Confidential Information” means nonpublic information, knowledge, or data relating to the business of Issuer or Cloud, including, without limitation, (i) all forms and types of financial, business, customer and supplier lists, formulae, know-how, processes, secrets and trade secrets, consultant Contracts, pricing information, marketing plans, product development plans, business acquisition plans, and all other information relating to the business of Issuer or Cloud, whether tangible or intangible, whether oral or in writing, and whether or not marked, labeled, or otherwise identified as “confidential” or the like and whether or not developed independently prior to or during any affiliation with Issuer or Cloud; and (ii) all copies of any of the foregoing or any analyses, studies or reports that contain, are based on, or reflect any of the foregoing. The term Confidential Information shall not include information: (i) that enters the public domain or is publicly available so long as neither Issuer or Cloud nor their Affiliates directly or indirectly causes such information to enter the public domain or become publicly available; or (ii) that was independently developed without use of the Confidential Information.

“Consent Deadline” means 5:00 p.m. local time in New York on February 20, 2026; provided, that such date may be extended from time to time in the sole and absolute discretion of APLD Intermediary. For the avoidance of doubt, any such extension shall not extend or otherwise affect the End Date.

“Contract” means any agreement, contract, mortgage, indenture, lease, license, covenant, plan, insurance policy, instrument, arrangement, understanding or commitment, permit, concession, franchise, license, terms of service, or terms of use, in each case, whether oral or written.

“Data Protection Laws” means (a) any applicable Law relating to the Processing of Personal Data, data privacy, data security, data breach notification, and the cross-border transfer of Personal Data; (b) any requirements of self-regulatory frameworks or organizations with which a party is, or has been, contractually obligated to comply, or any self-certification mechanisms (such as the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks) to which a party has committed; (c) any Laws that provide rights of privacy or publicity to individuals; and (d) PCI-DSS.

“Data Protection Requirements” means all applicable (i) Data Protection Laws; (ii) Privacy Policies; and (iii) the terms of any agreements to which a party is bound relating to the Processing of Personal Data.

“Disclosure Schedules” means the Disclosure Schedules of each of Issuer and Contributor, as applicable, in each case delivered concurrently herewith.

“Effect” means any change, event, effect, development or circumstance.

“Environmental Claim” means any Proceeding, investigation, order, demand, allegation, accusation or notice (written or oral) by any Person or entity alleging actual or potential liability (including actual or potential liability for investigatory costs, cleanup costs, response costs, natural resources damages, property damages, personal injuries, attorneys’ fees or penalties) arising out of, based on, resulting from or relating to any Environmental Laws, Environmental Permits or the presence, storage, handling, labeling, management, transportation, treatment, or release into the environment, of, or exposure to, any Hazardous Materials at any location, but shall not include any claims relating to products liability.

“Environmental Laws” means any and all applicable, federal, state, provincial, local or foreign Laws, statutes, ordinances, regulations, treaties, policies, guidance, rules, judgments, orders, writs, court decisions or rule of common law, stipulations, injunctions, consent decrees, permits, restrictions and licenses, regulating or relating to Hazardous Materials, pollution, protection of the environment (including ambient air, surface water, ground water, drinking water, land surface, subsurface strata, sediment, wildlife, plants or other natural resources), and/or the protection of health and safety of persons from exposures to Hazardous Materials.

“Environmental Permits” means any permit, certificate, approval, identification number, license, waiver, or other authorization required under, or issued pursuant to, an Environmental Law.

“Equity Interest” means any share, capital stock, partnership, limited liability company, member or similar equity interest in any Person, and any option, warrant, right or security (including debt securities) convertible, exchangeable or exercisable into or for any such share, capital stock, partnership, limited liability company, member or similar equity interest.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Excluded Contracts” means any of the following Contracts: (a) license agreements for “shrink-wrap,” “click-wrap” or other commercially available off-the-shelf software that is not the subject of a negotiated agreement; (b) Contracts the primary purpose of which is to purchase tangible goods or procure services unrelated to Intellectual Property and in the ordinary course of business; (c) customary nondisclosure agreements entered into in the ordinary course of business (that do not include any terms granting the right to use residuals or assigning or granting express license rights to Intellectual Property); (d) Contracts with the customers or end users of the Issuer or any of its Subsidiaries on Issuer’s or such Subsidiary’s form agreement without material modification, provided that the applicable form agreement has been made available APLD Intermediate and Contributor; (e) Contracts where the only grants of rights with respect to Intellectual Property are non-exclusive licenses granted to service providers, consultants, contractors or vendors solely to permit such parties to provide services to Issuer or its Subsidiaries, in the ordinary course of business, and that do not involve the development or creation of any Intellectual Property; (f) Contracts where the only grants of rights with respect to Intellectual Property are non-exclusive licenses to a party’s trademark for inclusion on customer lists (or for similar incidental promotional purposes that are ancillary and non-material to the subject matter of such Contract); and (g) licenses for Open Source Software.

“Federal Health Care Program” has the meaning specified in Section 1128B(f) of the Social Security Act and includes the Medicare, Medicaid, and TRICARE programs.

“Governmental Entity” means any court, administrative or regulatory agency or commission or other governmental or arbitral body or authority or instrumentality, including any state-controlled or owned corporation or enterprise, in each case whether federal, state, local or foreign, and any applicable industry self-regulatory organization.

“Hazardous Materials” means any pollutants, chemicals, contaminants or wastes and any other toxic, infectious, carcinogenic, reactive, corrosive, ignitable, explosive, radioactive, flammable or otherwise hazardous substance, whether solid, liquid or gas, that is regulated, controlled, restricted, or otherwise subject to any Environmental Laws, including asbestos in any form, urea formaldehyde, polychlorinated biphenyls, mold, radon gas, crude oil or any fraction thereof, all forms of natural gas, petroleum products or by-products or derivatives, and any PFAS.

“Intellectual Property” means all intellectual and industrial property rights worldwide, whether existing now or hereafter, registered or unregistered, and all applications, registrations, renewals, extensions and counterparts for the foregoing, including: (a) trademarks and service marks, and associated goodwill; (b) copyrights and works of authorship; (c) Trade Secrets, confidential information and know-how, including inventions (whether or not reduced to practice), methods, processes, improvements, technical data, specifications, research and development information, technology, designs, databases and data, ideas and source code; (d) patents and patent applications, including all continuations, continuations-in-part, divisionals, reissues, reexaminations and extensions; (e) websites, internet domain names and social media accounts and handles; (f) software; (g) rights of publicity and privacy; and (h) all other similar rights in any of the foregoing, and all rights to sue for and recover for past, present and future infringement, misappropriation or other violations.

“Issuer Common Stock” means the common stock of Issuer, par value \$0.001 per share.

“Issuer Intellectual Property” means collectively, all Owned Intellectual Property and Licensed Intellectual Property.

“Issuer Voting Stock” means, collectively, the shares of Issuer Common Stock and the shares of Issuer’s Series B Convertible Preferred Stock that are entitled to vote on the Stockholder Proposals as of the Record Date.

“Issuer Material Adverse Effect” means, with respect to Issuer, any Effect that, individually or taken together with all other Effects that have occurred prior to the date of determination of the occurrence of the Issuer Material Adverse Effect, is or is reasonably likely to be materially adverse to the business, assets, results of operations, prospects or financial condition of Issuer and its Subsidiaries, taken as a whole; provided, however, that in no event shall any of the following individually or taken together, be deemed to constitute, or be taken into account in determining whether an Issuer Material Adverse Effect has occurred or is expected to occur: (i) any change in Issuer’s stock price or trading volume on the Nasdaq, (ii) any failure by Issuer to meet internal or analyst revenue, earnings or other financial projections or expectations for any period, (iii) any Effect that results from changes affecting the industry in which Issuer operates, or the United States economy generally, or any Effect that results from changes affecting general worldwide economic or United States or global capital market conditions, (iv) any Effect caused by the announcement of the Transactions contemplated by this Agreement or the other Transaction Documents, (v) political conditions, including acts of war or terrorism or natural disasters or any pandemic or epidemic, including COVID-19, (vi) any action taken or omitted to be taken by Issuer at the written request or with the prior written consent of Contributor, (vii) changes in GAAP or other accounting standards (or any interpretation thereof) or (viii) changes in any Laws or other binding directives issued by any Governmental Entity or interpretations or enforcement thereof; provided, however, that (A) the exceptions in clause (i) and (ii) shall not prevent or otherwise affect a determination that any Effect underlying such change or failure has resulted in, or contributed to, an Issuer Material Adverse Effect or that the underlying cause of such failure (unless such underlying cause would otherwise be excluded from this definition) has resulted in, or contributed to, an Issuer Material Adverse Effect and (B) with respect to clauses (iii), (v), (vii) and (viii), such Effects, alone or in combination, may be deemed to constitute, or be taken into account in determining whether an Issuer Material Adverse Effect has occurred or would be reasonably expected to occur, but only to the extent such Effects disproportionately affect Issuer and its Subsidiaries, taken as a whole, relative to other companies operating in the same industry as Issuer and its Subsidiaries.

“IT Assets” means computers, software, servers, workstations, routers, hubs, switches, circuits, networks, data communications lines and all other information technology equipment.

“Knowledge of Cloud” means the actual knowledge of Wes Cummins and Saidal Mohmand, none of whom will have any personal liability or obligations regarding such knowledge.

“Knowledge of Issuer” means the actual knowledge of Scott Davis and Jerome Wong, none of whom will have any personal liability or obligations regarding such knowledge.

“Law” means any federal, national, state, provincial, local, municipal, foreign or other law, statute, constitution, principle of common law, resolution, ordinance, code, Order, edict, decree, rule, regulation, ordinance, treaty, ruling or other legally binding requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity.

“Leased Real Property” means all leasehold or subleasehold estates and other rights to use and occupy any land, buildings, structures, improvements, fixtures or other interests in real property held by Issuer and any of its Subsidiaries.

“Licensed Intellectual Property” means all Intellectual Property that is owned by a third Person and used or held for use by Issuer or any of its Subsidiaries.

“Liens” means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction (other than restrictions imposed by federal or state securities laws or created by this Agreement).

“Listing Application” means an initial listing application for the post-transaction entity, as required by Nasdaq Listing Rule 5110(a).

“Meeting Approval Deadline” means the date that is three (3) business days after the date of the Stockholder Meeting at which the Stockholder Proposals were approved.

“OFAC” means the Office of Foreign Assets Control of the United States Treasury Department.

“Order” means any charge, order, writ, injunction, judgment, decree, ruling, determination, directive, award, decision, verdict or settlement, in each case, whether civil, criminal or administrative, and, in each case, whether temporary, preliminary or permanent, entered, issued, made or rendered by any Governmental Entity or arbitrator.

“Organizational Documents” means (i) with respect to Issuer, the Issuer Articles of Incorporation and the Issuer Bylaws, and (ii) with respect to Cloud, the Cloud Articles of Organization and the Cloud Bylaws.

“Open Source Software” shall mean any Software (in source or object code form) that is subject to (a) a license meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation) (including any code or library licensed under the GNU General Public License, GNU Lesser General Public License, BSD License, Apache Software License, or any other public source code license arrangement), or (b) any other license or other agreement that requires, as a condition of the use, modification or distribution of software subject to such license or agreement, that such software or other software linked with, called by, combined or distributed with such software be (i) disclosed, distributed, made available, offered, licensed or delivered in source code form, (ii) licensed for the purpose of making derivative works, (iii) licensed under terms that allow reverse engineering, reverse assembly, or disassembly of any kind, or (iv) redistributable at no charge.

“Owned Intellectual Property” means all Intellectual Property that is owned, or purported to be owned, by Issuer or any of its Subsidiaries.

“Permitted Transferee” means, with respect to Issuer or Contributor, (i) any Affiliate thereof, or (ii) any successor entity of such party.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Personal Data” means (a) information related to an identified or identifiable individual and (b) any other, similar information or data, each to the extent defined as “personal data,” “personal information,” “personally identifiable information” or similar terms by Data Protection Laws.

“PIPE Investment” means a private placement of shares of Issuer Common Stock or preferred stock of Issuer that is convertible into Issuer Common Stock in such amount as shall be determined by, and on terms acceptable to, APLD Intermediate.

“Privacy Policy” means, with respect to a party, the party’s internal and external (including published, public-facing) privacy policies and notices.

“Proceeding” means any legal action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Process” (and the corollary terms “Processed” and “Processing”) shall mean, with respect to data, the collection, use, storage, transfer, disclosure, disposal, or other processing of such data.

“Products” means products of Issuer or any of Issuer’s Subsidiaries, including the Ekso NR, the Indego Therapy, the Indego Personal, the Indego Nomad and the Ekso Walker.

“Registered Intellectual Property” means all Owned Intellectual Property issued by, registered with, renewed by or the subject of a pending application before any Governmental Entity or domain name registrar.

“Restated Issuer Articles” means amended and restated Issuer Articles of Incorporation, in the form and substance attached hereto as Exhibit D, and which shall be proposed for adoption pursuant to the Stockholder Proposals.

“Restated Issuer Bylaws” means amended and restated Issuer Bylaws, in the form and substance attached hereto as Exhibit C.

“Restricted Person” means (a) any Person that is the subject of Sanctions, (b) any Person listed on any applicable U.S. or non-U.S. sanctions or export-related restricted party list, including OFAC’s list of Specially Designated Nationals and Blocked Persons, and the EU Consolidated List, or (c) is in the aggregate directly or indirectly fifty percent (50%) or greater owned or otherwise controlled by a Person or Persons described in (a) or (b), or (d) any Person located in, or organized under the Laws of any Sanctioned Country.

“Rule 144” means Rule 144 promulgated by the SEC pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same purpose and effect as such Rule.

“Sale of Applied Parent” means (a) a “person” or “group” (within the meaning of Section 13(d)(3) of the Exchange Act), other than Applied Parent or its wholly-owned Subsidiaries, or their respective employee benefit plans, files any report with the SEC indicating that such person or group has become the direct or indirect “beneficial owner” (as defined below) of shares of the common stock of Applied Parent representing more than fifty percent (50%) of the voting power of all of the common stock of Applied Parent; (b) the consummation of a sale or other disposition, in one or more transactions, of all or substantially all of the assets of Applied Parent and its Subsidiaries, taken as a whole; or (c) the consummation of any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) all of the common stock of Applied Parent is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, cash or other property.

“Sanctions” means all applicable economic or financial sanctions or Laws and trade embargoes imposed, administered or enforced from time to time by any Governmental Entity, including the list of Specially Designated Nationals and Blocked Persons and other regulations enforced by OFAC and the U.S. Department of State, the United Nations Security Council, His Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“Sanctioned Country” means any country or region that is, or since April 24, 2019, has been, the subject or target of a comprehensive embargo under Sanctions (including Myanmar (f/k/a Burma), Cuba, Iran, North Korea, Russia, Sudan, South Sudan, Syria, Venezuela and the Crimea, Donetsk, and Luhansk regions of Ukraine).

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Service Provider” means any employee, director, independent contractor or consultant.

“Services Agreement” means that certain services agreement, by and between Issuer and Applied Parent, in form and substance acceptable to APLD Intermediate.

“Software” means any computer program, application, middleware, firmware, microcode and other software, including operating systems, software implementations of algorithms, models and methodologies, in each case, whether in source code, object code or other form or format, including libraries, subroutines and other components thereof, and all documentation relating thereto.

“Stockholder Approval” means the approval of the Stockholder Proposals, including this Agreement, the Contribution and the other Transactions, by the requisite holders of Issuer Voting Stock, as applicable, whether by (a) the Written Consent obtained on or prior to the Consent Deadline, or (b) the affirmative vote of such holders at the Stockholder Meeting, following SEC clearance and mailing of the Proxy Statement, obtained prior to the Meeting Approval Deadline.

“Stockholder Proposals” means the proposals to approve (i) this Agreement, the Contribution and the other Transactions; (ii) Restated Issuer Articles; (iii) the issuance of the shares of Issuer Common Stock in the Contribution and the PIPE Investment for purposes of complying with Nasdaq Listing Rule 5635; (iv) the adoption of the 2026 Plan; and (v) any other proposals set forth in the Written Consent, the Information Statement or the Proxy Statement, as the case may be, which are mutually acceptable to the Issuer and Contributor.

“Subsidiary” of any party means any corporation, partnership, association, trust or other form of legal entity of which (i) 50% or more of the voting power of the outstanding voting securities are directly or indirectly owned by such party or (ii) such party or any Subsidiary of such party is a general partner.

“Takeover Statutes” means any “fair price,” “moratorium,” “control share acquisition” or other similar anti-takeover statute or regulation including, NRS 78.378-3793, inclusive, and NRS 78.411-444, inclusive.

“Tax Return” means any return, report, form, information return, declaration of estimated Tax, claim for refund or similar statement filed or required to be filed with any Governmental Entity with respect to any Tax, including any attached schedules or amendments thereto.

“Taxes” means any and all taxes, charges, fees, levies or other similar assessments, each in the nature of a tax, including, without limitation, all net income, gross income, gross receipts, excise, stamp, real or personal property, ad valorem, withholding, social security (or similar), unemployment, occupation, use, production, service, service use, license, net worth, payroll, franchise, severance, transfer, recording, employment, premium, windfall profits, environmental, customs duties, capital stock, profits, disability, sales, registration, value added, alternative or add-on minimum, estimated or other similar taxes, assessments or charges in the nature of a tax imposed by any Governmental Entity having jurisdiction in matters relating to Tax matters and any interest, penalties, or additions to tax attributable thereto.

“Trade Laws” means all applicable U.S. and non-U.S. Laws relating to export, reexport, transfer, and/or import controls of Products, including the Export Administration Regulations, the International Traffic in Arms Regulations, economic Sanctions and embargoes administered by Office of Foreign Assets Control, anti-boycott Laws and the customs and import Laws administered by U.S. Customs and Border Protection.

“Trade Secrets” means any information that derives actual or potential economic value from not being generally known to the public or to other Persons who can obtain economic value from its disclosure or use.

“Trading Market” means any of the following markets or exchanges on which the Issuer Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

“Transaction Documents” means this Agreement, the Investor Rights Agreement, and all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the Transactions contemplated hereunder.

“Transfer Agent” means Vstock Transfer, LLC, Issuer’s transfer agent.

ARTICLE II.

CONTRIBUTION AND EXCHANGE

2.1 Closing

- (a) Issuer shall have adopted and filed with the Secretary of State of the State of Nevada on or before the Closing Date, the Restated Issuer Articles.
- (b) The closing of the Transactions (the “Closing”) shall take place at 9:00 a.m. Eastern time, as soon as practicable (and, in any event, within two (2) business days) after satisfaction or, to the extent permitted hereunder, waiver of all applicable conditions set forth in Article 5 (except for any conditions that by their nature can only be satisfied at the Closing, but subject to the satisfaction of such conditions or, to the extent permitted hereunder, waiver by the party entitled to waive such conditions) via electronic exchange of signature pages or at such other time and place as the parties shall agree in writing.
- (c) On the Closing Date and after the filing of the Restated Issuer Articles as contemplated by Section 2.1(a), upon the terms and subject to the conditions set forth in this Agreement, (i) Contributor shall consummate the Contribution by delivering to Issuer all of Contributor’s right, title and interest in and to Contributed Shares free and clear of all Liens, and (ii) in exchange therefor, Issuer shall issue and deliver to Contributor the Exchanged Shares free and clear of all Liens.

2.2 Deliveries.

- (a) It shall be a condition to Contributor’s obligations to consummate the Transactions that, on or prior to the Closing Date, Issuer delivers or causes to be delivered to Contributor the following:
 - i. the Written Consent, duly executed by the requisite holders of Issuer Voting Stock, or, if the Written Consent has not been obtained by the Consent Deadline, evidence reasonably satisfactory to Contributor of receipt of the Stockholder Approval prior to the Meeting Approval Deadline;
 - ii. evidence of the due and proper mailing of the Information Statement in accordance with applicable Law, or, if the Written Consent has not been obtained by the Consent Deadline, evidence of the due and proper mailing of the Proxy Statement in accordance with applicable Law;

- iii. the Investor Rights Agreement, duly executed by Issuer;
- iv. a legal opinion of Ballard Spahr LLP, directed to Contributor, in form and substance reasonably acceptable to Contributor;
- v. a legal opinion of Wilson Sonsini Goodrich & Rosati, directed to Contributor, in form and substance reasonably acceptable to Contributor;
- vi. a copy of the resolutions of the Issuer Board, duly authorizing and approving entry into this Agreement by Issuer and the Transactions contemplated hereby and under the Transaction Documents;
- vii. a copy of the irrevocable instructions to the Transfer Agent instructing the Transfer Agent to deliver, on an expedited basis, evidence of the issuance of 138,216,820 shares of Issuer Common Stock as held in DRS book-entry form by the Transfer Agent and registered in the name of Contributor;
- viii. the resignation, effective as of the Closing, of the individuals set forth on Schedule 2.2(a)(viii), on a form reasonably acceptable to APLD Intermediate;
- ix. evidence that the Listing Application has been approved by Nasdaq;
- x. evidence of concurrent closing of the PIPE Investment and duly executed copies of all definitive agreements executed in connection therewith, each in form and substance reasonably acceptable to APLD Intermediate;
- xi. a certificate, executed on behalf of Issuer by its secretary, dated as of the Closing Date, certifying the resolutions adopted by the Issuer Board approving the Contribution and other Transactions contemplated by this Agreement, certifying the current versions of the Organizational Documents, including that the Restated Issuer Articles and the Restated Issuer Bylaws have been validly adopted as of the Closing and have not been amended or modified, and certifying as to the signatures and authority of Persons signing this Agreement, the Transaction Documents and related documents on behalf of Issuer;
- xii. the Services Agreement, duly executed by Issuer;
- xiii. a copy of the Restated Issuer Articles, duly approved by the Issuer Board and its stockholders and filed with the Secretary of State of the State of Nevada;
- xiv. a copy of the Restated Issuer Bylaws, duly adopted by the Issuer Board prior to the Closing;
- xv. a copy of 2026 Plan, duly approved by the Issuer Board and its stockholders; and
- xvi. evidence reasonably satisfactory to APLD Intermediate that Issuer has taken all actions necessary (including obtaining any required approvals of the Issuer Board or the compensation committee thereof) to suspend the 2014 Plan as of the Closing, such that from and after the Closing no further Awards (as defined in the 2014 Plan) may be granted thereunder; provided that, all Awards outstanding thereunder as of Closing shall continue in full force and effect in accordance with the terms thereof;
- xvii. evidence reasonably satisfactory to APLD Intermediate that Issuer has taken all actions necessary (including obtaining any required approvals of the Issuer Board or the compensation committee thereof) to terminate the Company ESPP as of the Closing; and
- xviii. all such other documents as Contributor may reasonably request.

(b) It shall be a condition to Issuer's obligations to consummate the Transactions that, on or prior to the Closing Date, Contributor delivers or causes to be delivered to Issuer, the following:

- i. the Investor Rights Agreement, duly executed by Contributor;
- ii. the Services Agreement, duly executed by Applied Parent,
- iii. a copy of the resolutions of the Cloud Board, duly authorizing entry into this Agreement by Cloud and the Transactions contemplated hereby and under the Transaction Documents;
- iv. a copy of resolutions of the board of Contributor, as sole stockholder of Cloud, duly authorizing entry into this Agreement by Cloud and the Transactions contemplated hereby and under the Transaction Documents;
- v. an IRS Form W-9 duly executed by Contributor or its regarded owner;
- vi. a stock power, in the form and substance attached hereto as Exhibit B, evidencing the transfer of the Contributed Shares; and
- vii. evidence, reasonably satisfactory to Issuer, that the Cloud Pre-Closing Restructuring has been completed.

ARTICLE III. REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Issuer

. Except as set forth in the SEC Documents filed with or furnished to the SEC prior to the date of this Agreement or in the correspondingly numbered section of the Disclosure Schedules that relates to such section or in another section of the Disclosure Schedules to the extent that it is reasonably apparent on the face of such disclosure that such disclosure is applicable to such section, Issuer hereby represents and warrants to APLD Intermediate and Contributor, as of the date hereof and as of the Closing Date as follows (unless as of a specific date therein, in which case they shall be accurate as of such date) that:

(a) Organization and Authority.

i. Issuer (i) is a corporation duly organized and validly existing under the Laws of the state of Nevada, (ii) has all requisite corporate power and authority to own its properties and conduct its business as presently conducted and (iii) is duly qualified to do business and is in good standing in all jurisdictions where its ownership or leasing of property or the conduct of its business requires it to be so qualified, except, in the case of this clause (iii), where failure to be so qualified or in good standing, individually or in the aggregate, has not and would not reasonably be expected to have an Issuer Material Adverse Effect. True and accurate

copies of the Restated Articles of Incorporation of Issuer (as amended or modified from time to time prior to the date hereof, the “Issuer Articles of Incorporation”) and the amended and restated by-laws of Issuer (as amended or modified from time to time prior to the date hereof, the “Issuer Bylaws”), each as in effect, have been made available to APLD Intermediate and Contributor prior to the date hereof.

ii. All of Issuer’s Significant Subsidiaries (as defined in Rule 1-02 of Regulation S-X of the Securities and Exchange Commission (the “SEC”)) are set forth on Exhibit 21.1 to its most recent Annual Report on Form 10-K, and Issuer owns, directly or indirectly, 100% of the outstanding equity securities of such Subsidiaries. Each of Issuer’s Subsidiaries (i) is duly organized and validly existing under the Laws of its jurisdiction of organization, (ii) has all requisite corporate or other applicable entity power and authority to own its properties and conduct its business as presently conducted and (iii) is duly qualified to do business and is in good standing in all jurisdictions where its ownership or leasing of property or the conduct of its business requires it to be so qualified, except, in the case of this clause (iii), where failure to be so qualified or in good standing, individually or in the aggregate, has not and would not reasonably be expected to have an Issuer Material Adverse Effect.

(b) Capitalization.

i. The authorized capital stock of Issuer consists of 141,429,000 shares of Issuer Common Stock, and 10,000,000 shares of preferred stock (the “Issuer Preferred Stock”). As of the close of business on February 13, 2026, (i) 3,563,152 shares of Issuer Common Stock were issued and outstanding, (ii) 93,528 shares of Issuer Common Stock were reserved for issuance under Issuer’s equity incentive plans including (x) 224 shares reserved for future issuance, (y) 11,116 shares in respect of outstanding options (“Issuer Options”) and (z) 82,188 shares in respect of outstanding restricted stock units (“Issuer RSUs”) and (iii) 5,852 shares of Issuer Preferred Stock were issued and outstanding. Since February 13, 2026, no other shares of Issuer Common Stock or Issuer Preferred Stock have been issued, other than shares of Issuer Common Stock issued in respect of the exercise of Issuer Options or settlement of Issuer RSUs in the ordinary course of business.

ii. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the Transactions contemplated by the Transaction Documents. Except as set forth in the SEC Documents, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Issuer Common Stock or the capital stock of any Subsidiary, or Contracts, commitments, understandings or arrangements by which Issuer or any Subsidiary is or may become bound to issue additional shares of Issuer Common Stock or Common Stock Equivalents or capital stock of any Subsidiary. Except as set forth in the SEC Documents, there are no outstanding securities or instruments of Issuer or any Subsidiary with any provision that adjusts the exercise, conversion, exchange or reset price of such security or instrument upon an issuance of securities by Issuer or any Subsidiary. There are no outstanding securities or instruments of Issuer or any Subsidiary that contain any redemption or similar provisions, and there are no Contracts, commitments, understandings or arrangements by which Issuer or any Subsidiary is or may become bound to redeem a security of Issuer or such Subsidiary. Issuer does not have any stock appreciation rights or “phantom stock” plans or agreements or any similar plan or agreement. All of the outstanding shares of capital stock of Issuer are duly authorized, validly issued, fully paid and non-assessable, have been issued in compliance with all federal and state securities laws where applicable, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. There are no stockholder agreements, voting agreements or other similar agreements with respect to Issuer’s capital stock to which Issuer is a party or, to the Knowledge of Issuer, between or among any of Issuer’s stockholders.

iii. All outstanding shares of Issuer Common Stock are duly authorized, validly issued, fully paid and nonassessable, and are not subject to and were not issued in violation of any preemptive or similar right, purchase option, call or right of first refusal or similar right. Except as set forth in Schedule 3.1(b)(iii) of the Disclosure Schedules, Issuer has not issued any securities or right to purchase securities of Issuer (including any options, warrants or other rights, agreements, arrangements or commitments of any character or any securities convertible into or exchangeable for any capital stock or other Equity Interests of Issuer). Except as provided in the Transaction Documents, there are no outstanding contractual obligations of Issuer or any of its Subsidiaries (i) restricting the transfer of, (ii) affecting the voting rights of, (iii) requiring the sale, issuance, repurchase, redemption or disposition of, or containing any right of first refusal with respect to, (iv) requiring the registration for sale of, or (v) granting any preemptive or antidilutive right, with respect to any shares of capital stock of, or other Equity Interests in, Issuer or any of Issuer’s Subsidiaries. Issuer does not have outstanding shareholder purchase rights or “poison pill” or any similar arrangement in effect.

iv. Each outstanding share of capital stock of or other Equity Interest in each Subsidiary of Issuer is duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights and is owned, beneficially and of record, by Issuer or one or more of its wholly-owned Subsidiaries free and clear of all Liens, except, in each case, where such failure, individually or in the aggregate, has not and would not reasonably be expected to have an Issuer Material Adverse Effect. No bonds, debentures, notes or other indebtedness having the right to vote (or convertible into or exchangeable for, securities having the right to vote) on any matters on which the shareholders of Issuer may vote are issued.

(c) Authorization.

i. Issuer has the corporate power and authority to enter into this Agreement and the other Transaction Documents and to carry out its obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and the other Transaction Documents by Issuer and the consummation of the Transactions contemplated hereby and thereby have been duly authorized by the Issuer Board. This Agreement and the other Transaction Documents have been duly and validly executed and delivered by Issuer and, assuming due authorization, execution and delivery by APLD Intermediate, Cloud and Contributor, this Agreement and each of the other Transaction Documents is a valid and binding obligation of Issuer enforceable against Issuer in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar Laws of general applicability relating to or affecting creditors’ rights or by general equity principles). No other corporate proceedings or further action by Issuer, the Issuer Board or Issuer’s stockholders (other than the Stockholder Approval) are necessary for the execution and delivery by Issuer of this Agreement or the other Transaction Documents, the performance by it of its obligations hereunder or thereunder or the consummation by it of the Transactions contemplated hereby or thereby.

ii. Neither the execution and delivery by Issuer of this Agreement or the other Transaction Documents, nor the consummation of the Transactions contemplated hereby or thereby, nor compliance by Issuer with any of the provisions hereof or thereof, will (i) require notice, consent or approval pursuant to, violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration of, or result in the creation of any Lien upon any of the properties or assets of Issuer or any Subsidiary of Issuer under any of the terms, conditions or provisions of (A) the Issuer Articles of Incorporation or the Issuer Bylaws or the charter, bylaws or other governing instrument of any Subsidiary of Issuer or (B) any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which Issuer or any Subsidiary of Issuer is a party or by which it may be bound, or to which Issuer or any Subsidiary of Issuer or any of the properties or assets of Issuer or any Subsidiary of Issuer may be subject, or (ii) violate any Law, statute, ordinance, rule, regulation, permit, franchise or any judgment, ruling, order, writ, injunction or decree applicable to Issuer or any Subsidiary of Issuer or any of their respective properties or assets, except in the case of clauses (i)(B) and (ii) for such violations, conflicts and breaches as would not, individually or in the aggregate, reasonably be expected to have an Issuer Material Adverse Effect.

iii. Other than (i) the securities or blue sky Laws of the various states of the United States and (ii) the filing of one or more Forms 8-K, no notice to, registration, declaration or filing with, exemption or review by, or authorization, order, consent or approval of any Governmental Entity or stock exchange, nor expiration or termination of any statutory waiting period other than expressly in connection with the Information Statement or the Proxy Statement, as applicable, is necessary for the execution or delivery by Issuer of this Agreement or the other Transaction Documents or the consummation by Issuer of the Transactions

contemplated by this Agreement or the other Transaction Documents, except, in the case of any such matters arising in respect of a non-United States Governmental Entity or Law, as would not, individually or in the aggregate, reasonably be expected to have an Issuer Material Adverse Effect.

iv. Any registrations, qualifications, permits and approvals, if any, required to be obtained prior to the Closing under applicable state securities laws have been obtained for the lawful execution, delivery and performance of this Agreement.

(d) SEC Documents; Financial Statements.

i. Issuer has filed, on a timely basis, all required reports, proxy statements, forms, and other documents with the SEC since January 1, 2024 (collectively, the “SEC Documents”). Each of the SEC Documents, as of its respective filing date complied in all material respects with the requirements of the Securities Act and the Exchange Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such SEC Documents, and, except to the extent that information contained in any SEC Document has been revised or superseded by a later filed SEC Document filed and publicly available prior to the date of this Agreement, none of the SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Issuer has never been an issuer subject to Rule 144(i) of the Securities Act.

ii. Issuer (i) has implemented and maintains disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) that are reasonably designed to ensure that material information (both financial and non-financial) relating to Issuer, including its consolidated Subsidiaries, is made known to the individuals responsible for the preparation of Issuer’s filings with the SEC and (ii) has disclosed, based on its most recent evaluation prior to the date of this Agreement, to Issuer’s outside auditors and the Issuer Board’s audit committee (A) any material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect Issuer’s ability to record, process, summarize and report financial information and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in Issuer’s internal controls over financial reporting.

iii. There is no transaction, arrangement or other relationship between Issuer and/or any of its Subsidiaries and an unconsolidated or other off-balance sheet entity that is required to be disclosed by Issuer in its SEC Documents and is not so disclosed.

iv. The financial statements of Issuer and its consolidated Subsidiaries included in the SEC Documents (i) complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, in each case as of the date such SEC Document was filed, and (ii) have been prepared in accordance with generally accepted accounting principles in the United States (“GAAP”) applied on a consistent basis during the periods involved (except as may be indicated in such financial statements or the notes thereto) and fairly present in all material respects the consolidated financial position of Issuer and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows of Issuer and its consolidated Subsidiaries for the periods then ended (subject, in the case of unaudited quarterly statements, to the absence of footnote disclosures and normal year-end audit adjustments).

(e) Brokers and Finders. Except for Lake Street Capital Markets, LLC pursuant to that certain engagement letter dated January 19, 2026 and Bradley Woods & Co. Ltd. pursuant to that certain engagement letter dated December 12, 2025, the fees and expenses of which will be paid by Issuer, neither Issuer nor any of its Subsidiaries or any of their respective officers, directors, employees or agents has employed any broker or finder or incurred any liability for any financial advisory fees, brokerage fees, commissions or finder’s fees, and no broker or finder has acted directly or indirectly for Issuer in connection with this Agreement or the Transactions contemplated hereby.

(f) Litigation. There is no action, suit, Proceeding or investigation pending or threatened (including “cease and desist” letters or invitations to take patent license) against, nor any outstanding judgment, order, writ or decree against, Issuer or any of its Subsidiaries or any of their respective assets, operations or business before or by any Governmental Entity. Neither Issuer nor any of its Subsidiaries is subject to any judgment, order or decree of any Governmental Entity.

(g) Indebtedness. Neither Issuer nor any of its Subsidiaries is, immediately prior to the execution and delivery of this Agreement, in default in the payment of any material indebtedness or in default under any agreement relating to its material indebtedness.

(h) Listing and Maintenance Requirements. The Issuer Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and Issuer has taken no action designed to, or which, to the Knowledge of Issuer, is reasonably likely to, have the effect of, terminating the registration of the Issuer Common Stock under the Exchange Act nor has Issuer received as of the date of this Agreement any notification that the SEC is contemplating terminating such registration. Issuer has not, in the twelve (12) months preceding the date hereof, received notice from Nasdaq that Issuer is not in compliance with the listing or maintenance requirements of Nasdaq. Issuer is, and has no reason to believe that it will not in the foreseeable future continue to be, in compliance with all such listing and maintenance requirements.

(i) Taxes.

i. Issuer and each Subsidiary of Issuer has filed all Tax Returns that are required to be filed or has requested extensions thereof and has paid all Taxes required to be paid by it to the extent that any of the foregoing is due and payable, except (i) for any such assessment, fine or penalty that is currently being contested in good faith or (ii) where such failure to file or pay would not have an Issuer Material Adverse Effect.

ii. The unpaid Taxes of Issuer and its Subsidiaries have, as of the date of Issuer’s most recent financial statements, been reflected on Issuer’s financial statements as of such date in accordance with GAAP, and Issuer and its Subsidiaries have not incurred any material liability for Taxes since such date outside the ordinary course of business.

iii. There is no audit or proceeding action, suit, Proceeding, audit or claim now proposed in writing or pending against or with respect to Issuer or any of its Subsidiaries in respect of any material amount of Tax or material Tax Return.

iv. Neither Issuer nor any of its Subsidiaries is liable for any Tax imposed on any entity other than such Person, except as the result of the application of Treasury Regulation section 1.1502-6 (and any comparable provision of the Tax Laws of any state, local or foreign jurisdiction) to the affiliated group of which Issuer is or was the common parent or pursuant to any Tax sharing or indemnification provisions contained in any agreement solely between or among any of Issuer and its Subsidiaries or any Tax sharing or any agreement entered into in the ordinary course of business and not primarily relating to Tax (e.g., leases, credit agreements or other commercial agreements).

v. Neither Issuer nor any of its Subsidiaries is a party to any closing agreement described in Section 7121 of the Code or any predecessor provision thereof or any similar agreement under the Tax Laws of any state, local or foreign jurisdiction.

vi. Neither Issuer nor any of its Subsidiaries has constituted either a “distributing corporation” or a “controlled corporation” (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution of stock qualifying or intended to qualify, in whole or in part, under Section 355 of the Code in the two years prior to the date of this Agreement.

vii. Neither Issuer nor any of its Subsidiaries has granted any currently effective requests, agreements, consents or waivers to extend the statutory period of limitations applicable to the assessment or collection of any Taxes with respect to any Tax Returns of Issuer or any of its Subsidiaries other than extensions requested in the ordinary course of business and routinely granted.

viii. Neither Issuer nor any of its Subsidiaries is a party to, is bound by, or has any obligation for any Tax imposed on any entity other than such Person under, any Tax sharing, allocation or indemnity agreement or any similar agreement or arrangement, except for any such agreement or arrangement solely between or among any of Issuer and its Subsidiaries or any Tax sharing or indemnification provisions contained in any agreement entered into in the ordinary course of business and not primarily relating to Tax (e.g., leases, credit agreements or other commercial agreements).

ix. Neither Issuer nor any of its Subsidiaries has participated in any “listed transaction,” within the meaning of Treasury Regulations Section 1.6011-4(b)(2);

x. There are no Liens for Taxes other than Taxes not yet due or being contested in good faith (and for which adequate accruals or reserves have been established) upon any of the assets of Issuer or any of its Subsidiaries;

xi. No claim has been made in writing in the last three years by an authority in a jurisdiction in which Issuer or any of its Subsidiaries does not file Tax Returns that Issuer or any of its Subsidiaries is or may be subject to Tax in that jurisdiction; and

xii. Neither Issuer nor any of its Subsidiaries (i) has agreed to or is required to make any adjustment pursuant to Section 481(a) of the Code or any similar provision of Law nor has any Governmental Entity proposed any such adjustment in writing, or (ii) will be required to include any item of income in taxable income for any taxable period (or portion thereof) beginning after the Closing Date as a result of any installment sale or open transaction disposition made on or prior to the Closing Date or prepaid amount received on or prior to the Closing Date outside of the ordinary course of business.

(j) Employee Relations.

i. Section 3.1(j) of the Disclosure Schedule sets forth, as of the date of this Agreement, a true, correct, and complete list of all employees of Issuer and each Issuer Subsidiary, showing date of hire; hourly rate, salary, or other basis of compensation (including annual bonus payment); full-time or part-time status; exempt or non-exempt status; paid-time off accrued as of the last payroll period prior to the date of this Agreement; principal work location; job title or function; and union affiliation, each as applicable.

ii. Neither Issuer nor any Issuer Subsidiary is, nor has either been a party to or bound by any collective bargaining agreement, Contract, or other agreement or understanding with any works council, trade or labor union, labor organization, employee association, group of employees, or other bargaining unit representatives (each, a “Union,” and such an agreement or arrangement with a Union, a “Labor Agreement”) nor are there any negotiations or discussions currently pending or occurring between Issuer nor any Issuer Subsidiary and any Union regarding any Labor Agreement or any other work rules or policies, nor is Issuer any or any Issuer Subsidiary under an obligation to negotiate with any Union. No Union has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened in writing to be brought or filed with the National Labor Relations Board or any other labor relations tribunal or authority. Neither Issuer nor any Issuer Subsidiary has engaged in any unfair labor practice with respect to any individuals employed by or otherwise performing services for Issuer or any Issuer Subsidiary (the “Issuer Business Personnel”), and there has been no unfair labor practice complaint or grievance or other administrative or judicial complaint, action or investigation pending or threatened in writing against Issuer or any Issuer Subsidiary by the National Labor Relations Board or any other Governmental Entity with respect to any present or former Issuer Business Personnel. There has been no labor strike, dispute, lockout, slowdown, disruption or stoppage pending or threatened against or affecting Issuer or any Issuer Subsidiary.

iii. Neither Issuer nor any Issuer Subsidiary is required to provide notice to any work council or similar representative body prior to the execution of this Agreement or the consummation of the Transactions.

iv. Issuer and each Issuer Subsidiary is and have for the past twelve (12) months been in compliance with all applicable Laws respecting labor, employment, and employment practices, including, all Laws respecting terms and conditions of employment, health and safety, wage payment, wages and hours, child labor, collective bargaining, immigration and work authorizations, employment discrimination, retaliation, civil rights, veterans’ rights, disability rights or benefits, equal opportunity, plant closures and layoffs, affirmative action, workers’ compensation, labor relations, social welfare obligations, proper classification of employees as exempt and non-exempt and as employees and independent contractors, unemployment insurance and the collection and payment of withholding and/or social security taxes and any similar Tax, except for noncompliance as individually or in the aggregate, has not had and would not reasonably be expected to have, an Issuer Material Adverse Effect.

v. Neither Issuer nor any of its Subsidiaries has effectuated a “plant closing” (as defined in the Worker Adjustment and Retraining Notification Act of 1988, as amended, and similar state, local and foreign Laws related to plant closings, relocations or mass layoffs (the “WARN Act”)) or a “mass lay-off” (as defined in the WARN Act), in either case without complying in all material respects with the WARN Act.

vi. No Order imposes continuing remedial obligations or otherwise limits or affects Issuer’s or any of Issuer’s Subsidiary’s ability to manage its employees, Service Providers, or job applicants.

vii. No Issuer Business Personnel is in any respect in violation of any term of any employment agreement, nondisclosure agreement, common law nondisclosure obligation, fiduciary duty, noncompetition agreement, restrictive covenant or other obligation to Issuer or any Issuer Subsidiary or to a former employer of any such employee relating (i) to the right of any such individual to be employed by or provide services for Issuer or any Issuer Subsidiary or (ii) to the knowledge or use of Trade Secrets or proprietary information, in each case except as, individually or in the aggregate, currently does not have and would not reasonably be expected to have, an Issuer Material Adverse Effect.

viii. Issuer or each Issuer Subsidiary is not delinquent in payments to any current or former Issuer Business Personnel for any services or amounts required to be reimbursed or otherwise paid except as currently does not have and would not reasonably be expected to have, individually or in the aggregate, an Issuer Material Adverse Effect.

ix. No allegations of sexual harassment or sexual misconduct have been made by any current or former employee of Issuer or any Issuer Subsidiary against any current or former officer of Issuer or any Issuer Subsidiary, neither Issuer nor any Issuer Subsidiary has entered into any settlement agreements related to allegations of sexual harassment or sexual misconduct by an officer, executive or other employee of Issuer or any Issuer Subsidiary. Issuer and each Issuer Subsidiary has promptly, thoroughly and impartially investigated all allegations of sexual harassment or discriminatory harassment of which they are or were aware and have taken all reasonable and necessary corrective actions with respect to such allegations that are reasonably calculated to prevent further discrimination and harassment with respect to each allegation with potential merit. No such allegation of sexual or discriminatory harassment would reasonably be expected to result in any material loss to Issuer or any Issuer Subsidiary and no such allegations have been made that, if known to the public, would reasonably be expected to bring Issuer or any Issuer Subsidiary into disrepute.

(k) Employee Benefit Plans.

i. Section 3.1(k) of the Disclosure Schedules sets forth a true and complete list of each material Benefit Plan. Neither Issuer nor any other Person, has any express or implied commitment, whether legally enforceable or not, to (i) modify, change or terminate any Benefit Plan, other than with respect to a modification, change or termination required by ERISA or the Code or (ii) adopt any new Benefit Plan.

ii. With respect to each material Benefit Plan, Issuer has made available to APLD Intermediate and Contributor a current written copy thereof (if any) and, to the extent applicable: (i) all amendments and any related trust agreement; (ii) the most recent IRS determination, opinion or advisory letter; (iii) the most recent summary plan description and summary of material modifications for each Benefit Plan for which a summary plan description is required by applicable Law, and (iv) for the most recent plan year (A) the Form 5500 filed with the IRS and attached schedules and (B) audited financial statements.

iii. Each Benefit Plan has been administered in accordance with its terms and all applicable Law, including ERISA and the Code, and contributions required to be made under the terms of any of the Benefit Plans have been timely made or, if not yet due, have been properly reflected on the most recent consolidated balance sheet filed or incorporated by reference in the SEC Documents prior to the date of this Agreement.

iv. Except as has not resulted or would not reasonably be expected to result, individually or in the aggregate, in an Issuer Material Adverse Effect: (i) each Benefit Plan which is intended to qualify under Section 401(a) of the Code has either received a favorable determination letter or opinion or advisory letter from the IRS as to its qualified status, and each trust established in connection with any Benefit Plan which is intended to be exempt from federal income taxation under Section 501(a) of the Code is so exempt, and no fact or event has occurred that could reasonably be expected to adversely affect the qualified status of any such Benefit Plan or the exempt status of any such trust, (ii) there has been no prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code), other than a transaction that is exempt under a statutory or administrative exemption, with respect to any Benefit Plan, and (iii) no action has been brought or is threatened against or with respect to any Benefit Plan, including any audit or inquiry by the IRS or United States Department of Labor (other than for routine benefits claims).

v. No Benefit Plan is, and neither Issuer nor any of its ERISA Affiliates contributes to, has during the preceding six (6) years contributed to or has any liability or obligation, whether fixed or contingent, with respect to a multiemployer plan (as defined in Section 4001(a)(3) of ERISA) or other plan subject to Title IV of ERISA or the minimum funding requirements of Section 302 of ERISA or Section 412 of the Code. No material liability under Title IV of ERISA has been incurred by Issuer or any ERISA Affiliate thereof that has not been satisfied in full, and no condition exists that would reasonably be expected to have an Issuer Material Adverse Effect (whether primarily, jointly or secondarily) under Title IV of ERISA.

vi. No amount, economic benefit or other entitlement that could be received (including in cash or property or vesting of property) as a result of the execution, delivery and performance of this Agreement or the consummation of the Transactions contemplated by this Agreement (whether alone or in conjunction with any other event, including any termination of employment or service on or following the Closing Date) by any person who could be a “disqualified individual” (as defined in Section 280G(c) of the Code) with respect to Issuer could give rise to any “parachute payment,” as defined under Section 280G(b)(2) of the Code and the regulations thereunder or trigger the excise tax under Section 4999 of the Code.

vii. Except as required by Law, no Benefit Plan provides post-employment medical, disability or life insurance benefits to any current or former Issuer Service Provider or their respective dependents (other than as required by health care continuation coverage as required by Section 4980B of the Code or any similar state Law or ERISA at the sole cost of the former Issuer Service Provider or coverage through the end of the calendar month in which a termination of employment occurs).

viii. Neither the execution of this Agreement nor the consummation of the Transactions (either alone or in combination with another event) will (i) entitle any current or former Service Provider of Issuer or any Issuer Subsidiary to a bonus, severance or change in control or similar payment, (ii) accelerate the time of payment or vesting or trigger any payment or funding (through a grantor trust or otherwise) of compensation or benefits to any current or former Service Provider of Issuer or any Issuer Subsidiary, (iii) increase the amount payable or trigger any other material obligation pursuant to any of the Benefit Plans or (iv) result in any breach or violation of, or default under any Benefit Plan.

ix. Except as has not had or would not reasonably be expected to have, individually or in the aggregate, an Issuer Material Adverse Effect, each Benefit Plan that constitutes in any part a nonqualified deferred compensation plan within the meaning of Section 409A of the Code has been operated and maintained in operational and documentary compliance with Section 409A of the Code and all IRS guidance promulgated thereunder, to the extent such section and such guidance have been applicable to such Benefit Plan. There is no agreement, plan, Contract or other arrangement to which Issuer or any Issuer Subsidiary is a party or by which it is otherwise bound to compensate any Person in respect of Taxes pursuant to Sections 409A or 4999 of the Code.

x. Except as has not resulted and would not reasonably be expected to result, individually or in the aggregate, in an Issuer Material Adverse Effect, with respect to each Benefit Plan established or maintained outside of the United States of America primarily for the benefit of current or former Service Providers of Issuer or any Issuer Subsidiary residing outside the United States of America (a “Foreign Benefit Plan”): (i) all employer and employee contributions to each Foreign Benefit Plan required by Law or by the terms of any Foreign Benefit Plan have been made or, if applicable, accrued, in accordance with normal accounting practices; (ii) the fair market value of the assets of each funded Foreign Benefit Plan, the liability of each insurer for any Foreign Benefit Plan funded through insurance or the book reserve established for any Foreign Benefit Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations with respect to all current and former participants in such Foreign Benefit Plan according to the actuarial assumptions and valuations most recently used to determine employer contributions to such Foreign Benefit Plan, and neither the execution of this Agreement nor the consummation of the Transactions will cause such assets or insurance obligations to be less than such benefit obligations; and (iii) each Foreign Benefit Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

(l) Environmental Matters. Except as, individually or in the aggregate, has not had and would not reasonably be expected to have, an Issuer Material Adverse Effect:

i. Issuer and each Issuer Subsidiary (i) has been, and is, in compliance with all, and are not subject to any liability with respect to any, Environmental Laws, (ii) has held, and currently hold, all Environmental Permits necessary for the conduct of their business and the use of their properties and assets, as conducted and used, and (iii) have been, and are, in compliance with their respective Environmental Permits.

ii. There are no Environmental Claims pending or threatened against Issuer or any Issuer Subsidiary relating to a violation or liability under any Environmental Laws, including, without limitation, with respect to any Environmental Permits or Hazardous Materials.

iii. There have been no releases of Hazardous Materials at any properties that are currently owned, operated, leased, used, or any third party property to which Hazardous Materials were sent, by or on behalf of Issuer or any Issuer Subsidiary, or at properties that were formerly owned, operated, leased, used, or any third party property to which Hazardous Materials were sent, by or on behalf of Issuer or any Issuer Subsidiary, that are reasonably likely to cause Issuer or any Issuer Subsidiary to incur liability pursuant to Environmental Laws.

iv. None of Issuer or any Issuer Subsidiary (i) has entered into or agreed to any consent decree or consent order or is otherwise subject to any judgment, decree, or judicial or administrative Order relating to compliance with, or liability under, any Environmental Laws or Environmental Permits, the investigation, sampling, labeling, monitoring, treatment, remediation, response, removal or cleanup of, or exposure to, Hazardous Materials, and no action is pending or is threatened with respect thereto, or (ii) is an indemnitor by Contract or otherwise in connection with any claim, demand, suit or action threatened or asserted by any third-party for any liability under any Environmental Law or otherwise to any third-party concerning any liabilities or obligations under Environmental Laws, including, without limitation, with respect to any Hazardous Materials.

v. There are no other circumstances or conditions involving Issuer or any Issuer Subsidiary that could reasonably be expected to result in any Environmental Claim, violation or liability under Environmental Laws, or restriction on the ownership, use, or transfer of any property pursuant to any Environmental Laws.

vi. None of Issuer or any Issuer Subsidiary has expressly assumed or retained any liabilities of any other Person in respect of any Environmental Laws, including in any acquisition or divestiture of any property or business.

vii. Issuer has made available to APLD Intermediate and Contributor, prior to the date of this Agreement, correct and complete copies of all material environmental reports, studies, assessments, data, and other material environmental information accessible or controlled by Issuer relating to Issuer or any Issuer Subsidiary or their respective current and former properties or operations.

(m) Licenses. Issuer and each Subsidiary of Issuer possesses all licenses, approvals, clearances, registrations, certificates, permits and other authorizations issued by all applicable authorities necessary to conduct its business ("Licenses"), except in each case, the lack of which would not reasonably be expected, individually or in the aggregate, to have an Issuer Material Adverse Effect, and neither Issuer nor any Subsidiary of Issuer has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have an Issuer Material Adverse Effect.

(n) Material Contracts.

i. All Contracts required to be filed as exhibits to the Issuer SEC Documents have been so filed in a timely manner. Section 3.1(n) of the Disclosure Schedules sets forth a true and complete list, as of the date hereof, of each of the following Contracts, excluding any Benefit Plans, to which Issuer or any of its Subsidiaries is a party or by which Issuer or any of its Subsidiaries or any of their assets or businesses are bound (and any amendments, supplements and modifications thereto):

(a) any Contract that is a "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the Exchange Act);

(b) any Contract that materially limits the ability of Issuer or any of its Subsidiaries to engage or compete in any line of business or in any geographic area;

(c) any Contract or series of related Contracts relating to indebtedness for borrowed money;

(d) any Contract required to be disclosed pursuant to Item 404 of Regulation S-K of the Exchange Act;

(e) any license, sublicense, development or collaboration agreement or other Contract relating to Issuer Material Intellectual Property (excluding Excluded Contracts);

(f) any Contract with an Issuer Material Customer or an Issuer Material Supplier;

(g) any purchase, sale or supply Contract that contains material volume requirements or commitments or exclusive purchasing arrangements on Issuer or its Subsidiaries or most favored nation provisions granted by Issuer or its Subsidiaries;

(h) any Issuer Lease;

(i) any Contract that requires Issuer or its Subsidiaries to pay any material leasing, brokerage or similar commissions in connection with the acquisition, sale, or leasing of any Issuer Owned Real Property;

(j) other than any Issuer Lease, any Contract under which Issuer or its Subsidiaries are lessors of or permits any third party to hold, operate, in each case, any material tangible property (other than real property), owned or controlled by Issuer or its Subsidiaries;

(k) any Contract that grants any right of first refusal or right of first offer or similar right or that limits or purports to limit the ability of Issuer or any of its Subsidiaries to own, operate, sell, transfer, pledge or otherwise dispose of any material amount of assets or businesses;

(l) any acquisition or divestiture Contract (A) entered into since January 1, 2022, or (B) that contains "earn-out" provisions or other contingent payment obligations that have not been satisfied in full;

(m) any Contract that by its terms limits the payment of dividends or other distributions by Issuer or any of its Subsidiaries;

(n) any Contract for any joint venture, partnership or similar arrangement, or any Contract involving a sharing of material revenues, profits, losses, costs, or liabilities by Issuer or any of its Subsidiaries with any other Person;

(o) any "single source" supply Contract pursuant to which goods or materials that are material to Issuer or any of its Subsidiaries are supplied to Issuer or such Subsidiary from an exclusive source

(p) any Labor Agreement;

(q) any Contract (other than a Benefit Plan) between Issuer or any Subsidiary of Issuer, on the one hand, and any director or officer of Issuer or any Person beneficially owning five percent or more of the outstanding shares of Issuer Common Stock or any of their respective Affiliates (other than Issuer and a Subsidiary of Issuer), on the other hand;

(r) any Contract with any Governmental Entity; or

(s) any Contract pursuant to which Issuer or any Subsidiary of Issuer has uncapped indemnification obligations to any Person (except for (i) Contracts related to Licensed Intellectual Property entered into in the ordinary course and (ii) Contracts with the customers or end users of the Issuer or

any of its Subsidiaries on the Issuer's or Subsidiary's form agreement).

(ii) Issuer has heretofore made available to APLD Intermediate and Contributor true, correct and complete copies of the Contracts set forth in Section 3.1(n)(i) of the Disclosure Schedules.

(iii) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, an Issuer Material Adverse Effect, (i) all Contracts set forth or required to be set forth in Section 3.1(n)(i) of the Disclosure Schedules or filed or required to be filed as exhibits to the Issuer SEC Documents (the "Issuer Material Contracts") are valid, binding and in full force and effect and are enforceable by Issuer or its applicable Subsidiary in accordance with their terms, except as limited by Laws affecting the enforcement of creditors' rights generally, by general equitable principles or by the discretion of any Governmental Entity before which any Proceeding seeking enforcement may be brought, (ii) Issuer, or its applicable Subsidiary, has performed all obligations required to be performed by it under the Issuer Material Contracts, and it is not (with or without notice or lapse of time, or both) in breach or default thereunder and, to the Knowledge of Issuer, no other party to any Issuer Material Contract is (with or without notice or lapse of time, or both) in breach or default thereunder, (iii) since January 1, 2022, neither Issuer nor any of its Subsidiaries has received written notice of any actual, alleged, possible or potential material violation of, or failure to comply with, any material term or requirement of any Issuer Material Contract, and (iv) neither Issuer nor any of its Subsidiaries has received any written notice of the intention of any party to cancel, terminate, materially change the scope of rights under or fail to renew any Issuer Material Contract.

(o) Intellectual Property.

i. Section 3.1(o)(i) of the Disclosure Schedules set forth a correct and complete list of all Registered Intellectual Property, indicating for each item the registration or application number, the registration or application date, and the applicable filing jurisdiction. All Issuer Registered Intellectual Property is, subsisting and to the Knowledge of Issuer, valid and enforceable, and not subject to any outstanding Order adversely affecting the validity or enforceability of, or Issuer's or its Subsidiaries' ownership or use of, or rights in or to, any such Intellectual Property.

ii. Except as set forth in Section 3.1(o)(ii) of the Disclosure Schedules, Issuer and its Subsidiaries solely and exclusively own all right, title and interest in and to the Owned Intellectual Property free and clear of all Liens other than Liens created by Issuer.

iii. Neither the execution and delivery of this Agreement by Issuer, nor the performance of this Agreement by Issuer, will result in the loss, forfeiture, termination, or impairment of, or give rise to a right of any Person to limit or terminate, or require the consent of, notice to, or payment to any Person for the continued use of, any rights of Issuer or any of its Subsidiaries in any Issuer Intellectual Property.

iv. Issuer and its Subsidiaries own, or have valid and sufficient rights to use, all Issuer Intellectual Property necessary or required for the conduct of their respective businesses as currently conducted. None of, and neither Issuer nor its Subsidiaries has received a notice (written or otherwise) that any of, the Issuer Intellectual Property has expired, terminated or been abandoned except as would not reasonably be expected to have an Issuer Material Adverse Effect. Neither Issuer nor any of its Subsidiaries has received, since the date of the latest consolidated financial statements included within the Issuer SEC Documents, a written notice of a claim or any complaint, notice, or demand alleging that the Issuer Intellectual Property violates, infringes, misappropriates, or dilutes the rights of any Person or challenging the use, validity, or enforceability of any rights in any Issuer Intellectual Property. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, an Issuer Material Adverse Effect, neither Issuer nor any of its Subsidiaries nor the conduct of their businesses is infringing, misappropriating, diluting, or otherwise violating and has not infringed, diluted, or otherwise violated the Intellectual Property of any Person.

v. To the Knowledge of Issuer, all such Issuer Intellectual Property is enforceable and no Person is infringing, misappropriating, diluting or otherwise violating any of the Issuer Intellectual Property.

vi. Issuer and its Subsidiaries have taken commercially reasonable steps to maintain, police and protect the Issuer Intellectual Property that is material to their business ("Issuer Material Intellectual Property"). Issuer has maintained all Trade Secrets included in the Issuer Material Intellectual Property in accordance with protection procedures customarily used in the industry to protect and maintain the confidentiality of Trade Secrets of a similar nature. Trade Secrets included in the Issuer Material Intellectual Property have not been disclosed by Issuer to any Person other than pursuant to written non-disclosure agreements that, to the Knowledge of Issuer, have not been breached by such Person. To the Knowledge of Issuer, there has been no unauthorized disclosure of any Issuer Intellectual Property. All current and former officers, directors, employees, personnel, consultants, advisors, agents, and independent contractors of Issuer and its Subsidiaries, and each of their predecessors, who have contributed to or participated in the conception, creation, or development of Intellectual Property for or on behalf of such entities have entered into valid and binding proprietary rights agreements with Issuer or one of its Subsidiaries or predecessors, vesting ownership of such Intellectual Property in Issuer or one of its Subsidiaries.

vii. No Software owned by or purported to be owned by Issuer or any of its Subsidiaries ("Owned Software") (or products containing Owned Software) contains, is derived from, or links to or is combined or distributed with any Open-Source Software in a manner that requires or purports to require, (i) any Owned Software (or portion thereof) to be disclosed or distributed in source code form or be licensed for the purpose of making derivative works; (ii) any restriction on the consideration to be charged for the distribution of any such any Owned Software; or (iii) any other material limitation, restriction or condition on the right of the Company with respect to its use or distribution of any Issuer Intellectual Property (other than attribution, warranty and liability disclaimer, and notice delivery conditions). Issuer and its Subsidiaries are in material compliance with all licenses or other obligations to which any Open-Source Software used by Issuer or any of its Subsidiaries is subject.

viii. No Person other than Issuer or its Subsidiaries (and its and their respective authorized employees and authorized independent contractors) has or has had possession of any source code for any Software that is owned or developed by or on behalf of Issuer or any of its Subsidiaries and is material to their respective businesses, taken as a whole. Neither Issuer nor any Subsidiary of Issuer has any duty or obligation (whether present, contingent or otherwise) to deliver, license or make available the proprietary source code (excluding, for clarity, any Open Source Software) for any such Software to any escrow agent or other third person, other than any employee, consultant or contractor of Issuer or a Subsidiary of Issuer under confidentiality obligations that prohibit the disclosure of such proprietary source code to any third party.

ix. No government funding, facilities of a university, college, other educational institution or research center was used in the development of any Issuer Material Intellectual Property.

x. The IT Assets owned, used, held for use, or maintained by or on behalf of each of Issuer and its Subsidiaries ("Issuer IT Assets"): (i) are sufficient for the current and anticipated needs of the business of Issuer and its Subsidiaries; (ii) operate in all material respects in accordance with their documentation and functional specifications and as required by Issuer and its Subsidiaries to operate the business as presently conducted; and (iii) have not, since January 1, 2022, materially malfunctioned or failed. Issuer and its Subsidiaries have implemented commercially reasonable measures to protect the confidentiality and security of Personal Data, Issuer Business Data, and Issuer IT Assets and information stored or contained therein against any loss, unauthorized use, access, interruption, corruption modification or disclosure, and there have been no material incidents regarding the same that would require notification of individuals, law enforcement, or any Governmental Entity under any applicable Data Protection Law, or that would reasonably be expected to have, individually or in the aggregate, an Issuer Material Adverse Effect. Issuer and its Subsidiaries have implemented commercially reasonable data backup, data storage, system redundancy and disaster avoidance procedures with respect to the Issuer IT Assets.

i. Except as would not, individually or in the aggregate, reasonably be expected to have an Issuer Material Adverse Effect, each of Issuer, its Subsidiaries and, to the Knowledge of Issuer, all vendors, processors, or other third parties Processing or otherwise with access to Personal Data collected and/or Processed by or for, and/or sharing Personal Data with, Issuer or any of its Subsidiaries is in compliance, and has for the past twelve (12) months complied, with all applicable Data Protection Requirements. In the past twelve (12) months, neither Issuer nor any of its Subsidiaries, has received written communication from any Governmental Entity that alleges that Issuer or any of its Subsidiaries is not in compliance with any Data Protection Requirement and there are no other facts that, individually or in the aggregate, would reasonably indicate non-compliance by Issuer or its Subsidiaries with any Data Protection Requirement. There is no action, suit or proceeding by or before any court or Governmental Entity pending or threatened against Issuer or its Subsidiaries alleging in writing non-compliance by Issuer or its Subsidiaries with any Data Protection Requirements.

ii. Issuer and each Subsidiary of Issuer have taken all commercially reasonable technical and organizational measures necessary to protect the information technology systems and Data used in connection with the operation of their business. Without limiting the foregoing, Issuer and each Subsidiary of Issuer have used commercially reasonable efforts to establish and maintain, and have established, maintained, implemented and complied with, commercially reasonable information technology, information security, cyber security and data protection controls, policies and procedures, including oversight, access controls, encryption, technological and physical safeguards and business continuity/disaster recovery and security plans that are designed to protect against and prevent unauthorized access to or acquisition of Data used in connection with the operation of their business (“Breach”). There has been no such Breach, and neither Issuer nor any Subsidiary of Issuer has been notified in writing of and to the Knowledge of Issuer of any event or condition that would reasonably be expected to result in, any such Breach.

(p) FDA Regulatory. (i) Issuer and each Subsidiary of Issuer are in compliance in all material respects, with all Laws, including those governing manufacture, import, export, testing, clinical or nonclinical investigation, development, processing, packaging, labeling, storage, marketing, registration, listing, advertising, reporting, record keeping, and distribution of the Products, except as would not have an Issuer Material Adverse Effect. Neither Issuer and each Subsidiary of Issuer nor any Representative of Issuer and each Subsidiary of Issuer has received any written or oral notice from a Governmental Entity alleging a violation by Issuer and each Subsidiary of Issuer of any Law applicable to Issuer and each Subsidiary of Issuer’s business; (ii) To Issuer and each Subsidiary, and to the Knowledge of Issuer, any third party that is a manufacturer or a contractor for Issuer and each Subsidiary of Issuer is in material compliance with all Licenses from the FDA or comparable Governmental Entity insofar as they pertain to the manufacture of the Products or any components, parts or accessories of the Products; (iii) Each Product developed, tested, investigated, manufactured, distributed, marketed or sold by Issuer and each Subsidiary of Issuer, that are subject to the jurisdiction of the FDA or comparable Governmental Entity, including Products for which marketing authorization applications are pending with the FDA or any comparable Governmental Entity, are being developed, tested, investigated, manufactured, distributed, marketed and sold in material compliance with all Laws, including those regarding clinical research, pre-market notification, Good Manufacturing Practices set forth in the Quality System Regulation at 21 C.F.R. Part 820, labeling, advertising, record-keeping, medical device reporting for adverse events and malfunctions, and reporting of corrections; (iv) Issuer and each Subsidiary of Issuer has not received any Form FDA-483, notice of adverse finding, FDA warning letters, notice of violation or “untitled letters,” or notice of FDA action for import detentions or refusals to allow entry into the United States from the FDA or other Governmental Entity alleging or asserting noncompliance with any applicable Law or Governmental Authorization, except as would not have an Issuer Material Adverse Effect. Issuer and each Subsidiary of Issuer is not subject to any obligation arising under an FDA inspection, FDA warning letter, FDA notice of violation letter or other enforcement notice, response or commitment made to or with the FDA or any comparable Governmental Entity, except as would not have an Issuer Material Adverse Effect. Issuer and each Subsidiary of Issuer has made all notifications, submissions and reports required by any such obligation, and all such notifications, submissions and reports were true, complete and correct in all material respects as of the date of submission to the FDA or any comparable Governmental Entity, except as would not have an Issuer Material Adverse Effect; (v) Within the last three years prior to the date of this Agreement, (i) there have been no recalls, field corrections, suspensions, seizures, or withdrawals of any of the Products or related to the business, and to Issuer and each Subsidiary to the Knowledge of Issuer, none are threatened or pending, nor is there any fact or condition related to any Product that would impose upon Issuer and any Subsidiary of Issuer a duty to recall any Product or material liability for returns with respect to the Products; (vi) There are no pending, and within the last 24 months prior to the date of this Agreement, there have not been any, actions, claims or, to Issuer and each Subsidiary to the Knowledge of Issuer, threats thereof related to product liability involving any Product, and no such actions or claims have been settled, adjudicated or otherwise disposed of within the twenty four (24) months prior to the date of this Agreement; (vii) All Product claims made by Issuer and each Subsidiary of Issuer with respect to their respective Products are accurate and truthful in all respects, except as would not have an Issuer Material Adverse Effect; (viii) Except as would not have an Issuer Material Adverse Effect, to Issuer and each Subsidiary to the Knowledge of Issuer, neither Issuer nor any Subsidiary of Issuer nor any of their Representatives has made an untrue statement of a material fact or fraudulent statement to any Governmental Entity, including the FDA, failed to disclose a material fact required to be disclosed to any Governmental Entity, or committed an act, made a material statement, or failed to make a material statement, including that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy respecting “Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities,” set forth in the FDA’s Compliance Policy Guide, Section 120.100 (CPG 7150.09), or another Governmental Entity to invoke a similar policy; and (ix) Issuer and each Subsidiary of Issuer have made available to APLD Intermediate and Contributor copies of any and all written notices of inspectional observations, establishment inspection reports and any other documents relating to an enforcement action received from the FDA or comparable foreign Governmental Entities in its possession that identify lack of compliance with any Law of the FDA or comparable foreign Governmental Entities.

(q) Healthcare Regulatory Compliance. (i) Neither Issuer, any Subsidiary of Issuer nor any of their officers, directors, employees, or to Issuer and each Subsidiary to the Knowledge of Issuer, agents acting on behalf of Issuer and each Subsidiary of Issuer: (1) has been charged with or convicted of any criminal offense relating to the delivery of an item or service under any Federal Health Care Program; (2) has been debarred, excluded or suspended from participation in any Federal Health Care Program; (3) has had a civil monetary penalty assessed against it, him or her under Section 1128A of the Social Security Act (“SSA”); (4) is currently listed on the General Services Administration published list of parties excluded from federal procurement programs and non-procurement programs; or (5) is or has been involved in any investigation relating to any Federal Health Care Program-related offense; (ii) Neither Issuer, any Subsidiary of Issuer nor any of their officers, directors, employees, or to Issuer and each Subsidiary to the Knowledge of Issuer, agents, including distributors and independent contractors, acting on behalf of Issuer and each Subsidiary of Issuer has engaged in connection with the conduct of Issuer’s or any Subsidiary’s business or services performed for or on behalf of Issuer or any Subsidiary, any activity that would constitute a violation of the federal Anti-Kickback Statute, Medicare, or federal or state Medicaid statutes, including, but not limited to, Sections 1128, 1128A, 1128B, 1128C or 1877 of the SSA (42 U.S.C. §§ 1320a-7, 1320a-7a, 1320a-7b, 1320a-7c and 1395nn), the federal TRICARE statute (10 U.S.C. § 1071 et seq.), the civil False Claims Act of 1863 (31 U.S.C. § 3729 et seq.), criminal false claims statutes (e.g., 18 U.S.C. §§ 287 and 1001), the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801 et seq.), the Sunshine Act, the anti-fraud and related provisions of the Health Insurance Portability and Accountability Act of 1996 (e.g., 18 U.S.C. §§ 1035 and 1347), or related regulations, or any applicable other federal or state Laws that govern the health care industry, to the extent applicable to the current business of Issuer and each Subsidiary of Issuer (collectively, “Health Care Program Laws”); (iii) To Issuer and each Subsidiary to the Knowledge of Issuer, no Person has filed or has threatened to file against Issuer and each Subsidiary of Issuer or any representative of Issuer and each Subsidiary of Issuer acting on Issuer and each Subsidiary of Issuer’s behalf an action under any federal or state whistleblower statute, including under the False Claims Act of 1863 (31 U.S.C. § 3729 et seq.); (iv) All arrangements involving the offer, payment, or provision by Issuer and each Subsidiary of Issuer, or any Representative of Issuer and each Subsidiary of Issuer acting on Issuer and each Subsidiary of Issuer’s behalf, to any health care professional, institution, organization or other provider, or any Representative thereof, are memorialized in writing, are at fair market value for bona fide items or services, and are in compliance in all material respects with Health Care Program Laws; (v) Issuer and each Subsidiary of Issuer have established and implemented a health care compliance program commensurate with and appropriately tailored to Issuer and each Subsidiary of Issuer’s risk profile and applicable state Health Care Program Laws, which includes the necessary policies, procedures, and trainings required to fulfill its contractual and regulatory obligations in all material respects, and to govern its interactions with healthcare professionals, institutions, organizations and other providers; (vi) Neither Issuer nor any Subsidiary of Issuer nor any of its representatives: (1) is a party to a corporate integrity agreement with the OIG (or a foreign equivalent), (2) has entered into or is negotiating a settlement agreement with a Governmental Entity, (3) has made or is preparing any filings pursuant to the OIG’s Provider Self Disclosure Protocol, (4) is or has been a defendant in any qui tam or False Claims Act litigation or (5) has been served with or received any written search warrant, subpoena (other than those related to actions against third parties), civil investigative demand or Contact Letter from a Governmental Entity. For purposes of this Section 3.1(q), a “Contact Letter” means a letter from a Governmental Entity notifying Issuer or any Subsidiary of Issuer or any of its representatives of a potential violation under the Health Care Program Laws that allows Issuer and each Subsidiary of Issuer or any of its representatives an opportunity to respond prior to the Governmental Entity’s taking further action.

(r) Products. Other than as part of the ordinary course of the business of Issuer and Issuer's Subsidiaries, neither Issuer nor any Subsidiary of Issuer has granted rights to develop, manufacture, produce, assemble, distribute, license, market or sell its products to any other Person and is not bound by any agreement that materially affects the exclusive right of Issuer or such Subsidiary of Issuer to develop, manufacture, produce, assemble, distribute, license, market or sell its products.

(s) Significant Customers and Suppliers. Section 3.1(s) of the Disclosure Schedules list: (a) the ten (10) largest customers of Issuer and Issuer's Subsidiaries (measured by aggregate billings) during the twelve (12) month period ended December 31, 2025 (the "Issuer Material Customers") and (b) the ten (10) largest suppliers of materials, products or services to Issuer and Issuer's Subsidiaries (measured by aggregate dollars spent) during the twelve (12) month period ended December 31, 2025 (the "Issuer Material Suppliers"). No Issuer Material Customer or Issuer Material Supplier has cancelled, terminated or adversely changed the pricing or other terms of its business relationship with Issuer or any of its Subsidiaries since December 31, 2025, or notified Issuer or any Issuer Subsidiary in writing since December 31, 2025, of any intent to do so.

(t) No Integrated Offering. Assuming the accuracy of the representations and warranties by Contributor, APLD Intermediate and Cloud, as applicable, set forth in Section 3.2, neither Issuer, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Exchanged Shares to be integrated with prior offerings by Issuer for purposes of (i) the Securities Act which would require the registration of any such share of the Exchanged Shares under the Securities Act, or (ii) any applicable shareholder approval provisions of any Trading Market on which any of the securities of Issuer are listed or designated.

(u) Investment Company. Issuer is not, and is not an Affiliate of, and immediately after receipt of the Contributed Shares, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. Issuer shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.

(v) Listing and Maintenance Requirements. The Issuer Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and Issuer has taken no action designed to, or to the Knowledge of Issuer is likely to have the effect of, terminating the registration of the Issuer Common Stock under the Exchange Act nor has Issuer received any notification that the Commission is contemplating terminating such registration. Issuer has not, in the 12 months preceding the date hereof, received notice from any Trading Market on which the Issuer Common Stock is or has been listed or quoted to the effect that Issuer is not in compliance with the listing or maintenance requirements of such Trading Market. Issuer is, and has no reason to believe that it will not in the foreseeable future continue to be, in compliance with all such listing and maintenance requirements. The Issuer Common Stock is currently eligible for electronic transfer through the Depository Trust Company or another established clearing corporation and Issuer is current in payment of the fees to the Depository Trust Company (or such other established clearing corporation) in connection with such electronic transfer. On or prior to the date hereof, Issuer has submitted to Nasdaq the Listing Application pursuant to Nasdaq Listing Rule 5110(a).

(w) Related-Party Transactions. Section 3.1(w) of the Disclosure Schedules sets forth a complete and correct list of any transaction or arrangement (other than any Benefit Plan) under which any (a) present or former executive officer or director of Issuer or any Issuer Subsidiary, (b) beneficial owner (within the meaning of Section 13(d) of the Exchange Act) of 5% or more of any class of the equity securities of Issuer or any of its Subsidiaries or (c) Affiliate, "associate" or member of the "immediate family" (as such terms are respectively defined in Rules 12b-2 and 16a-1 of the Exchange Act) of any of the foregoing Persons described in clause (a) or (b), in each case as would be required to be disclosed by Issuer pursuant to Item 404 of Regulation S-K promulgated under the Exchange Act, is a party to any actual or proposed loan, lease or other Contract with or binding upon Issuer or any Issuer Subsidiary or any of their respective properties or assets or has any interest in any property owned by Issuer or any Issuer Subsidiary, in each case, including any bond, letter of credit, guarantee, deposit, cash account, escrow, policy of insurance or other credit support instrument or security posted or delivered by any Person listed in clauses (a), (b) or (c) in connection with the operation of the business of Issuer or any Issuer Subsidiary.

(x) Anti-Bribery and Anti-Money Laundering Laws. Each of Issuer, its Subsidiaries and any of their respective officers, directors, supervisors, managers, agents, or employees are and have at all times been in compliance in all material respects with and its participation in the offering will not violate: (A) anti-bribery Laws, including but not limited to, any applicable Law, rule, or regulation of any locality, including but not limited to any Law, rule, or regulation promulgated to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed December 17, 1997, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act 2010, or any other Law, rule or regulation of similar purposes and scope or (B) anti-money laundering Laws, including, but not limited to, applicable federal, state, international, foreign or other Laws, regulations or government guidance regarding anti-money laundering, including, without limitation, Title 18 U.S. Code sections 1956 and 1957, the Patriot Act, the Bank Secrecy Act, and international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur, all as amended, and any executive order, directive, or regulation pursuant to the authority of any of the foregoing, or any orders or licenses issued thereunder.

(y) Real Property.

i. Section 3.1(y)(i) of the Disclosure Schedules sets forth a list of all real property owned by Issuer or any Issuer Subsidiary and the record owner thereof (the "Issuer Owned Real Property"). Issuer or the applicable Issuer Subsidiary has good, valid and marketable fee simple ownership of each parcel of the Issuer Owned Real Property, free and clear of all Liens. Except as set forth in Section 3.1(y)(i), there are no outstanding options, rights of first offer or rights of first refusal to purchase or lease the Issuer Owned Real Property or any portion thereof or interest therein.

ii. Section 3.1(y)(ii) of the Disclosure Schedules sets forth a list of all Leased Real Property, and a description of the applicable leases, including all amendments, extensions, guarantees and other binding supplements, waivers or other changes with respect to each lease thereto (each, an "Issuer Lease") related thereto. Issuer or a Subsidiary of Issuer has a good, valid and subsisting leasehold or subleasehold interest, as applicable, in the Issuer Leased Real Property, free and clear of all Liens.

iii. With respect to the Issuer Leased Real Property, the lease or sublease for such property is valid, legally binding, enforceable and in full force and effect, and none of Issuer or any of its Subsidiaries is in breach of or default under such lease or sublease, and no event has occurred, which, with notice, lapse of time or both, would constitute a breach or default by Issuer or any of its Subsidiaries or permit termination, modification or acceleration by any third party thereunder, except in each case as would not, individually or in the aggregate, have an Issuer Material Adverse Effect or reasonably be expected to prevent, materially delay or materially impair the ability of Issuer to consummate the Transactions contemplated by this Agreement.

iv. Section 3.1(y)(iv) of the Disclosure Schedules contains a correct and complete list of all Issuer Leased Real Property, together with a correct street address and such other information as is reasonably necessary to identify each Issuer Leased Real Property.

(z) Insurance. Section 3.1(z) of the Disclosure Schedules sets forth a true, correct, and complete list of each insurance policy currently maintained by or for the benefit of Issuer and its Subsidiaries and relating to their assets, business, operations, employees, officers and directors (the "Insurance Policies"), and for each Insurance Policy identifies the type of insurance, policy number, name of the insurer, name of the named insured, the aggregate limit of liability, and the policy period. Complete and accurate copies of the Insurance Policies have been made available to APLD Intermediate and Contributor. Issuer is in compliance in all material respects with the Insurance Policies (and any predecessor policies) and has taken no actions (or failed to take an action) that would render any of the Insurance Policies (or any predecessor insurance policies) void or unenforceable or otherwise limit, prejudice, or reduce recovery under any Insurance Policy (or predecessor policies), or materially interfere with the right to receive the proceeds of any such policy. The Insurance Policies are in full force and effect and, to the extent allowable, shall remain in full force and effect following the consummation of the Transactions contemplated within this Agreement in accordance with their terms and conditions. All premiums and fees due and owing with respect to

the Insurance Policies have been timely paid in full or, if due and payable prior to Closing, will be paid prior to Closing. No Insurance Policy is subject to any premium financing arrangements and no Insurance Policy (or predecessor policies) are subject to any retrospective premium adjustment or other experience-based liability on the part of Issuer. All Insurance Policies provide adequate coverage for the operations and assets of Issuer, are valid and binding in accordance with their terms, are provided by licensed insurers who, to the Knowledge of Issuer, are financially solvent, and no Insurance Policy (or predecessor policy) has been subject to any lapse in coverage. The Insurance Policies are of a type and level of coverage as is required by applicable Law or any Issuer Material Contract. During the past three (3) years, no insurer or underwriter has canceled or non-renewed any Insurance Policy (or predecessor insurance policy) and, during such time period, neither Issuer nor its Subsidiaries have received any written notice of a material increase in premium, cancellation, termination, non-renewal, or reduction in coverage with respect to such policies. To the Knowledge of Issuer, no event has occurred that is reasonably likely to give rise to a claim under the Insurance Policies. All claims against Issuer or its Subsidiaries reasonably likely to be covered under the Insurance Policies (or predecessor policies) have been timely submitted or noticed under such policies, and all such submissions were true and correct as and when submitted, and supplemented to the extent necessary. Section 3.1(z) includes a true and correct list of all pending or open claims made under the Insurance Policies (or predecessor policies) and any claims made under the Insurance Policies (or their predecessor insurance policies) during the past five (5) years. Except as set forth on Section 3.1(z), there is no claim or notice of circumstance open or pending under any of the Insurance Policies (or any predecessor insurance policies) and, in the past five (5) years, there is no claim under the any of the Insurance Policies (or any predecessor insurance policies) as to which an insurer has denied or disputed coverage or reserved any rights to deny coverage. Issuer and its Subsidiaries do not have any fronting or self-insured insurance policies.

(aa) XBRL. The interactive data in eXtensible Business Reporting Language included in the SEC Documents fairly presents the information called for in all material respects and has been prepared in accordance with the SEC's rules and guidelines applicable thereto.

(bb) Corporate Authority Relative to this Agreement.

i. Issuer has the requisite corporate power and authority to execute and deliver this Agreement, and, subject to the Stockholder Approval having been obtained, to consummate the Transactions contemplated hereby, including the Contribution. The execution, delivery and performance by Issuer of this Agreement and the consummation of the Transactions contemplated hereby, including the Contribution, have been duly, validly and unanimously authorized by the Issuer Board and, except for the Stockholder Approval, no other corporate action or proceedings on the part of Issuer or vote of Issuer's stockholders are necessary to authorize the execution and delivery by Issuer of this Agreement or the consummation of the Transactions contemplated hereby, including the Contribution. This Agreement has been duly and validly executed and delivered by Issuer and, assuming this Agreement constitutes the legal, valid and binding agreement of Contributor, APLD Intermediate and Cloud, this Agreement constitutes the legal, valid and binding agreement of Issuer and is enforceable against Issuer in accordance with its terms, except as such enforcement may be subject to applicable bankruptcy, reorganization, fraudulent conveyance, insolvency, moratorium or other similar Laws affecting creditor's rights generally and the availability of equitable relief and any implied covenant of good faith and fair dealing.

ii. Other than in connection with or in compliance with (i) the requirements of the applicable U.S. federal securities Laws, including the rules and regulations of the SEC thereunder (collectively, the "Securities Laws"), including, assuming the procurement of the Stockholder Approval as contemplated herein, the filing and delivery with the SEC and mailing to the holders of Issuer Voting Stock of the Information Statement prepared pursuant to Section 14(c) of the Exchange Act, or, if the Written Consent has not been obtained by the Consent Deadline, the Proxy Statement prepared pursuant to Section 14(a) under the Exchange Act, regarding the Contribution and the other Transactions contemplated hereby, (ii) the rules and regulations of The Nasdaq Capital Market, (iii) requirements under applicable state securities Laws or "blue sky" Laws and the securities Laws of any foreign country, and (iv) the approvals set forth in Section 3.1(c)(ii) of the Disclosure Schedules, and subject to the accuracy of the representations and warranties of Contributor, APLD Intermediate and Cloud, as applicable, set forth in Section 3.2, ((i)-(iv), the "Securities Approvals") no material authorization, consent, order, license, permit or approval of, or registration, declaration, notice or filing with, any Governmental Entity is required to be made or obtained under applicable Law for the consummation by Issuer of the Transactions contemplated by this Agreement.

iii. Neither the Information Statement nor the Proxy Statement, as applicable, nor any other filings required under the Securities Laws relating to the Contribution will, at the time such documents are filed with the SEC, at any time such documents are amended or supplemented or at the time such documents are first published, sent or given to the holders of Issuer Voting Stock, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Information Statement or the Proxy Statement, as applicable, and any other filings required under the Securities Laws relating to the Contribution, as the case may be, will comply as to form in all material respects with the Securities Laws. Notwithstanding the foregoing, no representation or warranty is made by Issuer with respect to statements made or incorporated by reference therein based on information supplied by or on behalf of Contributor, APLD Intermediate for inclusion or incorporation by reference therein.

(cc) Sale of Securities. Assuming the accuracy of Cloud's representations in Section 3.2, the offer and sale of the Exchanged Shares is exempt from the registration and prospectus delivery requirements of the Securities Act and the rules and regulations promulgated thereunder. Neither Issuer nor any Person acting on its behalf has conducted any general solicitation or general advertising (as those terms are used in Regulation D as promulgated by the SEC under the Securities Act) in connection with the offer or sale of any of the Exchanged Shares. Neither Issuer nor its Subsidiaries nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any Issuer security or solicited any offers to buy any Issuer security, under circumstances that would adversely affect reliance by Issuer on Section 4(a)(2) for the exemption from registration for the Transactions contemplated hereby or would require registration of the Exchanged Shares under the Securities Act. Neither Issuer, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Exchanged Shares to be integrated with prior offerings by Issuer for purposes of any applicable shareholder approval provisions of any Trading Market on which any of the securities of Issuer are listed or designated.

(dd) Registration Statement Eligibility; Ineligible Issuer. Issuer is eligible to register the resale of the Exchanged Shares for resale by Contributor on Form S-3 promulgated under the Securities Act. The Issuer is not, and on the date on which the first bona fide offer of the Exchanged Shares issued pursuant to this Agreement is made will not be, an "ineligible issuer", as defined in Rule 405 under the Securities Act.

(ee) No Disqualification Events. With respect to the Exchanged Shares to be provided hereunder in reliance on Rule 506 under the Securities Act, none of Issuer, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of Issuer participating in the Transactions contemplated hereunder, or to the Knowledge of Issuer, any beneficial owner of 20% or more of Issuer's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with Issuer in any capacity at the time of the exchange (each, an "Issuer Covered Person") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). Issuer has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. Issuer has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to APLD Intermediate and Contributor a copy of any disclosures provided thereunder, if any. Issuer will notify APLD Intermediate and Contributor in writing, prior to the Closing Date of (i) any Disqualification Event relating to any Issuer Covered Person and (ii) any event that would, with the passage of time, reasonably be expected to become a Disqualification Event relating to any Issuer Covered Person, in each case of which it is aware.

(ff) Absence of Changes. Since December 31, 2025, except as set forth in a subsequent SEC Document filed prior to the date hereof or as contemplated by the Transaction Documents, there has not been any other change, development, occurrence or event that has had or would reasonably be expected to have an Issuer Material Adverse Effect.

3.2 Representations and Warranties of Cloud, APLD Intermediate and Contributor

. Except as set forth in the SEC Documents filed with or furnished to the SEC prior to the date of this Agreement or in the correspondingly numbered section of the Disclosure Schedules that relates to such section or in another section of the Disclosure Schedules to the extent that it is reasonably apparent on the face of such disclosure that such disclosure is applicable to such section, Cloud, APLD Intermediate and Contributor hereby represent and warrant to Issuer as of the date hereof and as of the Closing Date (assuming that the Cloud Pre-Closing Restructuring has been completed) as follows (unless as of a specific date therein, in which case they shall be accurate as of such date) that:

(a) Organization and Authority.

i. Cloud (i) is a corporation duly organized and validly existing under the Laws of the state of Nevada, (ii) has all requisite corporate power and authority to own its properties and conduct its business as presently conducted and (iii) is duly qualified to do business and is in good standing in all jurisdictions where its ownership or leasing of property or the conduct of its business requires it to be so qualified, except, in the case of this clause (iii), where failure to be so qualified or in good standing, individually or in the aggregate, has not and would not reasonably be expected to have a Cloud Material Adverse Effect. True and accurate copies of the Articles of Incorporation of Cloud (as amended or modified from time to time prior to the date hereof, the “Cloud Articles of Incorporation”) and the by-laws of Cloud (as amended or modified from time to time prior to the date hereof, the “Cloud Bylaws”), each as in effect, have been made available to Issuer prior to the date hereof.

ii. All of Cloud’s Subsidiaries, after giving effect to the Cloud Pre-Closing Restructuring, are set forth on Section 3.2(a)(ii) of the Disclosure Schedules, and, other than as set forth on Section 3.2(a)(ii) of the Disclosure Schedules, after giving effect to the Cloud Pre-Closing Restructuring, Cloud will own, directly or indirectly, 100% of the outstanding equity securities of such Subsidiaries. Each of Cloud’s Subsidiaries (i) are duly organized and validly existing under the Laws of its jurisdiction of organization, (ii) have all requisite corporate or other applicable entity power and authority to own its properties and conduct its business as presently conducted and (iii) is duly qualified to do business and is in good standing in all jurisdictions where its ownership or leasing of property or the conduct of its business requires it to be so qualified, except, in the case of this clause (iii), where failure to be so qualified or in good standing, individually or in the aggregate, has not and would not reasonably be expected to have a Cloud Material Adverse Effect.

(b) Capitalization.

i. The authorized capital stock of Cloud consists of 1,200 shares of Cloud Common Stock, and 0 shares of preferred stock. As of the date hereof, 1,200 shares of the Cloud Common Stock are issued and outstanding.

ii. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the Transactions contemplated by the Transaction Documents. Except as set forth herein, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of the Cloud Common Stock or the capital stock of any Subsidiary of Cloud, or Contracts, commitments, understandings or arrangements by which Cloud or any Subsidiary is or may become bound to issue additional shares of Cloud Common Stock or Common Stock Equivalents or capital stock of any Subsidiary of Cloud. There are no outstanding securities or instruments of Cloud or any Subsidiary with any provision that adjusts the exercise, conversion, exchange or reset price of such security or instrument upon an issuance of securities by Cloud or any Subsidiary. There are no outstanding securities or instruments of Cloud or any Subsidiary that contain any redemption or similar provisions, and there are no Contracts, commitments, understandings or arrangements by which Cloud or any Subsidiary is or may become bound to redeem a security of Cloud or such Subsidiary. Cloud does not have any stock appreciation rights or “phantom stock” plans or agreements or any similar plan or agreement. All of the outstanding shares of capital stock of Cloud are duly authorized, validly issued, fully paid and non-assessable, have been issued in compliance with all federal and state securities laws where applicable, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. There are no stockholder agreements, voting agreements or other similar agreements with respect to Cloud’s capital stock to which Cloud is a party or between or among any of Cloud’s stockholders.

iii. All outstanding shares of Cloud Common Stock are duly authorized, validly issued, fully paid and nonassessable, and are not subject to and were not issued in violation of any preemptive or similar right, purchase option, call or right of first refusal or similar right. Cloud has not issued any securities or right to purchase securities of Cloud (including any options, warrants or other rights, agreements, arrangements or commitments of any character or any securities convertible into or exchangeable for any capital stock or other Equity Interests of Cloud). Except as provided in the Transaction Documents, there are no outstanding contractual obligations of Cloud or any of its Subsidiaries (i) restricting the transfer of, (ii) affecting the voting rights of, (iii) requiring the sale, issuance, repurchase, redemption or disposition of, or containing any right of first refusal with respect to, (iv) requiring the registration for sale of, or (v) granting any preemptive or antidilutive right, with respect to any shares of capital stock of, or other Equity Interests in, Cloud or any of Cloud’s Subsidiaries. Cloud does not have outstanding shareholder purchase rights or “poison pill” or any similar arrangement in effect.

iv. Each outstanding share of capital stock of or other Equity Interest in each Subsidiary of Cloud is duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights and is owned, beneficially and of record, by Cloud or one or more of its wholly-owned Subsidiaries free and clear of all Liens, except, in each case, where such failure, individually or in the aggregate, has not and would not reasonably be expected to have a Cloud Material Adverse Effect. No bonds, debentures, notes or other indebtedness having the right to vote (or convertible into or exchangeable for, securities having the right to vote) on any matters on which the shareholders of Cloud may vote are issued.

(c) Authorization.

i. Cloud, APLD Intermediate and Contributor have the requisite power and authority to enter into this Agreement and the other Transaction Documents and to carry out their respective obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and the other Transaction Documents by Cloud and the consummation of the Transactions contemplated hereby and thereby have been duly authorized by the Cloud Board. This Agreement and the other Transaction Documents have been duly and validly authorized, executed and delivered by Cloud, APLD Intermediate and Contributor, as applicable, and, assuming due authorization, execution and delivery by Issuer, this Agreement and each of the other Transaction Documents is a valid and binding obligation of Cloud, APLD Intermediate and Contributor as applicable enforceable against Cloud, APLD Intermediate and Contributor in accordance with its terms as applicable (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar Laws of general applicability relating to or affecting creditors’ rights or by general equity principles). No other corporate proceedings or further action by Cloud, the Cloud Board or Contributor as the sole stockholder of Cloud are necessary for the execution and delivery by Cloud, Contributor or APLD Intermediate, as applicable, of this Agreement or the other Transaction Documents, the performance by it of its obligations hereunder or thereunder or the consummation by it of the Transactions contemplated hereby or thereby.

ii. Neither the execution and delivery by Cloud, Contributor nor APLD Intermediate, as applicable, of this Agreement or the other Transaction Documents, nor the consummation of the Transactions contemplated hereby or thereby, nor compliance by Cloud, Contributor or APLD Intermediate, as applicable, with any of the provisions hereof or thereof, will (i) require notice, consent or approval pursuant to, violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration of, or result in the creation of any Lien upon any of the properties or assets of Cloud or any Subsidiary of Cloud under any of the terms, conditions or provisions of (A) the Cloud Articles of Incorporation or the Cloud Bylaws or other governing instrument of any Subsidiary of Cloud or (B) any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or

obligation to which Cloud or any Subsidiary of Cloud is a party or by which it may be bound, or to which Cloud or any Subsidiary of Cloud or any of the properties or assets of Cloud or any Subsidiary of Cloud may be subject, or (ii) violate any Law, statute, ordinance, rule, regulation, permit, franchise or any judgment, ruling, order, writ, injunction or decree applicable to Cloud or any Subsidiary of Cloud or any of their respective properties or assets, except in the case of clauses (i)(B) and (ii) for such violations, conflicts and breaches as would not, individually or in the aggregate, reasonably be expected to have a Cloud Material Adverse Effect. Other than the Securities Approvals, no material authorization, consent, order, license, permit or approval of, or registration, declaration, notice or filing with, any Governmental Entity is required to be made or obtained under applicable Law for the consummation by Cloud, Contributor or APLD Intermediate of the Transactions contemplated by this Agreement.

iii. Other than the securities or blue sky Laws of the various states of the United States, no notice to, registration, declaration or filing with, exemption or review by, or authorization, order, consent or approval of any Governmental Entity or stock exchange, nor expiration or termination of any statutory waiting period other than expressly in connection with the Information Statement or the Proxy Statement, as applicable, is necessary for the execution or delivery by Cloud, Contributor or APLD Intermediate, as applicable, of this Agreement or the other Transaction Documents or the consummation by Cloud, APLD Intermediate and Contributor of the Transactions contemplated by this Agreement or the other Transaction Documents, except, in the case of any such matters arising in respect of a non-United States Governmental Entity or Law, as would not, individually or in the aggregate, reasonably be expected to have a Cloud Material Adverse Effect.

(d) Ownership of the Contributed Shares. After giving effect to the Cloud Pre-Closing Restructuring, Contributor will be the sole record and beneficial owner of the Contributed Shares, free and clear of any and all Liens. All of the Contributed Shares have been duly authorized, validly issued, fully paid and are non-assessable. Except as contemplated by the Cloud Pre-Closing Restructuring, none of the Contributed Shares are subject to any voting trust, stockholder agreement, proxy or other agreement or understanding in effect with respect to the voting, transfer or disposition of any of the Contributed Shares. Other than this Agreement, neither APLD Intermediate nor Contributor is not bound by any Contract restricting its right to transfer the Contributed Shares.

(e) Brokers and Finders. Except as set forth on Section 3.2(e) of the Disclosure Schedules, neither Cloud nor its Subsidiaries or any of their respective officers, directors, employees or agents has employed any broker or finder or incurred any liability for any financial advisory fees, brokerage fees, commissions or finder's fees, and no broker or finder has acted directly or indirectly for Cloud in connection with this Agreement or the Transactions contemplated hereby.

(f) Litigation. There is no action, suit, Proceeding or investigation pending or threatened (including "cease and desist" letters or invitations to take patent license) against, nor any outstanding judgment, order, writ or decree against, Cloud or any of its Subsidiaries or any of their respective assets, operations or business before or by any Governmental Entity, which individually or in the aggregate has had, or, would reasonably be expected to have (including for this purpose, assuming an adverse determination of any such matter), a Cloud Material Adverse Effect. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Cloud Material Adverse Effect, neither Cloud nor any of its Subsidiaries is subject to any judgment, order or decree of any Governmental Entity.

(g) Indebtedness. Neither Cloud nor any of its Subsidiaries is, immediately prior to the execution and delivery of this Agreement, in default in the payment of any material indebtedness or in default under any agreement relating to its material indebtedness.

(h) Taxes. Cloud and each Subsidiary has filed all Tax Returns that are required to be filed or has requested extensions thereof and has paid all Taxes required to be paid by it to the extent that any of the foregoing is due and payable, except (i) for any such assessment, fine or penalty that is currently being contested in good faith or (ii) where such failure to file or pay would not have a Cloud Material Adverse Effect.

(i) Employee Relations. No labor problem or dispute with the employees of Cloud or any Subsidiary of Cloud exists or is threatened or imminent, and Cloud is not aware of any existing or imminent labor disturbance by the employees of any of its principal suppliers, contractors or customers, that in each case could reasonably be expected to have a Cloud Material Adverse Effect.

(j) Licenses. Cloud and each Subsidiary of Cloud possesses all licenses, certificates, permits and other authorizations issued by all applicable authorities necessary to conduct its business, except in each case, the lack of which would not reasonably be expected, individually or in the aggregate, to have a Cloud Material Adverse Effect, and neither Cloud nor any Subsidiary of Cloud has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Cloud Material Adverse Effect.

(k) Intellectual Property.

i. Cloud and each Subsidiary of Cloud owns, possesses, licenses or has other rights to use, on reasonable terms, all Intellectual Property necessary for the conduct of their business in all material respects as now conducted (collectively, the "Cloud Intellectual Property") necessary for the conduct of their business in all material respects as now conducted. (a) There are no rights of third parties to any such Cloud Intellectual Property; (b) to Knowledge of Cloud, there is no material infringement by third parties of any such Cloud Intellectual Property; (c) there is no pending or, to Knowledge of Cloud, threatened action, suit, Proceeding or claim by others challenging Cloud's or any Cloud's Subsidiaries' rights in or to any such Cloud Intellectual Property, and, except as would not reasonably be expected to have a Cloud Material Adverse Effect, Cloud is unaware of any facts which would form a reasonable basis for any such claim; (d) there is no pending or, to Knowledge of Cloud, threatened action, suit, Proceeding or claim by others challenging the validity or scope of any such Cloud Intellectual Property, and, except as would not reasonably be expected to have a Cloud Material Adverse Effect, Cloud is unaware of any facts which would form a reasonable basis for any such claim; (e) there is no pending or, to Knowledge of Cloud, threatened action, suit, Proceeding or claim by others that Cloud or any Subsidiary of Cloud infringes or otherwise violates any Intellectual Property of others, and, except as would not reasonably be expected to have a Cloud Material Adverse Effect, Cloud is unaware of any other fact which would form a reasonable basis for any such claim; (f) there is no U.S. patent which contains claims that dominate any Cloud Intellectual Property described in the SEC Documents as being owned by or licensed to Cloud or any Subsidiary of Cloud or that interferes with the issued claims of any such Cloud Intellectual Property; and (g) there is no prior art that may render any U.S. patent held by Cloud and or any Subsidiary of Cloud invalid, and all prior art of which Cloud is aware that may be material to the validity of a U.S. patent or to the patentability of a U.S. patent application has been disclosed to the U.S. Patent and Trademark Office.

ii. Except as would not, individually or in the aggregate, reasonably be expected to have a Cloud Material Adverse Effect, each of Cloud, its Subsidiaries and, to the Knowledge of Cloud, all vendors, processors, or other third parties Processing or otherwise with access to Personal Data collected and/or Processed by or for, and/or sharing Personal Data with, Cloud or any of its Subsidiaries is in compliance, and has for the past twelve (12) months complied, with all applicable Data Protection Requirements. In the past twelve (12) months, neither Cloud nor any of its Subsidiaries, has received written communication from any Governmental Entity that alleges that Cloud or any of its Subsidiaries is not in compliance with any Data Protection Requirement and there are no other facts that, individually or in the aggregate, would reasonably indicate non-compliance by Cloud or its Subsidiaries with any Data Protection Requirement, except for non-compliance that would not, individually or in the aggregate, reasonably be expected to have a Cloud Material Adverse Effect. There is no action, suit or proceeding by or before any court or Governmental Entity pending or threatened against Cloud or its Subsidiaries alleging in writing non-compliance by Cloud or its Subsidiaries with any Data Protection Requirements.

iii. Cloud and each Subsidiary of Cloud have taken all commercially reasonable technical and organizational measures necessary to protect the information technology systems and Personal Data used in connection with the operation of their business. Without limiting the foregoing, Cloud and each Subsidiary of Cloud have used commercially reasonable efforts to establish and maintain, and have established, maintained, implemented and complied with, commercially reasonable information technology, information security, cyber security and data protection controls, policies and procedures, including oversight, access controls, encryption, technological and physical safeguards and business continuity/disaster recovery and security plans that are designed to protect against

and prevent unauthorized access to or acquisition of Personal Data used in connection with the operation of their business (“Security Breach”). To the Knowledge of Cloud, there has been no such Security Breach, and neither Cloud nor any Subsidiary of Cloud has been notified in writing of and has no knowledge of any event or condition that would reasonably be expected to result in, any such Security Breach.

(l) Operational Business. The Cloud business as described in Applied Parent’s Annual Report on Form 10-K for the fiscal year ended May 31, 2025, and the Quarterly Report on Form 10-Q for the fiscal quarter ended November 30, 2025, is in compliance with the rules of the SEC and GAAP, and is true, accurate and complete in all material respects.

(m) Regulatory. Cloud and each Subsidiary of Cloud (i) are and at all times have been in compliance with all local, state, federal, national, supranational and foreign statutes, rules and regulations applicable to it, (ii) have not received written notice of any claim, action, suit, Proceeding, hearing, enforcement, investigation, arbitration or other action from any court or arbitrator or governmental or regulatory authority alleging that any product, operation or activity is in violation of any applicable Laws nor, to Knowledge of Cloud, is any such claim, action, suit, Proceeding, hearing, enforcement, investigation, arbitration or other action threatened, except such as would not, individually or in the aggregate, have a Cloud Material Adverse Effect; and (iii) are not a party to any corporate integrity agreements, monitoring agreements, consent decrees, settlement orders, or similar agreements with or imposed by any governmental or regulatory authority.

(n) Anti-Bribery and Anti-Money Laundering Laws. Each of Cloud, its Subsidiaries and any of their respective officers, directors, supervisors, managers, agents, or employees are and have at all times been in compliance in all material respects with and its participation in the offering will not violate: (A) anti-bribery Laws, including but not limited to, any applicable Law, rule, or regulation of any locality, including but not limited to any Law, rule, or regulation promulgated to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed December 17, 1997, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act 2010, or any other Law, rule or regulation of similar purposes and scope or (B) anti-money laundering Laws, including, but not limited to, applicable federal, state, international, foreign or other Laws, regulations or government guidance regarding anti-money laundering, including, without limitation, Title 18 U.S. Code sections 1956 and 1957, the Patriot Act, the Bank Secrecy Act, and international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur, all as amended, and any executive order, directive, or regulation pursuant to the authority of any of the foregoing, or any orders or licenses issued thereunder.

(o) Balance Sheet. Section 3.2(o) of the Disclosure Schedules sets forth a true, correct and complete copy of the unaudited consolidated balance sheet of the Cloud business as within the Applied Parent’s consolidated group (the “Cloud Balance Sheet”) as of November 30, 2025 (the “Cloud Balance Sheet Date”). The Cloud Balance Sheet has been prepared in accordance with GAAP applied on a consistent basis and fairly presents, in all material respects, the consolidated financial position of the Cloud business as within the Applied Parent’s consolidated group. Since the Cloud Balance Sheet Date, except as contemplated by the Transaction Documents, there has not been any other change, development, occurrence or event that has had or would reasonably be expected to have a Cloud Material Adverse Effect.

(p) Purchase for Investment. Contributor is an accredited investor (as defined in Rule 501 of the Securities Act) and acknowledges that the Exchanged Shares have not been registered under the Securities Act or under any state securities Laws. Contributor (i) acknowledges that it is acquiring the Exchanged Shares pursuant to an exemption from registration under the Securities Act solely for investment with no present intention to distribute any of the Exchanged Shares to any person in violation of applicable securities Laws, (ii) that such securities are characterized as “restricted securities” under the U.S. federal securities laws and will bear the legend set forth in Section 4.15, (iii) will not sell, transfer, or otherwise dispose of any of the Exchanged Shares, except in compliance with this Agreement, the Issuer Articles of Incorporation and/or the Restated Issuer Articles, as applicable, the registration requirements or exemption provisions of the Securities Act and any other applicable securities Laws, (iv) has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of its investment in the Exchanged Shares and of making an informed investment decision, and (v) without prejudice to any claim of Contributor hereunder for breach of Issuer’s representations and warranties or for actual and intentional fraud, (A) has been furnished with or has had full access to all the information that it considers necessary or appropriate to make an informed investment decision with respect to the Exchanged Shares, (B) has had an opportunity to discuss with management of Issuer the intended business and financial affairs of Issuer and to obtain information (to the extent Issuer possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to it or to which it had access and (C) can bear the economic risk of (1) an investment in the Exchanged Shares indefinitely and (2) a total loss in respect of such investment. Contributor has such knowledge and experience in business and financial matters so as to enable it to understand and evaluate the risks of and form an investment decision with respect to, its investment in the Exchanged Shares and to protect its own interest in connection with such investment.

(q) Purchase Entirely for Own Account. The Exchanged Shares to be received by Contributor hereunder will be acquired for the Contributor’s own account. Contributor is not a broker-dealer registered with the SEC or an entity engaged in a business that would require it to be so registered.

(r) No General Solicitation. Contributor did not learn of the investment in the Exchanged Shares as a result of any general solicitation or general advertising.

ARTICLE IV.

COVENANTS AND OTHER AGREEMENTS OF THE PARTIES

4.1 Conduct of Issuer’s Business.

(a) During the period from the date hereof until the earlier of the termination of this Agreement in accordance with its terms and the Closing, except (i) as may be required by applicable Law, (ii) with prior written consent of APLD Intermediate (which shall not be unreasonably withheld, conditioned or delayed), or (iii) as permitted or contemplated by this Agreement, Issuer shall and shall cause each of its Subsidiaries to use commercially reasonable efforts to conduct its business in all material respects in the ordinary course of business.

(b) In addition to and without limiting the generality of Section 4.1(a), during the period from the date hereof until the earlier of the termination of this Agreement in accordance with its terms and the Closing, except (i) as may be required by applicable Law, (ii) with the prior written consent of APLD Intermediate (which shall not be unreasonably withheld, conditioned or delayed), (iii) as permitted or contemplated by this Agreement, or (iv) as set forth in Section 4.1(b) of the Disclosure Schedules, Issuer shall not, and shall not permit any of its Subsidiaries (whether by merger, sale of shares, sale of assets, consolidation, formation of a joint venture or otherwise) to:

- i. amend, supplement or otherwise modify any of its Organizational Documents;
- ii. split, combine or reclassify any of its capital stock, voting securities or other Equity Interests;
- iii. make, declare, set aside or pay any dividend, or make any other distribution on, redeem, purchase or otherwise acquire (or authorize any of the foregoing), any shares of its capital stock or other Equity Interests, or any other securities or obligations convertible (whether currently convertible or convertible only after the passage of time or the occurrence of certain events) into or exchangeable for any shares of its capital stock or other Equity Interests, except for purchases, redemptions, or other acquisition of any shares of its capital stock, other Equity Interests or any other securities expressly required by the terms of any Benefit Plan or any Issuer Options;

- iv. grant any Issuer Options or other equity-based awards or interests, or grant any individual, corporation or other entity any right to acquire shares of its capital stock or other Equity Interests;
- v. issue, sell, transfer, pledge, authorize, encumber, dispose of or otherwise permit to become outstanding (or authorized any of the foregoing) any additional shares of its capital stock, other Equity Interests or securities convertible or exchangeable into, or exercisable for, any shares of its capital stock or any options, warrants, or other rights of any kind to acquire any shares of its capital stock, except pursuant to the due exercise, vesting and/or settlement of Issuer Options outstanding as of the date hereof in express accordance with their terms;
- vi. adopt a plan, Contract or resolutions providing for complete or partial liquidation, dissolution, merger, consolidation or other reorganization;
- vii. incur, create, assume, acquire, endorse, guarantee or otherwise become directly or indirectly liable (whether as primary obligor, guarantor, surety, endorser or otherwise) for, or modify, amend, extend, refinance, replace, repay, prepay or otherwise alter in any respect the terms of, any indebtedness (including any increase in principal amount, interest rate, fees, or maturity);
- viii. sell, transfer, mortgage, encumber, license, sublicense, lease, sublease, pledge, abandon, otherwise make subject to any Lien or otherwise dispose of any of its properties or assets whether by merger or consolidation, acquisition of stock or assets or by formation of a joint venture or otherwise;
- ix. acquire for cash consideration any assets or any other Person or business of any other Person (whether by merger or consolidation, acquisition of stock or assets or by formation of a joint venture or otherwise) or make any investment in any Person;
- x. (1) establish, adopt, amend or terminate any material Benefit Plan or create or enter into any plan, agreement, program, policy, trust, fund or other arrangement that would be a material Benefit Plan if it were in existence as of the date hereof, (2) accelerate any rights or benefits under any Benefit Plan, or (3) accelerate the time of vesting or payment of any award under any Benefit Plan, in each case except as required by terms of this Agreement or as required by applicable Law or the terms of a Benefit Plan or Contract or agreement in effect on the date hereof;
- xi. except as required pursuant to the terms of any Benefit Plan in effect as of the date of this Agreement or as otherwise required by any applicable Law: (1) increase in any manner the compensation or consulting fees, bonus, pension, or other benefits of any current or former employee, officer, director or natural person independent contractor or consultant of Issuer, except in connection with annual promotion-related or merit-based increases for employees that are not executive officers of Issuer in the ordinary course of business; (2) become a party to, establish, adopt, amend, commence participation in or terminate any Benefit Plan or any arrangement that would have been a Benefit Plan had it been entered into prior to this Agreement; (3) take any action to accelerate rights under any Benefit Plan; or (4) enter into any Contract for employment (other than "at-will" employment) with Issuer or any of its Subsidiaries that provides compensation and/or benefits (including severance pay or benefits) in an amount, or having a value in excess, of \$100,000 per year;
- xii. unless required by applicable Law, (1) become a party to, establish, adopt, amend, extend, commence participation in or terminate any collective bargaining agreement or other agreement or arrangement with a Union or (2) recognize or certify any Union as the bargaining representative for any employees of Issuer or any of its Subsidiaries;
- xiii. (1) make, change or rescind any express or deemed election relating to Taxes, or take any action to deny the availability of any election relating to Taxes; (2) settle or compromise any material Proceeding relating to Taxes or surrender any right to obtain a material tax refund or credit, offset or other reduction in tax liability; (3) enter into any closing agreement with respect to any material Taxes; (4) file any material amended Tax Return; (5) change any method of reporting income or deductions (including, without limitation, any method of accounting) for federal income Tax purposes from those employed in the preparation of its federal income Tax Returns for the taxable year ending December 31, 2025; except, in each case, as is required by applicable Law or GAAP; (6) extend or waive the application of any statute of limitations relating to the collection or assessment or any tax (except with respect to routine extensions relating to the initial filing of a Tax Return); (7) apply for or pursue any tax ruling or (8) execute any power of attorney in respect of any material tax matter; except, in each case, as is required by applicable Law or GAAP, provided, notwithstanding the foregoing, Issuer and its Subsidiaries shall have the right to make any election permitted pursuant to Revenue Procedure 2025-28 under Section 70302(f)(1)(A), if eligible, or Section 70302(f)(2)(A)(i) of the One Big Beautiful Bill Act (P.L. 119-21);
- xiv. cancel or make any material changes to the Insurance Policies, other than renewals of the Insurance Policies and in the ordinary course of business consistent with past practices;
- xv. change its present accounting methods or principles in any material respect, except as required by GAAP or applicable Law;
- xvi. enter into any Contract that would be required to be disclosed under Item 404(a) of Regulation S-K promulgated under the Exchange Act;
- xvii. make or enter into any commitment for capital expenditures in excess of \$250,000 individually;
- xviii. make any loans, advances or capital contributions to, or material investments in, any other Person;
- xix. sell, assign, transfer or exclusively license any Issuer Intellectual Property, or permit the lapse of any right, title or interest to any Issuer Intellectual Property, or terminate, cancel or amend any Contract governing Issuer Intellectual Property;
- xx. settle, compromise or otherwise resolve any Proceedings (excluding any audit, claim or other Proceeding in respect of Taxes) in a manner resulting in liability for, or restrictions on the conduct of business by, Issuer or any of its Subsidiaries;
- xxi. (1) amend, modify, terminate (partially or completely), grant a waiver under, cancel, or take (or fail to take) any action that would reasonably be expected to cause or result in a material breach of, or a material default under, any Issuer Material Contract, or (2) enter into or assume any Contract that would have constituted an Issuer Material Contract had it been in effect as of the date hereof; or
- xxii. agree or commit in writing, or otherwise take any action or resolve to do any of the foregoing.

4.2 Conduct of Cloud's Business.

During the period from the date hereof until the earlier of the termination of this Agreement in accordance with its terms and the Closing, except (i) as may be required by applicable Law, (ii) with the prior written consent of Issuer (which shall not be unreasonably withheld, conditioned or delayed), (iii) for the purpose of consummating the Cloud Pre-Closing Restructuring, (iv) as permitted or contemplated by this Agreement or (v) as set forth in Section 4.2 of the Disclosure Schedules, Cloud shall not, and shall not permit any of its Subsidiaries (whether by merger, sale of shares, sale of assets, consolidation, formation of a joint venture or otherwise) to:

- i. amend, supplement or otherwise modify any of its Organizational Documents;

- ii. make, declare, set aside or pay any dividend, or make any other distribution on, redeem, purchase or otherwise acquire (or authorize any of the foregoing), any shares of its capital stock or other Equity Interests, or any other securities or obligations convertible (whether currently convertible or convertible only after the passage of time or the occurrence of certain events) into or exchangeable for any shares of its capital stock or other Equity Interests;
- iii. adopt a plan, Contract or resolutions providing for complete or partial liquidation, or dissolution;
- iv. sell, transfer, mortgage, encumber, license, sublicense, lease, sublease, pledge, abandon, otherwise make subject to any Lien or otherwise dispose of any of its properties or assets whether by merger or consolidation, acquisition of stock or assets or by formation of a joint venture or otherwise except on an arms' length basis and at fair market value;
- v. settle, compromise or otherwise resolve any Proceedings (excluding any audit, claim or other proceeding in respect of Taxes) in a manner reasonably likely to result in a Cloud Material Adverse Effect; or
- vi. enter into any Contract with an Affiliate that is not on an arms' length basis.

4.3 Access and Information.

(a) Prior to the Closing, APLD Intermediate and its officers, directors, managers, employees, consultants, equity partners, agents, advisors, financial advisors, attorneys, accountants and other representatives (collectively, "Representatives") shall be entitled to, at APLD Intermediate's sole cost and expense, make or cause to be made such investigation of Issuer and its business, assets and operations, and the financial and legal condition thereof, as APLD Intermediate reasonably deems necessary for the purposes of evaluating or implementing the Transactions, and Issuer shall reasonably cooperate with any such investigation. In furtherance of the foregoing, but not in limitation thereof, Issuer shall upon reasonable request during regular business hours, promptly provide APLD Intermediate and its Representatives or cause them to be permitted to have reasonable access to the premises, books and records of Issuer and shall promptly furnish such financial and operating data, projections, forecasts, business plans, strategic plans and other data relating to the business or operations of Issuer as APLD Intermediate or its Representatives shall reasonably request from time to time; provided, however that APLD Intermediate will take all reasonable actions to not interfere with the conduct of Issuer's business.

(b) Prior to the Closing, Issuer and its Representatives shall be entitled to, at Issuer's sole cost and expense, make or cause to be made such investigation of Contributor, APLD Intermediate and their respective businesses, assets and operations, and the financial and legal condition thereof, as Issuer reasonably deems necessary for the purposes of evaluating or implementing the Transactions, and APLD Intermediate and Contributor, as applicable, shall reasonably cooperate with any such investigation. In furtherance of the foregoing, but not in limitation thereof, APLD Intermediate and Contributor, as applicable, shall, upon reasonable request, provide Issuer and its Representatives or cause them to be permitted to have reasonable access to the premises, books and records of APLD Intermediate and Contributor upon reasonable notice during regular business hours; provided, however that Issuer will take all reasonable actions to not interfere with the conduct of neither Contributor's nor APLD Intermediate's business.

4.4 Written Consent; Information Statement; Proxy Statement.

(a) Issuer shall use its best efforts to obtain the Stockholder Approval by the Consent Deadline or the Meeting Approval Deadline, as applicable, and, if by Written Consent, deliver the same to APLD Intermediate immediately after execution thereof by the requisite stockholders of Issuer. Issuer shall comply with applicable Law and Issuer's Organizational Documents in connection with the Written Consent and Information Statement or the Proxy Statement, as applicable, including giving notice of the availability of dissenters' rights in accordance with the Nevada Revised Statutes to the holders of Issuer Voting Stock not executing the Written Consent or not voting in favor of the approval of the Stockholder Proposals, together with any additional information required by the Nevada Revised Statutes. The parties agree and acknowledge that the Stockholder Approval shall be void and of no further effect if this Agreement is terminated in accordance with the terms and conditions hereof. The Issuer shall timely file with the SEC, within two (2) business days of the execution of the Written Consent by stockholders holding a majority of the Issuer's voting power, the Written Consent under cover of Item 5.07 of a Current Report on Form 8-K.

(b) As promptly as reasonably practicable after delivery to APLD Intermediate of the Written Consent (but in any event, no later than March 13, 2026), Issuer shall prepare and file with the SEC, the preliminary Information Statement in form and substance reasonably satisfactory to each of Issuer and APLD Intermediate relating to the Contribution and the other Transactions contemplated hereby; provided, that, if the Issuer is required by APLD Intermediate to initiate the Meeting Procedures pursuant to Section 4.4(c), Issuer shall instead prepare and file with the SEC the preliminary Proxy Statement in form and substance reasonably satisfactory to each of Issuer and APLD Intermediate and in no event later than March 12, 2026 (or such later date as the Contributor may determine by written notice to the Issuer) and shall obtain the Stockholder Approval no later than the Meeting Approval Deadline; provided further that such filing deadlines shall be extended to the extent APLD Intermediate does not promptly provide the information relating to Contributor as required by this Section 4.4(b). Any SEC filing fees associated with the Information Statement or the Proxy Statement shall be split between APLD Intermediate and Issuer. APLD Intermediate and Issuer shall reasonably cooperate with the other party in the preparation of the preliminary Information Statement or the preliminary Proxy Statement, as applicable, the definitive Information Statement or the definitive Proxy Statement, as applicable, and any amendments or supplements thereto and APLD Intermediate will promptly furnish to Issuer the information relating to Contributor required by the Exchange Act and stock exchange requirements for inclusion therein. Prior to filing with the SEC, Issuer shall provide APLD Intermediate and its counsel a reasonable opportunity to review and comment on the Information Statement or the Proxy Statement, as applicable, and shall incorporate any comments to the Information Statement or the Proxy Statement, as applicable, made by APLD Intermediate or its counsel to the extent such comments are not in violation of applicable Law. Issuer shall notify APLD Intermediate immediately following the receipt of any comments from the SEC or its staff and of any request by the SEC or its staff for any amendments or supplements to the Information Statement or the Proxy Statement, as applicable. Issuer shall, after consultation with APLD Intermediate, respond as promptly as practicable to any comments of the SEC with respect to the preliminary Information Statement or the preliminary Proxy Statement, as applicable. Issuer shall cause the Information Statement or the Proxy Statement, as applicable, in definitive form to be mailed to the holders of Issuer Voting Stock as promptly as reasonably practicable after the filing of the definitive Information Statement or the definitive Proxy Statement, as applicable, with the SEC and in no event later than one (1) business day after the earliest of the SEC notifying Issuer that it is not reviewing or has completed its review of the Information Statement or Proxy Statement or the SEC has not timely notified Issuer of its intent to review the Information Statement or Proxy Statement. If at any time prior to the Closing any event shall occur, or fact or information shall be discovered, that should be set forth in an amendment or supplement to the Information Statement or the Proxy Statement, as applicable, so that such document would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they are made, not misleading, the party that discovers such information shall promptly notify the other parties hereto and the parties shall work together to prepare and Issuer shall file with the SEC such amendment or supplement to the Information Statement or the Proxy Statement, as applicable, in consultation with and subject to review by APLD Intermediate as promptly as practicable and, to the extent required by Law, cause such amendment or supplement to the Information Statement or the Proxy Statement, as applicable, to be disseminated to the holders of the Issuer Voting Stock; provided that Issuer shall incorporate all comments received from APLD Intermediate or its counsel to the extent such comments comply with applicable Law. Issuer shall provide APLD Intermediate and its counsel the opportunity to participate in all discussions or meetings (whether in-person, telephonic or otherwise) with the SEC, unless prohibited by Law. Notwithstanding the foregoing, in the event that this Agreement is terminated in accordance with the terms and conditions hereof, the parties shall not be required, after the date of termination, to prepare, file and mail the Information Statement or the Proxy Statement pursuant to this Section 4.4(b).

(c) If the Written Consent is not obtained by the Consent Deadline, then APLD Intermediate has the unilateral right and authority in its sole and absolute discretion to require Issuer to initiate the following procedures (collectively, the "Meeting Procedures") upon delivery of a written notice from APLD Intermediate to Issuer (the "Proxy Notice"), and the Issuer shall, at its sole cost and expense, take each of the following actions:

i. Within three (3) business days of the receipt of the Proxy Notice, Issuer shall cause the Issuer Board to duly convene at a meeting of the Issuer Board to, or through action by written consent (the date of such approval, the “Issuer Board Approval Date”), (A) set a record date for stockholders eligible to vote at the Stockholder Meeting, which record date is (i) no less than two (2) business days after the date of the Issuer Board Approval Date, and (ii) no less than ten (10) calendar days prior to the Meeting Date, and no more than sixty (60) calendar days prior to the Meeting Date (such date, as may be extended from time to time, the “Record Date”), (B) set April 20, 2026 as the initial date for the Stockholder Meeting, subject to SEC clearance of the Proxy Statement relating to this Agreement, the Contribution and the other Transactions contemplated hereby, provided, that, if such date is not permitted under applicable Laws, then such other date as mutually agreed by the Issuer and Contributor (such date, as extended from time to time, the “Meeting Date”), and (C) recommend to the Issuer’s stockholders that such holders vote to approve the Stockholder Proposals as set forth in the Proxy Statement in accordance with subsection (v) below;

ii. Issuer shall, at its own cost and expense, engage a proxy solicitor no later than the Record Date. Issuer shall use commercially reasonable efforts to solicit proxies in favor of the Stockholder Approval and to obtain the Stockholder Approval prior to the Meeting Approval Deadline;

iii. No later than two (2) business days prior to the Record Date, Issuer shall conduct a “broker search” in accordance with Rule 14a-13 of the Exchange Act;

iv. Notwithstanding anything to the contrary contained herein, but subject to the immediately following sentence, Issuer shall not postpone or adjourn the Stockholder Meeting without the prior written consent of APLD Intermediate (which consent shall not be unreasonably withheld); provided that if at any time following the dissemination of the Proxy Statement, either Issuer or APLD Intermediate reasonably determines in good faith that the Stockholder Approval is unlikely to be obtained at the Stockholder Meeting, including due to an absence of quorum, then each of Issuer and APLD Intermediate shall have the right to require an adjournment or postponement of the Stockholder Meeting for the purpose of soliciting additional votes in favor of the Stockholder Proposals; provided, further, that no such single adjournment or postponement shall delay the Stockholder Meeting by more than ten (10) calendar days from the prior-scheduled date or to a date on or after the fifth (5th) business day preceding the End Date. Notwithstanding the foregoing, Issuer may (without the consent of APLD Intermediate) postpone or adjourn the Stockholder Meeting if (i) Issuer is required to postpone or adjourn the Stockholder Meeting by applicable Law, or (ii) after consultation with APLD Intermediate, the Issuer Board or any authorized committee thereof shall have determined in good faith (after consultation with outside legal counsel) that such postponement or adjournment of the Stockholder Meeting is required in order to give Issuer’s stockholders sufficient time to evaluate any amendment or supplement to the Proxy Statement that Issuer is required to provide to such holders under applicable Law (so long as any such supplement or amendment was provided in compliance with this Agreement); provided that no such single adjournment or postponement shall delay the Stockholder Meeting by more than ten (10) calendar days from the prior-scheduled date or to a date on or after the fifth (5th) business day preceding the End Date. Unless this Agreement has been validly terminated pursuant to Section 6.1, (A) Issuer shall submit this Agreement to the stockholders of Issuer for adoption at the Stockholder Meeting and (B) the only matters to be voted upon at the Stockholder Meeting shall be the Stockholder Proposals and routine proposals required in connection with such vote (and not any other matters).

v. Issuer shall (A) upon APLD Intermediate’s request, provide APLD Intermediate reasonably detailed periodic updates concerning proxy solicitation results on a timely basis, (B) give written notice to APLD Intermediate one day prior to the Stockholder Meeting, and on the day of, but prior to the Stockholder Meeting, indicating whether as of such date sufficient proxies representing the Stockholder Approval have been obtained. Issuer shall undertake any other obligations that APLD Intermediate reasonably requests in connection with the Stockholder Meeting and/or the Stockholder Approval, and (C) take such other actions as are reasonably and customarily necessary, appropriate and convenient to conduct the Stockholder Meeting and obtain the Stockholder Approval thereat.

4.5 No Solicitation.

(a) Issuer shall not, and shall cause each of its Subsidiaries and Representatives not to, directly or indirectly (i) initiate, knowingly encourage (including by means of furnishing or disclosing information), solicit, discuss or negotiate, directly or indirectly, any Acquisition Proposal, other than with APLD Intermediate and Contributor (for the avoidance of doubt, no controlled equityholder of Issuer or member of Issuer’s management will be permitted to meet with any Person with respect to an Acquisition Proposal), (ii) furnish or disclose any non-public information to any Person, other than to Contributor and/or APLD Intermediate, their respective Affiliates and their respective Representatives, in connection with an Acquisition Proposal, (iii) enter into any agreement regarding an Acquisition Proposal, other than with Contributor and/or APLD Intermediate, or (iv) enter into any agreement, arrangement or understanding that would reasonably be expected to have an adverse effect on the ability of Issuer to consummate the Contribution. Notwithstanding anything to the contrary in this Agreement, Issuer may (i) engage in discussions with potential buyers of substantially all of Issuer’s assets and (ii) engage in (and consummate) the PIPE Investment.

(b) Neither Contributor nor APLD Intermediate shall, directly or indirectly, through any of its Representatives (i) initiate, knowingly encourage (including by means of furnishing or disclosing information), solicit, discuss or negotiate, directly or indirectly, any inquiry, proposal or offer (written or oral) (A) to acquire, directly or indirectly, Cloud, or any portion of Contributor’s assets (whether by merger, consolidation, recapitalization, purchase or issuance of equity securities, purchase of assets, tender offer or otherwise), (B) to make any investment in, capital contribution or loan to, or reorganization, dissolution, liquidation or recapitalization of Cloud, or (C) any similar transaction or business combination involving the assets, equity, interests or capital stock of Cloud (each, a “Cloud Acquisition Proposal”), other than with Issuer (for the avoidance of doubt, no controlled equityholder of Contributor or member of Contributor’s management will be permitted to meet with any Person with respect to a Cloud Acquisition Proposal), (ii) furnish or disclose any non-public information to any Person, other than to Issuer, its Affiliates and their Representatives, in connection with a Cloud Acquisition Proposal, (iii) enter into any agreement regarding a Cloud Acquisition Proposal, other than with Issuer, or (iv) enter into any agreement, arrangement or understanding that would reasonably be expected to have an adverse effect on the ability of Contributor consummate the Contribution. Notwithstanding anything to the contrary in this Agreement, no inquiry, proposal, offer, discussion, negotiation or agreement that contemplates the sale, transfer, disposition, merger, business combination, financing, restructuring or other transaction involving the Cloud as part of any proposed Sale of Applied Parent shall be restricted by this Section 4.5(b).

4.6 Regulatory Approvals; Efforts.

(a) Prior to the Closing, the parties hereto shall, and shall cause their respective Affiliates to, use their respective reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable by such party under any applicable Laws to consummate and effectuate the Contribution and other transactions as contemplated herein and in the Transaction Documents, as promptly as practicable, including (i) preparing and filing all forms, registrations and notifications with any governmental authorities or third parties required to be filed to consummate the Contribution, (ii) using reasonable best efforts to satisfy the conditions to consummating the Contribution, (iii) using reasonable best efforts to obtain (and to cooperate with each other in obtaining) any consent, authorization, expiration or termination of a waiting period, permit, Order or approval of, waiver or any exemption by, any governmental authorities required to be obtained or made by the parties hereto or any of their respective Subsidiaries in connection with the Contribution or the taking of any action contemplated by this Agreement, (iv) defending any lawsuits or other legal Proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the Contribution, and (v) using reasonable best efforts with respect to the execution and delivery of all such instruments, deeds, assignments or assurances and do all other things reasonably necessary or desirable to consummate the Contribution and to fully carry out the purposes or intent of this Agreement.

4.7 Securities Laws Disclosure; Publicity.

Issuer shall not (i) issue a press release or (ii) file a Current Report on Form 8-K disclosing the material terms of the Transactions contemplated hereby (a “Press Release”), including forms of the Transaction Documents as exhibits thereto, with the SEC within the time required by the Exchange Act, in each case except to the extent required by applicable Law. Notwithstanding the foregoing, if such Press Release is required in accordance with applicable Law, it shall be on a form reasonably acceptable to APLD Intermediate after APLD Intermediate has had reasonable time to review and comment on such form. Issuer shall not issue any press release nor otherwise make any public

statement which contains any false, defamatory, or disparaging remarks, comments, or statements concerning Contributor, APLD Intermediate, Cloud or any of its Affiliates.

4.8 Acknowledgment of Dilution

. Issuer acknowledges that the issuance of the Exchanged Shares may result in dilution of the outstanding shares of Issuer Common Stock, which dilution may be substantial under certain market conditions. Issuer further acknowledges that its obligations under the Transaction Documents, including, without limitation, its obligation to issue the Exchanged Shares pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim Issuer may have against Contributor and regardless of the dilutive effect that such issuance may have on the ownership of the other stockholders of Issuer.

4.9 Notifications of Certain Events

. Subject to applicable Law and as otherwise required by any Governmental Entity, APLD Intermediate and/or Contributor, on the one hand, and Issuer, on the other hand, each shall keep the other apprised of the status of matters relating to the consummation of the Transactions contemplated by this Agreement, including promptly furnishing the other with copies of notices or other communications received by APLD Intermediate and/or Contributor or Issuer, as applicable, or any of their Subsidiaries, from any third party or any Governmental Entity with respect to this Agreement and the Transactions contemplated hereby. APLD Intermediate and/or Contributor and Issuer each shall give prompt written notice (including copies of relevant documents) to the other of any Effect (within 48 hours of a board or chief executive officer first becoming aware), individually or in the aggregate, that has had or would reasonably be expected to have a Cloud Material Adverse Effect or an Issuer Material Adverse Effect, as applicable, or of any failure of any condition to a party's obligation to consummate the Transactions contemplated by this Agreement or the Transaction Documents; provided, however, that the failure to deliver any such notice shall not affect any of the conditions set forth in ARTICLE V or give rise to any right to terminate under ARTICLE VI, unless the underlying breach would independently result in the failure of a condition set forth in ARTICLE V to be satisfied.

4.10 Tax Matters

(a) Tax Periods Ending on or before Closing Date. To the extent permitted by applicable Law, Issuer agrees to apply for any automatic extension of the deadline for filing any income Tax Returns that otherwise would be required to be filed before July 1, 2026. Not later than thirty (30) days prior to the due date for filing any federal income Tax Returns, for periods ending on or prior to the Closing Date that are filed after the Closing Date, Issuer shall provide APLD Intermediate with drafts of such Tax Returns. Issuer shall permit APLD Intermediate to review and comment on each such Tax Return described in this paragraph prior to filing and shall consider in good faith all of APLD Intermediate's reasonable comments timely provided.

(b) Cooperation on Tax Matters. Issuer shall cooperate fully, as and to the extent reasonably requested by APLD Intermediate, in connection with the filing of Tax Returns and any audit, litigation or other Proceeding with respect to Taxes. Such cooperation shall include the retention and (upon APLD Intermediate's request) the provision of records and information reasonably relevant to any such audit, litigation, or other Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

(c) Tax-Sharing Agreements. All tax-sharing agreements or similar agreements with respect to or involving Issuer, except for any such agreement or arrangement solely between or among any of Issuer and its Subsidiaries or any Tax sharing or indemnification provisions contained in any agreement entered into in the ordinary course of business and not primarily relating to Tax (e.g., leases, credit agreements or other commercial agreements) shall be terminated as of the Closing Date and, after the Closing Date, Issuer shall not be bound thereby or have any liability thereunder.

(d) Transfer Taxes; Mitigation. Notwithstanding anything to the contrary contained herein, Issuer shall bear 100% of any and all liabilities for any excise, sales, use, stamp, value added, documentary, filing, recording, transfer, stock transfer, gross receipts, registration, duty, securities transactions or similar fees or Taxes or governmental charges (together with any interest or penalty, addition to tax or additional amount imposed) as levied by any Governmental Entity in connection with the Contribution (collectively, "Transfer Taxes"), regardless of the Person liable for such Transfer Taxes under applicable Law. Issuer shall, at its own expense, prepare and file the required Tax Returns and other required documents with respect to the Transfer Taxes required to be paid pursuant to the preceding sentence and shall promptly provide APLD Intermediate with evidence of the payment of such Transfer Taxes.

4.11 Transaction Litigation

. Issuer shall promptly (and in any event within two business days) notify APLD Intermediate in writing of, and shall give APLD Intermediate the opportunity to participate fully and actively in the defense and settlement of, any shareholder or stockholder claim or litigation (including any class action or derivative litigation) against or otherwise involving Issuer and/or any of their respective directors or officers relating to this Agreement, the Contribution or any of the other Transactions contemplated by this Agreement (any such claim or litigation, "Transaction Litigation"). No compromise or full or partial settlement of any such claim or litigation shall be agreed to by Issuer without APLD Intermediate's prior written consent (not to be unreasonably delayed, conditioned or withheld).

4.12 Confidentiality

. Any such information provided pursuant to this Agreement shall be held in confidence to the extent required by, and in accordance with, the provisions of that certain Mutual Non-Disclosure Agreement, by and between Applied Parent and Issuer, dated as of August 11, 2025 (the "Confidentiality Agreement").

4.13 Nasdaq Listing of Shares

. Prior to Closing, Issuer shall apply to cause the shares of Issuer Common Stock issued in connection with the Transactions contemplated by this Agreement to be approved for listing on Nasdaq and shall timely submit a notice of listing of additional shares with Nasdaq with respect thereto.

4.14 Takeover Statutes

. If any Takeover Statute is or may become applicable to the Transactions contemplated by this Agreement, Issuer, and the Issuer Board, as applicable, shall promptly grant such approvals and take such lawful actions as are necessary so that transactions contemplated by this Agreement may be consummated as promptly as practicable on the terms contemplated by this Agreement, and shall otherwise take any such lawful actions to eliminate or minimize the effects of such statute, and any regulations promulgated thereunder, on such Transactions.

4.15 Legend

(a) Contributor agrees that all certificates or other instruments representing the Exchanged Shares issued pursuant to this Agreement will bear a legend substantially to the following effect:

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A

REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.

(b) In connection with any sale, assignment, transfer or other disposition of the Exchanged Shares by Contributor pursuant to Rule 144, pursuant to any other exemption under the Securities Act or pursuant to sale under an effective registration statement such that the purchaser acquires freely tradable shares and upon compliance by Contributor with the requirements of this Section 4.15, if requested by Contributor (or any Permitted Transferee), Issuer shall cause the Transfer Agent to timely remove any restrictive legends related to the book entry account holding such Exchanged Shares, and make a new, unlegended entry for such book entry Exchanged Shares, provided that Issuer has received customary representations and other documentation reasonably acceptable to Issuer in connection therewith. Subject to receipt by Issuer of customary representations and other documentation reasonably acceptable to Issuer in connection therewith (including in the case of clause (i) below, to the extent the Transfer Agent requires an opinion from counsel pursuant to clause (B) below, representations and documentation from a broker dealer acceptable to Issuer as to prospective sales pursuant to such registration statement), upon the earlier of such time as the Exchanged Shares (i) have been registered under the Securities Act pursuant to an effective registration statement, (ii) have been sold or transferred pursuant to an effective registration statement, (iii) have been sold pursuant to Rule 144, or (iv) are eligible for resale under Rule 144(b)(1) or any successor provision (without the requirement for Issuer to comply with the current public information obligations of Rule 144(c)), Issuer shall promptly upon any request therefor from Contributor accompanied by such customary and reasonably acceptable documentation referred to above (A) deliver to the Transfer Agent irrevocable instructions that the Transfer Agent shall make a new, unlegended entry for such book entry Exchanged Shares, and (B) use reasonably best efforts to cause its counsel to deliver to the Transfer Agent one or more blanket opinions to the effect that the removal of such legends in such circumstances may be effected under the Securities Act.

4.16 Reservation of Common Stock

. As of the date hereof, Issuer has reserved and Issuer shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Issuer Common Stock for the purpose of enabling Issuer to issue Issuer Common Stock pursuant to this Agreement.

4.17 Listing of Issuer Common Stock

. Issuer hereby agrees to use commercially reasonable efforts to maintain the listing or quotation of the Issuer Common Stock on the Trading Market on which it is currently listed, and in connection with the execution and delivery of this Agreement, Issuer has submitted the Listing Application to Nasdaq to list or quote all of the Exchanged Shares on such Trading Market and shall not consummate the Closing until such Listing Application has been approved. Issuer further agrees, if Issuer applies to have the Issuer Common Stock traded on any other Trading Market, it will then include in such application all of the Exchanged Shares, and will take such other action as is necessary to cause all of the Exchanged Shares to be listed or quoted on such other Trading Market as promptly as possible. Issuer will then take all action reasonably necessary to continue the listing and trading of its Issuer Common Stock on a Trading Market and will comply in all respects with Issuer's reporting, filing and other obligations under the bylaws or rules of the Trading Market. Issuer agrees to maintain the eligibility of its Issuer Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Company or such other established clearing corporation in connection with such electronic transfer.

4.18 Directors' and Officers' Indemnification and Insurance

(a) Contributor agrees that all rights to indemnification, advancement of expenses and exculpation from liability for acts or omissions occurring on or prior to the Closing Date now existing in favor of any of the current or former directors, managers, officers or authorized person of Issuer (each an "Indemnified Party" and collectively the "Indemnified Parties"), to the extent permitted under applicable Law and required by Issuer's Organizational Documents as in effect as of the date of this Agreement shall survive the Closing Date and shall continue in full force and effect in accordance with their respective terms for a period of not less than six (6) years after the Closing Date, and in the event that any Proceeding is pending or asserted or any claim made during such period, until the disposition of any such Proceeding or claim. From and after the Closing, Contributor shall cause Issuer and its Subsidiaries to comply with and honor the foregoing obligations.

(b) Prior to or on the Closing Date, Issuer shall, at Issuer's sole cost and expense, obtain a non-cancellable (i) "tail" directors' and officers' liability, employment practices liability, and fiduciary liability insurance policies ("D&O Tail Policy") with an extended reporting period of six (6) years from the Closing Date insuring claims for conduct, acts, and omissions occurring prior to the Closing Date and (ii) "tail" products liability and cyber insurance policies ("Cyber/Products Tail Policy," and together with the D&O Tail Policy, the "Tail Insurance"), in each case, insuring events, acts, and omissions occurring before the Closing Date and on terms and conditions, including limits and retentions, no less favorable than Issuer's existing policies and in form and substance reasonably satisfactory to APLD Intermediate and Contributor.

(c) The covenants contained in this Section 4.18 are intended to be for the benefit of, and shall be enforceable by, each of the Indemnified Parties and their respective heirs and legal representatives and shall not be deemed exclusive of any other rights to which an Indemnified Party is entitled, whether pursuant to Law, Contract or otherwise.

4.19 Contractor Information. Issuer agrees to use best efforts to provide the Contributor with a true, correct, and complete list of all independent contractors (other than those employed or retained by third party corporate entities) and consultants, including, but not limited to, all individuals who provide services to Issuer or any Issuer Subsidiary either personally or through a single member corporate entity and receive a Form 1099, of Issuer or any Issuer Subsidiary, showing date of engagement; hourly rate or other basis of compensation; principal work location; job title or function, each as applicable, within ten (10) days of the date hereof.

ARTICLE V.

CONDITIONS TO CLOSING

5.1 Conditions to Each Party's Obligation to Effect the Contribution

. The respective obligations of each party to effect the Contribution and complete the Transactions contemplated hereby shall be subject to the fulfillment (or waiver in a writing signed by Issuer, APLD Intermediate and Contributor, to the extent permissible under applicable Law and provided that such waiver shall only be effective as to the conditions of the waiving party) at or prior to the Closing of the following conditions:

(a) The Stockholder Approval shall have been obtained in accordance with all applicable Law, including, for the avoidance of doubt, all of the Securities Laws and rules of the Trading Market.

(b) If the Stockholder Approval is obtained by Written Consent, the Information Statement shall have been cleared by the SEC and shall have been sent to the holders of Issuer Voting Stock at least twenty (20) calendar days prior to the Closing Date in accordance with Regulation 14C of the Exchange Act; provided, that, if the Stockholder Approval is obtained at the Stockholder Meeting, the definitive Proxy Statement shall have been cleared by the SEC and mailed in accordance with Regulation 14A under the Exchange Act.

(c) No Order or Law shall have been entered, adopted, enacted, issued, promulgated or enforced, in each case, by a Governmental Entity of competent jurisdiction, that prevents, enjoins, prohibits, restrains or makes illegal the consummation of the Contribution or the other transactions contemplated hereby.

(d) All requisite approvals or waivers of any Governmental Entity or other third parties in each case as set forth on Section 5.1(d) of the Disclosure Schedules have been obtained.

(e) Immediately following the Closing, Issuer, on a consolidated basis with Cloud, shall have Cash and Cash Equivalents of at least \$15,000,000, inclusive of net proceeds of the PIPE Investment.

(f) The Restated Issuer Articles shall have been duly adopted by all necessary corporate action on the part of the Issuer, filed with the Secretary of State of the State of Nevada, and shall be in full force and effect as of immediately prior to the Closing.

5.2 Conditions to Obligation of Issuer to Effect the Contribution

The obligation of Issuer to effect the Contribution is further subject to the fulfillment (or waiver in a writing signed by Issuer, to the extent permissible under applicable Law) at or prior to the Closing of the following conditions:

(a) (i) The representations and warranties of Cloud set forth in Section 3.2 that are qualified by a “Cloud Material Adverse Effect” qualification shall be true and correct in all respects as so qualified at and as of the Closing Date as though made at and as of the Closing Date and (ii) the representations and warranties of Cloud, APLD Intermediate and Contributor set forth in Section 3.2 that are not qualified by a “Cloud Material Adverse Effect” qualification shall be true and correct at and as of the Closing Date as though made at and as of the Closing Date, except for such failures to be true and correct that have not had, individually or in the aggregate, a Cloud Material Adverse Effect; provided that representations and warranties set forth in Section 3.2 that are made as of a particular date or period shall be true and correct (in the manner set forth in clauses (i) or (ii) of this Section 5.2(a), as applicable) only as of such date or period.

(b) APLD Intermediate and Contributor shall have performed and complied with, in each case, in all material respects, all covenants required by this Agreement to be performed or complied with by it prior to the Closing.

(c) Contributor shall have delivered to Issuer a certificate, dated the Closing Date and signed by a duly authorized executive officer in their capacity as such (and not individually) of each of Contributor and Cloud, certifying to the effect that the conditions set forth in Section 5.2(a) and Section 5.2(b) have been satisfied.

(d) Since the date hereof, there shall not have occurred and be continuing a Cloud Material Adverse Effect.

(e) Contributor shall have delivered to Issuer duly executed counterparts to all Transaction Documents to which it, Cloud or APLD Intermediate is a party, and all such other documents and deliveries set forth in Section 2.2(b).

5.3 Conditions to Obligation of APLD Intermediate and Contributor to Effect the Contribution

The obligation of each of APLD Intermediate and Contributor to effect the Contribution is further subject to the fulfillment (or the waiver in a writing signed by APLD Intermediate and Contributor, to the extent permissible under applicable Law) at or prior to the Closing of the following conditions:

(a) (i) The representations and warranties of Issuer set forth in Section 3.1 that are qualified by an “Issuer Material Adverse Effect” qualification shall be true and correct in all respects as so qualified at and as of the Closing Date as though made at and as of the Closing Date and (ii) the representations and warranties of Issuer set forth in Section 3.1 that are not qualified by an “Issuer Material Adverse Effect” qualification shall be true and correct at and as of the Closing Date as though made at and as of the Closing Date, except for such failures to be true and correct that have not had, individually or in the aggregate, an Issuer Material Adverse Effect; provided that representations and warranties set forth in Section 3.1 that are made as of a particular date or period shall be true and correct (in the manner set forth in clauses (i) or (ii) of this Section 5.3(a), as applicable) only as of such date or period.

(b) Issuer shall have performed and complied with, in each case, in all material respects, all covenants required by this Agreement to be performed or complied with by it prior to the Closing.

(c) Issuer shall have delivered to Contributor a certificate, dated the Closing Date and signed by a duly authorized executive officer in their capacity as such (and not individually), certifying to the effect that the conditions set forth in Section 5.3(a) and Section 5.3(b) have been satisfied.

(d) The PIPE Investment shall be consummated concurrently with the Closing.

(e) Issuer shall have delivered the third-party consents and waivers set forth on Section 5.3(e) of the Disclosure Schedules.

(f) Since the date hereof, there shall not have occurred an Issuer Material Adverse Effect.

(g) The Listing Application shall have been submitted and approved, and a copy thereof provided to APLD Intermediate.

(h) The Investor Rights Agreement shall be in full force and effect in accordance with its terms.

(i) Evidence, reasonably satisfactory to APLD Intermediate, that the Tail Insurance is bound, paid for, and in effect as of the Closing.

(j) Issuer shall have delivered to Contributor duly executed counterparts to all Transaction Documents to which it is a party, and all such other documents and deliveries set forth in Section 2.2(a).

5.4 Waiver of Conditions; Frustration of Purpose

All conditions to the consummation of the Contribution shall be deemed to have been satisfied or waived from and after the Closing Date. Neither Issuer, APLD Intermediate nor Contributor may rely on the failure of any condition set forth in this ARTICLE V, as applicable, to be satisfied if such failure was caused by such party's material breach of any provision of this Agreement.

ARTICLE VI. TERMINATION

6.1 Termination or Abandonment

Notwithstanding anything in this Agreement to the contrary, this Agreement may be terminated, and this Agreement and the Contribution may be abandoned at any time prior to the Closing Date, whether before or after, subject to the terms hereof, as follows:

(a) by the mutual written consent of Issuer and APLD Intermediate;

(b) by either Issuer or APLD Intermediate if the Contribution shall not have been consummated on or prior to 5:00 p.m. New York City time, on July 15, 2026 (the “End Date”); provided, further, that the right to terminate this Agreement pursuant to this Section 6.1(b) shall not be available to a party if the failure of the Contribution to be consummated by such date shall be proximately caused by the material breach or inaccuracy of, or failure to comply with, any representation, warranty, covenant or other agreement of such party set forth in this Agreement by such party;

(c) by either Issuer or APLD Intermediate if an Order shall have been issued restraining, enjoining or otherwise prohibiting the consummation of the Contribution and such order shall have become final and nonappealable; provided that the right to terminate this Agreement pursuant to this Section 6.1(c) shall not be available to a party if such Order was proximately caused by the material breach or inaccuracy of, or failure to comply with, any representation, warranty, covenant or other agreement of such party set forth in this Agreement by such party;

(d) by Issuer, if Contributor, APLD Intermediate or Cloud shall have materially breached or there is any material inaccuracy in any of their respective representations or warranties, or shall have materially breached or failed to perform any of its covenants or other agreements contained in this Agreement, which breach, inaccuracy or failure to perform (i) if it occurred or was continuing to occur on the Closing Date, would result in a failure of a condition set forth in Section 5.2(a) or Section 5.2(b) and (ii) is either not curable or is not cured by the earlier of (A) the End Date and (B) the date that is thirty (30) days following delivery of written notice from Issuer to Contributor, APLD Intermediate or Cloud, as applicable, of such breach, inaccuracy or failure;

(e) by APLD Intermediate, if Issuer shall have materially breached or there is any material inaccuracy in any of its representations or warranties, or shall have materially breached or failed to perform any of its covenants or other agreements contained in this Agreement, which breach, inaccuracy or failure to perform (i) if it occurred or was continuing to occur on the Closing Date, would result in a failure of a condition set forth in Section 5.3(a) or Section 5.3(b) and (ii) is either not curable or is not cured by the earlier of (A) the End Date and (B) the date that is thirty (30) days following delivery of written notice from Contributor or APLD Intermediate to Issuer of such breach, inaccuracy or failure;

(f) by APLD Intermediate, at any time prior to receiving the Stockholder Approval, in the event that Issuer fails to obtain the Written Consent and deliver the same to APLD Intermediate prior to the Consent Deadline; provided, that, if the Written Consent is not obtained by the Consent Deadline and APLD elects to cause Issuer to initiate the Meeting Procedures, then in the event that Issuer fails to obtain the Stockholder Approval prior to the Meeting Approval Deadline; or

(g) by APLD Intermediate, at any time after or concurrently with the announcement of a Sale of Applied Parent.

6.2 Effect of Termination

. In the event of termination of this Agreement pursuant to Section 6.1, this Agreement shall terminate (except that Section 7.1 and the provisions of the final sentence of this Section 6.2 shall survive any termination), and there shall be no other liability on the part of Issuer, on the one hand, or Contributor, APLD Intermediate or Cloud, on the other hand. In the event of termination of this Agreement, and regardless of the reason for the termination, the provisions set forth in the Confidentiality Agreement shall continue in full force and effect and any such termination shall not amend, modify, release, waive or otherwise limit any rights or obligations under the Confidentiality Agreement.

ARTICLE VII. MISCELLANEOUS

7.1 Expenses

. Unless this Agreement is terminated in accordance with ARTICLE VI, Issuer shall pay, at the Closing, all fees and expenses of Issuer, Cloud, APLD Intermediate and Contributor, including the fees and expenses of their respective advisers, counsel, accountants, and other experts, if any, as well as all other out-of-pocket expenses incurred by such parties in connection with the negotiation, preparation, execution, and delivery of this Agreement (collectively, the “Expenses”). If this Agreement is terminated in accordance with ARTICLE VI, Issuer shall be responsible for its own Expenses, and APLD Intermediate and Contributor shall be responsible for its own Expenses and any Expenses incurred by Cloud.

7.2 Entire Agreement

. The Transaction Documents, together with the exhibits and schedules hereto and thereto, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

7.3 Notices

. Any notice, request, instruction or other document to be given hereunder by any party to the other will be either personally delivered, sent by electronic mail, or sent by certified mail, return receipt requested, or sent by reputable overnight courier service (charges prepaid) to the parties at the applicable address set forth below, or at such address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party. Notices will be deemed to have been given hereunder when delivered personally or sent by telecopier or electronic mail (provided confirmation of transmission is received), three (3) days after deposit in the U.S. mail and one (1) day after deposit with a reputable overnight courier service.

(a) If to APLD Intermediate, Contributor or Cloud:

c/o Applied Digital Corporation
3811 Turtle Creek Blvd., Suite 2100 Dallas, TX 75219
Attention: Saidal Mohmand
Email: [***]

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

Lowenstein Sandler LLP
1251 Avenue of the Americas
New York, NY 10020
Attention: Steven E. Siesser, Esq.
Email: [***]

(b) If to Issuer:

Ekso Bionics Holdings, Inc.

[***]
Attn: Scott Davis
E-Mail: [***]

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

Wilson Sonsini Goodrich & Rosati
One Market Plaza, Spear Tower #3300,
San Francisco, CA 94105
Attn: Ethan Lutske
E-mail: [***]

7.4 Amendments; Waivers

. This Agreement may be amended only by a writing signed by Issuer and APLD Intermediate. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The conditions to each party's obligation to consummate the Closing are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permitted by applicable Law. No waiver by any party to this Agreement will be effective unless it is in a writing signed by a duly authorized officer of the waiving party that makes express reference to the provision or provisions subject to such waiver. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

7.5 Successors and Assigns

. Neither this Agreement, nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of Law or otherwise) without the prior written consent of each of the parties hereto, provided, however, that (a) the parties may assign their rights, interests and obligations under this Agreement, in whole or in part, to one or more Permitted Transferees, and (b) in the event of such assignment, (i) the assignee shall agree in writing to be bound by the provisions of this Agreement, including the rights, interests and obligations so assigned and (ii) the assignor shall remain responsible for the provisions of this Agreement and the performance of its obligations hereunder.

7.6 No Third-Party Beneficiaries

. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any Person other than the parties hereto (and their permitted assigns), any benefit, right or remedies; provided that, notwithstanding the foregoing, the Indemnified Parties are express third party beneficiaries of Section 4.18.

7.7 Captions

. The article, section, paragraph and clause captions herein are for convenience of reference only, do not constitute part of this Agreement and will not be deemed to limit or otherwise affect any of the provisions hereof.

7.8 Governing Law

. This Agreement shall be governed by, and construed in accordance with, the Laws of the state of New York, without giving effect to any choice of law or conflict of law rules or provisions (whether of the state of New York or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the state of New York; provided that any matters relating to the internal governance of Issuer will be governed by, and construed in accordance with, the Laws of the state of Nevada. Any dispute relating hereto shall be heard in any state or federal court located in Manhattan in the state of New York (each a "Chosen Court" and collectively, the "Chosen Courts"), and the parties agree to the exclusive jurisdiction and venue of the Chosen Courts. Such Persons further agree that any Proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the Transactions contemplated hereby or by any matters related to the foregoing (the "Applicable Matters") shall be brought exclusively in a Chosen Court, and that any Proceeding arising out of this Agreement or any other Applicable Matter shall be deemed to have arisen from a transaction of business in the state of New York, and each of the foregoing Persons hereby irrevocably consents to the jurisdiction of such Chosen Courts in any such Proceeding and irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that such Person may now or hereafter have to the laying of the venue of any such suit, action or Proceeding in any such Chosen Court or that any such Proceeding brought in any such Chosen Court has been brought in an inconvenient forum. Such Persons further covenant not to bring a Proceeding with respect to the Applicable Matters (or that could affect any Applicable Matter) other than in such Chosen Court and not to challenge or enforce in another jurisdiction a judgment of such Chosen Court. Process in any such Proceeding may be served on any Person with respect to such Applicable Matters anywhere in the world, whether within or without the jurisdiction of any such Chosen Court. Without limiting the foregoing, each such Person agrees that service of process on such party as provided in Section 7.8 shall be deemed effective service of process on such Person. AS SPECIFICALLY BARGAINED FOR INDUCEMENT FOR EACH OF THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT (AFTER HAVING THE OPPORTUNITY TO CONSULT WITH COUNSEL), EACH PARTY HERETO EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS AGREEMENT OR THE MATTERS CONTEMPLATED HEREBY.

7.9 Survival

. None of the representations, warranties, covenants and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Closing, except for covenants and agreements that contemplate performance after the Closing or otherwise expressly by their terms survive the Closing.

7.10 Execution

. This Agreement, and any amendments hereto, to the extent signed and delivered by means of an electronic transmission, including by a facsimile machine or via email, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. The words "execution," "execute," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the Transactions contemplated hereby (including without limitation waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act or any state Laws based on the Uniform Electronic Transactions Act. No party hereto or to any such agreement or instrument shall raise the use of electronic transmission by a facsimile machine or via email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through such electronic transmission as a defense to the formation of a contract and each such party forever waives any such defense. This Agreement may be executed in separate counterparts, each of which will be an original and all of which together shall constitute one and the same agreement binding on each party hereto.

7.11 Severability

. If any provision of this Agreement or the application thereof to any Person (including the officers and directors of the parties hereto) or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances other than those as to which it has been held invalid or unenforceable, will remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the Transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

7.12 Remedies

. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement and the Transaction Documents were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that, without the necessity of posting bond or other undertaking, the parties shall be entitled to specific performance of the terms hereof, this being in addition to any other remedies to which they are entitled at law or equity, and in the event that any action or suit is brought in equity to enforce the provisions of this Agreement and the Transaction Documents, and no party will allege, and each party hereby waives, the defense or counterclaim that there is an adequate remedy at law.

7.13 Non-Recourse

. This Agreement may only be enforced against, and any claims or causes of action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance hereof may only be made against the entities that are expressly identified as parties hereto (including entities that become parties hereto after the date hereof, pursuant to a permitted assignment in accordance with Section 7.5), and not against any other Person, except as expressly provided in this Section 7.13. Notwithstanding anything to the contrary in this Agreement, no claim or cause of action (whether in tort, contract or otherwise) may be asserted against, and no recourse shall be had to Applied Parent or any Subsidiary of Applied Parent, other than Contributor, APLD Intermediate or Cloud, in each case in their capacities as parties hereto.

7.14 Construction

. Wherever required by the context of this Agreement, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa, and references to any agreement, document or instrument shall be deemed to refer to such agreement, document or instrument as amended, supplemented or modified from time to time. All article, section, paragraph or clause references not attributed to a particular document shall be references to such parts of this Agreement, and all exhibit, annex, letter and schedule references not attributed to a particular document shall be references to such exhibits, annexes, letters and schedules to this Agreement. In addition, the following terms are ascribed the following meanings:

- (a) the word "or" is not exclusive;
- (b) the words "including," "includes," "included" and "include" are deemed to be followed by the words "without limitation";
- (c) the terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision; and
- (d) the term "business day" means any day except Saturday, Sunday and any day which shall be a legal holiday or a day on which banking institutions in New York generally are authorized or required by Law or other governmental action to close.

(Signature Pages Follow) IN WITNESS WHEREOF, the parties hereto have caused this Contribution Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**APLD INTERMEDIATE
APLD INTERMEDIATE HOLDCO LLC**

By: /s/ Saidal Mohmand
Name: Saidal Mohmand
Title: Chief Financial Officer

**CONTRIBUTOR
APLD CHRONOSCALE HOLDCO LLC**

By: /s/ Saidal Mohmand
Name: Saidal Mohmand
Title: Chief Financial Officer

**CLOUD
APPLIED DIGITAL CLOUD CORPORATION**

By: /s/ Saidal Mohmand
Name: Saidal Mohmand
Title: Chief Financial Officer

**ISSUER
EKSO BIONICS HOLDINGS, INC.**

By: /s/ Scott G. Davis
Name: Scott G. Davis
Title: Chief Executive Officer

**EXHIBIT A
INVESTOR RIGHTS AGREEMENT**

**EXHIBIT B
FORM OF STOCK POWER**

STOCK POWER

FOR VALUE RECEIVED, APLD ChronoScale HoldCo LLC, a Delaware limited liability company does hereby sell, assign and transfer unto Ekso Bionics Holdings, Inc., a Nevada corporation 1,200 shares of the common stock (the “Shares”) of Applied Digital Cloud Corporation, a Nevada corporation (the “Company”), standing in its name on the books of the Company and does hereby irrevocably constitute and appoint [●] attorney to transfer the Shares on the books of the Company, with full power of substitution in the premises.

Dated: _____, 2026

By: _____
Name: [Saidal Mohmand]
Title: [Chief Financial Officer]

**EXHIBIT C
RESTATED ISSUER BYLAWS**

**SECOND AMENDED AND RESTATED BYLAWS
OF
CHRONOSCALE CORPORATION**

Effective as of [●], 2026

ARTICLE I

Meetings of Stockholders

Section 1.1 Annual Meetings. If required by applicable law, an annual meeting of stockholders shall be held for the election of directors at such date, time and place, if any, either within or without the State of Nevada, as may be designated by resolution or resolutions of the board of directors (the “Board of Directors”) of ChronoScale Corporation (as such name may be changed from time to time in accordance with applicable law, the “Corporation”). Any annual meeting of stockholders may be postponed by action of the Board of Directors at any time in advance of such meeting.

Section 1.2 Special Meetings. Except as otherwise provided by or pursuant to the Corporation’s articles of incorporation (including any certificate filed with the Secretary of State of the State of Nevada establishing a series of preferred stock of the Corporation) (as the same may be amended, restated or amended and restated, from time to time, the “Articles of Incorporation”), special meetings of stockholders for any purpose or purposes may be called at any time solely and exclusively by the Board of Directors, the chairman of the Board of Directors (the “Chairman”) (or, if and to the extent expressly provided for in the Articles of Incorporation with respect to any series of preferred stock, by the holders of such series of preferred stock, acting pursuant to the terms applicable thereto). Except as provided in the foregoing sentence, special meetings of stockholders may not be called by any other person or persons. Any special meeting of stockholders may be postponed by action of the Board of Directors (or by the person calling such meeting, if other than the Board of Directors) at any time in advance of such meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 1.3 Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given that shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by applicable law, the Articles of Incorporation or these Second Amended and Restated Bylaws (as the same may be further amended, restated or amended and restated, from time to time, these “Bylaws”), the notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, as of the record date for determining the stockholders entitled to notice of the meeting.

Section 1.4 Adjournments. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, if any, and notice need not be given of any such adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person or by proxy and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment or postponement is for more than sixty (60) days, the Board of Directors shall fix a new record date for such adjourned or postponed meeting in accordance with Section 1.8 of these Bylaws, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 1.5 Quorum. Except as otherwise provided by applicable law, by or pursuant to the Articles of Incorporation or by these Bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of a majority in voting power of the then outstanding shares of capital stock of the Corporation entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum; provided, however, that for so long as Applied Digital Corporation, a Nevada corporation (“APLD”) Beneficially Owns (which, for purposes of these Bylaws, shall have the meaning ascribed thereto in Rule 13d-3 under the Exchange Act) more than fifty percent (50%) of such voting power, the presence in person or by proxy of the holders of at least two thirds (66 2/3%) in voting power of the then outstanding shares entitled to vote at the meeting shall be required to constitute a quorum. In the absence of a quorum, the stockholders so present may, by a majority in voting power thereof, adjourn the meeting from time to time in the manner provided in Section 1.4 of these Bylaws until a quorum shall be present in person or represented by proxy. Shares of the Corporation’s capital stock shall neither be entitled to vote nor be counted for quorum purposes if such shares belong to (a) the Corporation, (b) to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly by the Corporation or (c) any other entity, if a majority of the voting power of such other entity is held, directly or indirectly by the Corporation or if such other entity is otherwise controlled, directly or indirectly, by the Corporation; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including but not limited to its own capital stock, held by it in a fiduciary capacity.

Section 1.6 Organization. Meetings of stockholders shall be presided over by the Chairman of the Board of Directors, if any, or in his or her absence by the Chief Executive Officer, if any, or in his or her absence, by the President, if any, or in his or her absence, by a chairperson designated by the Board of Directors, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 1.7 Voting; Proxies. Except as otherwise provided by or pursuant to the Articles of Incorporation, including any certificates of designation for any class of capital stock, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one (1) vote for each share of capital stock of the Corporation held by such stockholder which has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders or to consent to corporate action without a

meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary a revocation of the proxy or a new proxy bearing a later date. Voting at meetings of stockholders need not be by written ballot. At all meetings of stockholders for the election of directors (other than any Class/Series Directors) (as defined below) at which a quorum is present, a majority of the votes cast shall be sufficient to elect; provided, however, that any meeting of stockholders for the election of directors (other than any Class/Series Directors) at which a quorum is present, and one or more stockholders have (a) nominated one or more individuals for election to the Board of Directors in compliance with Section 1.13 of these Bylaws, such that the number of nominees for election to the Board of Directors exceeds the number of open seats, and (b) not withdrawn such Nomination or Nominations (as each is defined below) on or prior to the tenth (10th) day preceding the date the Corporation first gives notice of such meeting to stockholders, a plurality of the votes cast shall be sufficient to elect. When a quorum is present at any meeting of stockholders, all other elections, questions or business presented to the stockholders at such meeting shall be decided by the affirmative vote of a majority of votes cast with respect to any such election, question or business presented to the stockholders unless the election, question or business is one which, by express provision of the Articles of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, any regulation applicable to the Corporation or its securities or the laws of the State of Nevada, a vote of a different number or voting by class or series is required, in which case, such express provision shall govern. For purposes of this Section 1.7, a "majority of votes cast" means that the number of votes cast "for" a nominee, question or business exceeds the number of votes cast "against" such nominee, question or business.

Section 1.8 Fixing Date for Determination of Stockholders of Record. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, or to consent to corporate action without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date for determining stockholders entitled to notice of or to vote at the meeting, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date: (a) in the case of a determination of stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, shall, unless otherwise required by applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting; and (b) in the case of a determination of stockholders entitled to consent to corporate action without a meeting, shall not be more than ten (10) days from the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date is fixed: (i) the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held; and (ii) the record date for determining stockholders entitled to consent to corporate action without a meeting, when no prior action of the Board of Directors is required by applicable law, shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, or, if prior action by the Board of Directors is required by applicable law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for the stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for the determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 1.8 at the adjourned meeting.

Section 1.9 Maintenance of List of Stockholders. The Corporation shall keep, at its principal office or with its custodian of records whose name and street address are available at the corporation's registered office, a list, revised annually not later than 60 days after the date by which an annual list is required to be filed pursuant to Nevada Revised Statute 78.150, containing only the names, alphabetically arranged, of all persons who are stockholders of record of the Corporation, showing their places of residence, if known, and the number of shares held by them respectively. Such list shall be open to the inspection by any person who has been a stockholder of record of the Corporation for at least six (6) months immediately preceding the demand, or any person holding, or thereunto authorized in writing by the holders of, at least five percent (5%) of all of its outstanding shares, upon at least five (5) days' written demand, including the affidavit required pursuant to Nevada Revised Statute 78.105. Absent manifest error or actual fraud, the stock ledger of the Corporation, as maintained by the Corporation or its designated transfer agent, shall conclusively determine the stockholders of record of the Corporation.

Section 1.10 Action By Consent in Lieu of Meeting. Notwithstanding anything to the contrary in these Bylaws, for so long as APLD Beneficially Owns more than fifty percent (50%) of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents, setting forth the action so taken, shall be signed by the holders of outstanding capital stock of the Corporation having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation in accordance with applicable law. At all other times, stockholder action shall be taken only at a duly called annual or special meeting of the stockholders and may not be taken by written consent.

Section 1.11 Inspectors of Election. The Corporation may, and shall if required by applicable law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the individual presiding over the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (a) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (b) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors and (e) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by applicable law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders, the inspectors may consider such information as is permitted by applicable law. No individual who is a candidate for an office at an election may serve as an inspector at such election.

Section 1.12 Conduct of Meetings. The date and time of the opening and the closing of the polls for each election, question or business upon which the stockholders will vote at a meeting of stockholders shall be announced at the meeting by the individual presiding over the meeting. Without limiting the foregoing, the presiding individual may impose reasonable time, topic and manner limitations on questions and comments to ensure orderly conduct and to confine discussion to matters properly before the meeting. If a stockholder proposal or nomination is determined to be procedurally deficient but the deficiency is reasonably curable, the Corporation shall provide prompt notice of such deficiency to the proponent, and the presiding individual may permit a brief recess or deferral to allow the proponent a reasonable opportunity to cure such deficiency before the polls close; proposals or nominations that remain deficient after such opportunity shall be disregarded. The Board of Directors may adopt (by resolution or resolutions thereof) such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the individual presiding over any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding individual, are appropriate for the proper conduct of the meeting of stockholders. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the individual presiding over the meeting of stockholders, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting of stockholders; (b) rules and procedures for maintaining order at the meeting of stockholders and the safety of those present; (c) limitations on attendance at or participation in the meeting of stockholders to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other individuals as the individual presiding over the meeting of stockholders shall determine; (d) restrictions on entry to the meeting of stockholders after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants in the meeting of stockholders. The Board of Directors or, in addition to making any other determinations that may be appropriate to the conduct of the meeting of stockholders, the individual presiding over any meeting of stockholders, in each case, shall have the

power and duty to determine whether any election, question or business was or was not properly made, proposed or brought before the meeting of stockholders and therefore shall be disregarded and not be considered or transacted at the meeting, and, if the Board of Directors or the individual presiding over the meeting, as the case may be, determines that such election, question or business was not properly made, proposed or brought before the meeting of stockholders and shall be disregarded and not be considered or transacted at the meeting, the individual presiding over the meeting shall declare to the meeting that such election, question or business was not properly made, proposed or brought before the meeting and shall be disregarded and not be considered or transacted at the meeting, and any such election, question or business shall not be considered or transacted at the meeting. Unless and to the extent determined by the Board of Directors or the individual presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 1.13 Notice of Stockholder Business and Nominations.

(a) Annual Meetings of Stockholders.

(i) Nominations of one or more individuals for election to the Board of Directors by the stockholders generally entitled to vote (which, for the avoidance of doubt, shall exclude nominations of one or more individuals for election as Class/Series Directors (as defined below)) (each, a "Nomination," and more than one, "Nominations") and the proposal of any question or business other than a Nomination or Nominations to be considered by the stockholders generally entitled to vote (which, for the avoidance of doubt, shall exclude any question or business other than a Nomination or Nominations required by or pursuant to the Articles of Incorporation to be voted on solely and exclusively by the holders of any class (voting separately as a class) or series (voting separately as a series) of capital stock of the Corporation then outstanding) (collectively, "Business") may be made at an annual meeting of stockholders only a. pursuant to the Corporation's notice of meeting (or any supplement thereto), provided, however, that reference in the Corporation's notice of meeting to the election of directors or the election of members of the Board of Directors shall not include or be deemed to include a Nomination or Nominations, b. by or at the direction of the Board of Directors or c. by any stockholder of the Corporation who was a stockholder of record of the Corporation at the time the notice provided for in this Section 1.13 is delivered to the Secretary, who is entitled to vote at the meeting and who complies with the procedures set forth in this Section 1.13.

(ii) For Nominations or Business to be properly brought before an annual meeting of stockholders by a stockholder pursuant to Section 1.13(a)(i)(C) of these Bylaws, the stockholder must have given timely notice thereof in writing to the Secretary and any proposed Business must constitute a proper matter for stockholder action. The Corporation may notify the stockholder of any immaterial deficiencies in such notice, and the stockholder shall have five (5) business days following delivery of such notice (but in no event later than the second (2nd) business day prior to the meeting) to cure such immaterial deficiencies; material deficiencies or untimely notices shall not be subject to cure. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first (1st) anniversary of the preceding year's annual meeting of stockholders; provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting of stockholders commence a new time period (or extend any time period) for the giving of the stockholder's notice as described above. The stockholder's notice shall set forth: a. as to each Nomination to be made by such stockholder, (1) all information relating to the individual subject to such Nomination that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), without regard to the application of the Exchange Act to either the Nomination or the Corporation, (2) such individual's written consent to being named in any proxy statement as a nominee and to serving as director if elected, (3) a description of any direct or indirect compensation or benefit (including, without limitation, indemnification and/or advancement rights) to which the individual subject to such Nomination may be entitled under any agreement, arrangement or understanding with any person other than the Corporation (including, without limitation, the amount of any such monetary compensation) in connection with such individual's nomination or service as a director of the Corporation and (4) a description of any other material relationship or relationships between or among the individual subject to such Nomination and/or such individual's affiliates and associates, on the one hand, and the stockholder giving the notice and the beneficial owner, if any, on whose behalf the Nomination or Nominations is/are made and/or such stockholder's or beneficial owner's respective affiliates and associates, or others acting in concert with such stockholder or beneficial owner or their respective affiliates and associates, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such stockholder, beneficial owner, affiliate, associate or other person were the "registrant" for purposes of such rule and the individual subject to such Nomination was a director or officer of such registrant; b. as to the Business proposed by such stockholder, a brief description of the Business, the text of the proposed Business (including the text of any resolution or resolutions proposed for consideration and in the event that such Business includes a proposal to amend these Bylaws, the text of the proposed amendment), the reason or reasons for conducting such Business at the meeting and any material interest or interests in such Business of such stockholder and of the beneficial owner, if any, on whose behalf the Business is proposed; and c. as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the Nomination, Nominations or Business is/are made (1) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, if any, and any of their respective affiliates or associates or others acting in concert with them, (2) the class, series and number of shares of capital stock of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, if any, (3) a representation that the stockholder is a holder of record of shares of capital stock of the Corporation entitled to vote at such meeting and such stockholder (or a qualified representative of such stockholder) intends to appear in person or by proxy at the meeting to propose such Nomination, Nominations or Business and (4) a representation as to whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (x) to deliver by proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the Business or elect the nominee or nominees subject to the Nomination or Nominations and/or (y) to otherwise solicit proxies from stockholders of the Corporation in support of such Nomination, Nominations or Business; provided, however, that if the Business is otherwise subject to Rule 14a-8 (or any successor thereto) promulgated under the Exchange Act ("Rule 14a-8"), the foregoing notice requirements shall be deemed satisfied by a stockholder if the stockholder has notified the Corporation of his, her or its intention to present such Business at an annual meeting of stockholders in compliance with Rule 14a-8, and such Business has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting of stockholders. The Corporation may require (1) any individual subject to a Nomination by a stockholder pursuant to Section 1.13(a)(i)(C) of these Bylaws of to furnish such other information as the Corporation may reasonably require to determine the eligibility of such individual subject to such Nomination to serve as a director of the Corporation if elected and (2) the stockholder giving notice pursuant to Section 1.13(a)(i)(C) of these Bylaws to furnish such other information as the Corporation may reasonably require to demonstrate that any Business is a proper matter for stockholder action at an annual meeting of stockholders.

(iii) Notwithstanding anything in the second sentence of Section 1.13(a)(ii) of these Bylaws to the contrary, in the event that the number of directors to be elected to the Board of Directors by the stockholders generally entitled to vote (which, for the avoidance of doubt, shall exclude any Class/Series Directors) at an annual meeting of stockholders is increased and there is no public announcement by the Corporation naming the nominees for election to the additional directorships at least one hundred (100) days prior to the first (1st) anniversary of the preceding year's annual meeting of stockholders, a stockholder's notice required by Section 1.13(a)(ii) of these Bylaws shall also be considered timely, but only with respect to nominees for election to such additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(b) Special Meetings of Stockholders. Only such Business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting (or any supplement thereto); provided, however, that reference therein to the election of directors or the election of members of the Board of Directors shall not include or be deemed to include Nominations. Nominations may be made at a special meeting of stockholders at which one or more directors are to be elected by the stockholders generally entitled to vote (which, for the avoidance of doubt, shall exclude any Class/Series Directors) pursuant to the Corporation's notice of meeting (or any supplement thereto) as aforesaid (provided that the Board of Directors has determined that directors shall be elected at such meeting) (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 1.13(b) is delivered to the Secretary, who is entitled to vote at the special meeting and upon such election and who complies with the notice procedures set forth

in this Section 1.13(b). In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors by the stockholders generally entitled to vote (which, for the avoidance of doubt, shall exclude any Class/Series Directors), any such stockholder entitled to vote in such election may make a Nomination or Nominations of one or more individuals (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting pursuant to this Section 1.13(b), if the stockholder's notice setting forth the information required by Section 1.13(a)(ii) of these Bylaws shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of such special meeting and of the nominee(s) proposed by the Board of Directors to be elected at such special meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting of stockholders commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 1.13(b).

(c) General.

(i) Only individuals subject to a Nomination made in compliance with the procedures set forth in this Section 1.13 shall be eligible for election at an annual or special meeting of stockholders, and only such Business shall be conducted at an annual or special meeting of stockholders as shall have been brought before such meeting in accordance with the procedures set forth in this Section 1.13. Except as otherwise provided by applicable law, the Board of Directors or the individual presiding over an annual or special meeting of stockholders shall have the power and duty to determine whether (A) a Nomination or any Business proposed to be brought before the meeting was or was not made, proposed or brought, as the case may be, in accordance with the procedures set forth in this Section 1.13 and (B) any proposed Nomination, Nominations or Business shall be disregarded or that such Nomination, Nominations or Business shall not be considered or transacted at the meeting. Notwithstanding the foregoing provisions of this Section 1.13, if the stockholder (or a qualified representative of the stockholder) giving notice pursuant to Section 1.13(a)(i)(C) or Section 1.13(b) of these Bylaws does not appear at the annual or special meeting of stockholders to present a Nomination, Nominations or Business, such Nomination, Nominations or Business shall be disregarded and such Nomination, Nominations or Business shall not be considered or transacted at the meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(ii) For purposes of this Section 1.13 and Section 1.14 of these Bylaws, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with or publicly furnished by the Corporation to the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) (or any successor thereto) of the Exchange Act.

(iii) Nothing in this Section 1.13 shall be deemed to affect any (A) rights or obligations, if any, of stockholders with respect to inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 (to the extent the Corporation or such proposals are subject to Rule 14a-8), (B) rights or obligations, if any, of stockholders with respect to the inclusion of a nominee in a universal proxy card pursuant to Rule 14a-19 (or any successor thereto) promulgated under the Exchange Act or (C) rights, if any, of the holders of any class or series of capital stock of the Corporation as provided for or fixed by or pursuant to the Articles of Incorporation and then outstanding to, solely and exclusively, elect one or more directors (collectively, the "Class/Series Directors" and each, a "Class/Series Director").

Section 1.14 Proxy Access.

(a) Nominations of Eligible Nominees. The Corporation shall include in its proxy statement and/or on its proxy card (collectively, "proxy materials") for an annual meeting of stockholders the name of, and the Required Information (as defined below) relating to, any individual nominated for election to the Board of Directors who satisfies the eligibility requirements set forth in this Section 1.14 (an "Eligible Nominee" and more than one, the "Eligible Nominees"), who is nominated pursuant to a stockholder notice in compliance with Section 1.13(a)(i)(C) of these Bylaws, which notice also complies with Section 1.14(f) (a "Proxy Access Notice") and is timely delivered pursuant to Section 1.14(g) of these Bylaws by a stockholder or a group of no more than twenty (20) stockholders (each, a "Holder" and collectively, "Holders") who: (i) expressly elects or elect, as the case may be, at the date of delivery of the Proxy Access Notice pursuant to Section 1.14(g) of these Bylaws to have such Eligible Nominee included in the Corporation's proxy materials; (ii) as of both the date of delivery of the Proxy Access Notice and the record date for determining stockholders entitled to vote at the annual meeting of stockholders, (A) owns of record, or is acting on behalf of one or more beneficial owners who own (in each case, as defined in Section 1.14(c) of these Bylaws), a number of shares that represents at least three percent (3%) in voting power of the then outstanding shares of capital stock of the Corporation generally entitled to vote in the election of directors (the "Required Shares") and (B) has owned of record, or is acting on behalf of one or more beneficial owners who have owned (in each case, as defined in Section 1.14(c) of these Bylaws), continuously the Required Shares (as adjusted for any stock splits, stock dividends or similar events) for at least the three-year period preceding the date of delivery of the Proxy Access Notice, and must continue to hold the Required Shares through the date of the annual meeting; and (iii) satisfies the additional requirements set forth in this Section 1.14 (such Holder, or such group of Holders, collectively, an "Eligible Stockholder"). For the avoidance of doubt, in the event of a nomination by a group of Holders that together constitute an Eligible Stockholder, any and all requirements and obligations for an individual Eligible Stockholder set forth in this Section 1.14, including the minimum holding period, shall apply to each member of such group of Holders (each, a "Constituent Holder"); provided that the Required Shares shall be owned by such group of Holders in the aggregate. Should any Holder withdraw from a group of Holders constituting an Eligible Stockholder at any time prior to the annual meeting of stockholders, the remaining Holders shall be deemed to own only the shares owned by the remaining members of the group in determining if the group of Holders continues to constitute an Eligible Stockholder.

(b) Satisfying the Ownership Requirement. For purposes of satisfying the ownership requirement under Section 1.14(a) of these Bylaws: (i) the outstanding shares of capital stock of the Corporation owned by one or more Holders may be aggregated, provided that the number of Holders whose ownership of shares is aggregated for such purpose shall not exceed twenty (20); (ii) a group of investment funds under common management and investment control shall be treated as one Holder for the purpose of determining the aggregate number of Holders in Section 1.14(b)(i) of these Bylaws, provided that each such investment fund otherwise meets the requirements set forth in this Section 1.14; and (iii) two (2) or more persons that would be deemed to be beneficial owners of the same outstanding shares of capital stock of the Corporation under Rule 13d-3 (or any successor Rule) promulgated under the Exchange Act) shall be treated as one Holder for the purpose of determining the aggregate number of Holders in Section 1.14(b)(i) of these Bylaws.

(c) Determining Ownership. For purposes of this Section 1.14, a Holder "owns" only those outstanding shares of capital stock of the Corporation as to which the Holder possesses both: (i) the full voting and investment rights pertaining to such shares; and (ii) the full economic interest in (including the opportunity for profit and risk of loss on) such shares, provided that the number of shares calculated in accordance with Section 1.14(b)(i) and Section 1.14(b)(ii) of these Bylaws shall not include any shares (A) sold by such Holder or any of such Holder's affiliates in any transaction that has not been settled or closed (including any short sale), (B) borrowed by such Holder or any of such Holder's affiliates for any purpose or purchased by such Holder or any of such Holder's affiliates pursuant to an agreement to resell or (C) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Holder or any of such Holder's affiliates, whether any such instrument or agreement is to be settled with shares of capital stock of the Corporation or with cash based on the notional amount or value of outstanding shares of capital stock of the Corporation, in any such case, which instrument or agreement has, or is intended to have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such Holder's or any of such Holder's affiliates' full right to vote or direct the voting of any such shares and/or (2) hedging, offsetting, or altering to any degree gain or loss arising from the full economic ownership of such shares by such Holder or such Holder's affiliates.

A Holder "owns" outstanding shares of capital stock of the Corporation held in the name of a nominee or other intermediary so long as the Holder retains the right to instruct how such shares are voted with respect to the election of directors and possesses the full economic interest in such shares. A Holder's ownership of shares of capital stock of the Corporation shall be deemed to continue during any period in which the Holder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement that is revocable at any time by the Holder. A Holder's ownership of outstanding shares of capital stock of the Corporation shall be deemed to continue during any period in which the Holder has loaned such shares, provided that the Holder has the power to recall such loaned shares on no more than five (5) business days' notice and recalls such loaned shares back to such Holder's own possession not more than five (5) business days after being notified that such Holder's Eligible Nominee will be included in the Corporation's proxy material for the relevant annual meeting of stockholders and holds the recalled shares through date of such

annual meeting. The terms “owned,” “owning” and other variations of the word “own” shall have correlative meanings. Whether outstanding shares of capital stock of the Corporation are “owned” for purposes of this Section 1.14 shall be determined by the Board of Directors. For purposes of this Section 1.14, the terms “affiliate” or “affiliates” and “associate” or “associates” shall have the respective meanings ascribed thereto under the General Rules and Regulations promulgated under the Exchange Act.

(d) Limitations on Groups of Holders. No shares of capital stock of the Corporation may be attributed to more than one group of Holders constituting an Eligible Stockholder under this Section 1.14, and no Holder may be a member of more than one group of Holders constituting an Eligible Stockholder under this Section 1.14 per each annual meeting of stockholders.

(e) Required Information. For purposes of this Section 1.14, the “Required Information” that the Corporation shall include in its proxy statement is: (i) the information concerning the Eligible Nominee and the Eligible Stockholder that the Corporation determines is required to be disclosed in the Corporation’s proxy materials by the applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder; and (ii) if the Eligible Stockholder so elects, a written statement of the Eligible Stockholder, not to exceed five-hundred (500) words, in support of such Eligible Stockholder’s Eligible Nominee, which must be delivered at the same time and in the same manner as the Proxy Access Notice for inclusion in the Corporation’s proxy materials for the annual meeting (the “Statement”). Notwithstanding anything to the contrary contained in this Section 1.14, the Corporation may omit from its proxy materials, or may require the Eligible Stockholder to supplement or correct, any information, including all or a portion of any Statement, if the Corporation believes: (A) such information is not true and correct in all material respects or omits to state a material statement necessary to make the statements therein not misleading; (B) such information directly or indirectly impugns character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person; (C) the inclusion of such information would violate any applicable law, rule or regulation; or (D) the inclusion of such information would impose a material risk of liability to or upon the Corporation. Nothing in this Section 1.14 shall limit the Corporation’s ability to solicit against and include in its proxy materials its own statements or other information relating to any Eligible Stockholder or Eligible Nominee.

(f) Information to be Set Forth in Proxy Access Notice. The Proxy Access Notice shall set forth the information required under Section 1.13(a)(ii)(A) and Section 1.13(a)(ii)(C) of these Bylaws with respect to the Eligible Stockholder and each Eligible Nominee, respectively, and, in addition, shall set forth or include the following: (i) a copy of the Schedule 14N that has been or is concurrently filed with the Securities and Exchange Commission under Rule 14a-18 promulgated under the Exchange Act; (ii) the details of any relationship not disclosed in the Schedule 14N that existed within the past three (3) years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N; (iii) the name and address of the Eligible Stockholder; (iv) an executed written agreement by the Eligible Stockholder addressed to the Corporation, setting forth the following additional agreements, representations, and warranties: (A) with respect to the Eligible Stockholder, a representation and warranty as to the number of outstanding shares of capital stock of the Corporation such Eligible Stockholder owns and has owned (as defined in Section 1.14(c) of these Bylaws) continuously for at least three (3) years as of the date of delivery of the Proxy Access Notice and an agreement to continue to own the Required Shares through the date of the annual meeting of stockholders, which statement shall also be included in the written statements set forth in Item 4 of the Schedule 14N filed by the Eligible Stockholder with the Securities and Exchange Commission, and a representation and warranty that such Eligible Stockholder intends to continue to satisfy the eligibility requirements described in this Section 1.14 of these Bylaws through the date of the annual meeting of stockholders; (B) the Eligible Stockholder’s agreement to provide (1) written statements from the record holder and intermediaries as required under Section 1.14(h) of these Bylaws verifying the Eligible Stockholder’s continuous ownership of the Required Shares, such statements to be delivered to the Corporation in the same manner as the Proxy Access Notice within five (5) business days after the date of delivery of the Proxy Access Notice and as of the business day immediately preceding the date of the annual meeting of stockholders and (2) immediate notice to the Corporation (in the same manner as the Proxy Access Notice) if the Eligible Stockholder ceases to own any of the Required Shares prior to the date of the annual meeting of stockholders; (C) the Eligible Stockholder’s representation and agreement that the Eligible Stockholder (and its respective affiliates and associates) (1) did not acquire the Required Shares with the intent to change or influence control of the Corporation, and does not presently have such intent, (2) has not nominated and will not nominate for election to the Board of Directors at the annual meeting of stockholders any individual other than the Eligible Nominee being nominated pursuant to this Section 1.14, (3) has not engaged and will not engage in a “solicitation,” and has not been and will not be a “participant” in another person’s “solicitation,” in each case, within the meaning of Rule 14a-1(l) (or any successor rule) promulgated under the Exchange Act, in support of the election of any individual as a director at the annual meeting of stockholders other than such Eligible Stockholder’s Eligible Nominee or a nominee of the Board of Directors and (4) will not distribute to any stockholder of the Corporation any form of proxy for the annual meeting of stockholders other than the form distributed by the Corporation; (D) the Eligible Stockholder’s agreement to (1) assume all liability stemming from any legal or regulatory violation arising out of any statements or communications made by the Eligible Stockholder to the Corporation, its stockholders or any other persons in connection with the nomination or election of directors, including, without limitation, the Proxy Access Notice, (2) indemnify and hold harmless (jointly, in the case of a group of Holders constituting an Eligible Stockholder) the Corporation and each of its directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including reasonable attorneys’ fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of the Eligible Stockholder’s actions, including the provision of any information in the Proxy Access Notice or any other communication by the Eligible Stockholder to or with the Corporation, in connection with any nomination submitted by the Eligible Stockholder pursuant to this Section 1.14, (3) in the event that any information in the Proxy Access Notice, or any other communication by the Eligible Stockholder to or with the Corporation, its stockholders or any other person in connection with the nomination or election (including, without limitation, the Statement) or the Eligible Nominee ceases to be true and correct in all material respects or omits to state a material fact necessary to make the statements made therein not misleading, or the Eligible Stockholder discovers that such person has failed to continue to satisfy the eligibility requirements described in this Section 1.14, promptly (and in any event within forty-eight (48) hours of discovering such misstatement, omission or failure to satisfy eligibility) notify the Corporation (in the same manner as the Proxy Access Notice) and any other recipient of such misstatement or omission and of the information required to correct the misstatement or omission, or of such failure to satisfy eligibility, (4) comply with all other applicable laws and regulations applicable to the Eligible Stockholder in connection with any solicitation in connection with the annual meeting of stockholders, (5) file all materials described in Section 1.14(h)(iii) of these Bylaws with the Securities and Exchange Commission, regardless of whether any such filing is required under Regulation 14A promulgated under the Exchange Act or whether any exemption from filing is available for such materials under Regulation 14A and (6) provide to the Corporation (in the same manner as the Proxy Access Notice) prior to the annual meeting of stockholders such additional information as may be reasonably requested by the Corporation in order for the Corporation to comply with its disclosure obligations under applicable law, determine the Eligible Stockholder’s satisfaction of the requirements of this Section 1.14 and ascertain the Eligible Nominee’s eligibility for nomination pursuant to this Section 1.14; (E) with respect to each Eligible Nominee, (1) a list of all positions held by such Eligible Nominee as an officer or director of any competitor (as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended (the “Clayton Act”)) of the Corporation or any of its subsidiaries within the three (3) years preceding the date of delivery of the Proxy Access Notice, (2) a completed and signed questionnaire, representation and agreement and any additional information, in each case, required by Section 1.14(i) of these Bylaws, (3) such Eligible Nominee’s written consent to being named in any proxy statement as a nominee and to serving as a director of the Corporation if elected; and (F) in the case of a nomination by a group of Holders that together constitute an Eligible Stockholder, the designation by each Constituent Holder of a lead Constituent Holder that is authorized to act on behalf of each such Constituent Holders with respect to the nomination of the Eligible Nominee and matters related thereto, including any withdrawal of the nomination of the Eligible Nominee.

The information and documents required by this Section 1.14(f) shall be: (i) provided with respect to and executed by each Constituent Holder; and (ii) provided with respect to the persons specified in Instruction 1 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of an Eligible Nominee or Constituent Holder that is an entity. The Proxy Access Notice shall be deemed delivered on the date on which all of the information and documents referred to in this Section 1.14(f) (other than such information and documents contemplated to be delivered after the date the Proxy Access Notice is delivered) have been delivered to the Secretary at the principal executive offices of the Corporation.

(g) Delivery of Proxy Access Notice. To be timely under this Section 1.14, the Proxy Access Notice must be delivered to the Secretary at the principal executive offices of the Corporation within the time period described in the second sentence of Section 1.13(a)(ii) of these Bylaws. In no event shall the public announcement of an adjournment or postponement of an annual meeting of stockholders commence a new time period (or extend any time period) for the delivery of the Proxy Access Notice as described above.

(h) **Eligible Stockholder Obligations.** An Eligible Stockholder must: (i) within five (5) business days after the date of delivery of the Proxy Access Notice, and on the last business day immediately prior to the date of the annual meeting of stockholders, provide to the Corporation (in the same manner as the Proxy Access Notice) one or more written statements from the record holder(s) of the Required Shares and from each intermediary through which the Required Shares are or have been held, in each case, during the requisite three-year holding period, verifying that the Eligible Stockholder owns, and has owned continuously for the preceding three (3) years, the Required Shares; (ii) include in the written statements provided pursuant to Item 4 of Schedule 14N filed with the Securities and Exchange Commission a statement certifying that such Eligible Stockholder owns and continuously has owned (as defined in Section 1.14(c)) the Required Shares for at least three (3) years; (iii) file with the Securities and Exchange Commission any solicitation or other communication relating to the annual meeting of stockholders at which any Eligible Nominee will be nominated, regardless of whether any such filing is required under Regulation 14A promulgated under the Exchange Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A; and (iv) as to any group of investment funds whose shares are aggregated for purposes of constituting an Eligible Stockholder, within five (5) business days after the date of delivery of the Proxy Access Notice, provide documentation reasonably satisfactory to the Corporation that demonstrates that the funds are under common management and investment control.

(i) **Eligible Nominee Obligations.** To be eligible to be an individual nominated for election to the Board of Directors by an Eligible Stockholder pursuant to this Section 1.14, an Eligible Nominee must complete and deliver (within the time period specified in Section 1.14(g) of these Bylaws for delivery of the Proxy Access Notice) to the Corporation (in the same manner as the Proxy Access Notice), a written questionnaire providing information with respect to the background, experience and qualifications of such individual, together with a written representation and agreement of such individual with respect to the matters described in Section 1.13(b)(ii)(A) of these Bylaws. At the request of the Corporation, the Eligible Nominee must promptly, but in any event within five (5) business days of such request, submit to the Corporation (in the same manner as the Proxy Access Notice) any additional completed and signed questionnaires required of the Corporation's directors and provide to the Corporation such other information as the Corporation may reasonably request in order for the Corporation to comply with its disclosure obligations under applicable law or, as of the date of delivery of the Proxy Access Notice or a date subsequent thereto, determine whether the Eligible Stockholder satisfies the requirements of this Section 1.14 or ascertain whether the Eligible Nominee is eligible for nomination pursuant to this Section 1.14. The Corporation may request such additional information as necessary to permit the Board of Directors to determine if the Eligible Nominee is qualified and suitable to serve as a director of the Corporation, eligible to serve as an "independent director" or "audit committee financial expert" of the Corporation under applicable law, the rules or regulations of any stock exchange applicable to the Corporation, any regulation applicable to the Corporation or its securities, or any publicly disclosed corporate governance guideline or committee charter of the Corporation, and such other information as could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such Eligible Nominee. If the Eligible Nominee fails to furnish such requested information prior to the last date on which a Proxy Access Notice would be timely pursuant to Section 1.14(g), the nomination of such Eligible Nominee shall not be considered made in compliance with this Section 1.14, the Corporation may omit from its proxy materials such Eligible Nominee, and such nomination shall be disregarded and not be considered at the annual meeting of stockholders before which such nomination is proposed to be brought, notwithstanding that proxies in respect of such vote or such Eligible Nominee may have been received by the Corporation.

(j) **Omission of Eligible Nominee from Proxy Materials.** Notwithstanding anything to the contrary contained in this Section 1.14, the Corporation may omit from its proxy materials any Eligible Nominee, and the nomination of such Eligible Nominee shall be disregarded and not be considered at the annual meeting of stockholders before which such nomination is proposed to be brought, notwithstanding that proxies in respect of such vote or such Eligible Nominee may have been received by the Corporation, and the Eligible Stockholder may not, after the last date on which a Proxy Access Notice would be timely, cure in any way any defect preventing the nomination of the Eligible Nominee, if: (i) the Secretary receives notice pursuant to Section 1.13(a)(i)(C) of these Bylaws that a stockholder intends to nominate one or more individuals for election to the Board of Directors, which stockholder does not elect to have such stockholders nominee(s) included in the Corporation's proxy materials pursuant to this Section 1.14; (ii) the Eligible Stockholder has engaged in (A) an exempt solicitation as described in Rule 14a-2(b) promulgated under the Exchange Act or (B) any communication, as described in Rule 14a-1(l)(2)(iv) promulgated under the Exchange Act, stating how the Eligible Stockholder intends to vote at the annual meeting of stockholders and the reasons therefor (in each case, other than with respect to such Eligible Stockholder's Eligible Nominee(s) or any nominee(s) of the Board of Directors); (iii) (A) the Eligible Stockholder fails to include in the Proxy Access Notice or otherwise provide to the Corporation, or the Eligible Nominee fails to include in the written questionnaire, representation or agreement required by Section 1.14(i) of these Bylaws or otherwise provide to the Corporation (in each case, within the time period specified in Section 1.14(g) of these Bylaws for delivery of the Proxy Access Notice), all information required to be provided pursuant to this Section 1.14 in connection with the nomination of the Eligible Nominee, or the Eligible Stockholder or the Eligible Nominee otherwise breaches or fails to comply in any material respect with the Eligible Stockholder's or Eligible Nominee's, as applicable, obligations or agreements set forth in this Section 1.14, (B) the Eligible Stockholder has made representations and warranties or provided other information to the Corporation in connection with the nomination of the Eligible Nominee (including, without limitation, in the Proxy Access Notice) that was untrue, or ceases to be true, in any material respect or omitted, or omits, to state a material fact necessary to make the statements made therein not misleading, (C) the Eligible Nominee withdraws his or her written consent to being named in any proxy statement and to serving as a director of the Corporation if elected or becomes unwilling or unable to serve on the Board of Directors or (D) any material violation or breach occurs of any of the obligations, agreements, representations or warranties of the Eligible Nominee set forth in or required by this Section 1.14; (iv) the Eligible Stockholder withdraws such Eligible Stockholder's nomination of the Eligible Nominee; (v) such Eligible Nominee's nomination or election to the Board of Directors would result in the Corporation violating or failing to be in compliance with the Articles of Incorporation, these Bylaws or any applicable law, the rules or regulations of any stock exchange applicable to the Corporation, any regulation applicable to the Corporation or its securities, or any publicly disclosed corporate governance guideline or committee charter of the Corporation; or (vi) the Eligible Nominee (A) is not "independent" under the rules or regulations of any stock exchange applicable to the Corporation, any regulation applicable to the Corporation or its securities, or any publicly disclosed corporate governance guideline or committee charter of the Corporation, (B) does not qualify as a "non-employee director" under Rule 16b-3 (or any successor Rule) promulgated under the Exchange Act, in each case, as determined by the Board of Directors, (C) is or has been, within the past three (3) years, an officer or director of a competitor (as defined in Section 8 of the Clayton Act) of the Corporation or any of its subsidiaries, (D) is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in a criminal proceeding within the past ten (10) years or (E) is or has been subject to any order, judgement, decree, event or circumstance specified in Rule 506(d)(1) (or any successor Rule) promulgated under the Securities Act of 1933, as amended (the "Securities Act"), such that the exemption under Rule 506 (or any successor rule) would be unavailable to the Corporation were the Eligible Nominee a member of the Board of Directors.

(k) **Nomination Not Made in Compliance with this Section 1.14.** Notwithstanding anything to the contrary contained in this Section 1.14, the nomination of an Eligible Nominee shall not be considered made in compliance with this Section 1.14, and such nomination shall be disregarded and not be considered at the annual meeting of stockholders before which such nomination is proposed to be brought, notwithstanding that proxies in respect of such vote or such Eligible Nominee may have been received by the Corporation, if: (i) the Eligible Stockholder has failed to continue to satisfy the eligibility requirements described in this Section 1.14; (ii) the Eligible Stockholder or the designated lead Constituent Holder, as the case may be, or any qualified representative thereof, does not appear at the annual meeting of stockholders before which such nomination is proposed to be brought to present the nomination of the Eligible Nominee submitted pursuant to this Section 1.14; (iii) the Eligible Nominee becomes unwilling or unable to serve on the Board of Directors; or (iv) the Eligible Stockholder withdraws such Eligible Stockholder's nomination of the Eligible Nominee.

(l) **Impermissible Activities.** Notwithstanding anything to the contrary contained in this Section 1.14, the Corporation shall not be required to include in its proxy materials any Eligible Nominee pursuant to this Section 1.14, the nomination of an Eligible Nominee shall not be considered made in compliance with this Section 1.14, such nomination shall be disregarded and not be considered at the annual meeting of stockholders before which such nomination is proposed to be brought, notwithstanding that proxies in respect of such vote or such Eligible Nominee may have been received by the Corporation, and no stockholder who submits a nomination of an Eligible Nominee shall be deemed to constitute an Eligible Stockholder for purposes of this Section 1.14, if such Eligible Nominee or nominating stockholder, as the case may be, at any time during the three (3)-year period immediately preceding the date of delivery of the Proxy Access Notice for such nomination or at any time prior to the annual meeting of stockholders, directly or indirectly, whether through an affiliate, associate or other intermediary, has initiated, financially sponsored, supported or otherwise actively participated in any initiative, campaign or other process seeking to (i) advance any agenda that is not directly related to the enhancement of stockholder value or (ii) restrict, eliminate or declare unlawful any business or operation of the Corporation or any of its subsidiaries that has generated revenue, positive earnings and/or net income

in at least one (1) fiscal quarter in the trailing four (4) fiscal quarters, as disclosed in the most recent earnings press release or periodic report (on Form 10-Q or Form 10-K, as the case may be) filed by the Corporation with the Securities and Exchange Commission immediately preceding the date of delivery of such Proxy Access Notice.

(m) **Maximum Number of Eligible Nominees.** Notwithstanding the other provisions of this Section 1.14, the number of Eligible Nominees appearing in the Corporation's proxy materials with respect to an annual meeting of stockholders (including any Eligible Nominee whose name was submitted for inclusion in the Corporation's proxy materials but who is nominated by the Board of Directors as a Board of Directors nominee), together with any nominees who were previously elected to the Board of Directors as Eligible Nominees at any of the preceding two (2) annual meetings of stockholders and who are re-nominated for election at such annual meeting of stockholders by the Board of Directors and any Eligible Nominee who was qualified for inclusion in the Corporation's proxy materials but whose nomination is subsequently withdrawn, shall not exceed (the "Maximum Number") the greater of (i) two (2) or (ii) twenty-five percent (25%) of the number of directors in office as of the last date on which a Proxy Access Notice may be delivered pursuant to Section 1.14(g) of these Bylaws with respect to such annual meeting of stockholders, or if such amount is not a whole number, the closest whole number below twenty-five percent (25%). In the event that the number of Eligible Nominees submitted by Eligible Stockholders pursuant to this Section 1.14 exceeds this Maximum Number, each Eligible Stockholder will select one (1) Eligible Nominee for inclusion in the Corporation's proxy materials until the Maximum Number is reached, going in order of the number (largest to smallest) of outstanding shares of capital stock of the Corporation each Eligible Stockholder disclosed as owned in such Eligible Stockholder's respective Proxy Access Notice delivered to the Corporation. If the Maximum Number is not reached after each Eligible Stockholder has selected one (1) Eligible Nominee, this selection process will continue as many times as necessary, following the same order each time, until the Maximum Number is reached. In the event that one or more vacancies occurs on the Board of Directors resulting from the death, resignation, disqualification, removal or other cause after the deadline set forth in Section 1.14(g) of these Bylaws, but before the date of the annual meeting of stockholders, and the Board of Directors resolves to reduce the number of directors constituting the Board of Directors in connection therewith, the Maximum Number shall be calculated based on such reduced number of directors.

(n) **Ineligible Nominees.** Any Eligible Nominee who is included in the Corporation's proxy materials for a particular annual meeting of stockholders but either (i) withdraws from or becomes ineligible or unavailable for election at such annual meeting of stockholders or (ii) does not receive at least twenty five percent (25%) of the votes cast in favor of the Eligible Nominee's election at such annual meeting of stockholders, will be ineligible to be an Eligible Nominee pursuant to this Section 1.14 for the next two (2) annual meetings of stockholders.

(o) **Section 1.14 Exclusive.** This Section 1.14 provides the exclusive method for a stockholder or group of stockholders to include nominees for election to the Board of Directors in the Corporation's proxy materials.

(p) **Determinations.** Except as otherwise provided by applicable law, the Articles of Incorporation, or this Section 1.14, the Board of Directors shall have the power and duty to determine whether this Section 1.14 or any of the representations, warranties and covenants contained in this Section 1.14 or required by this Section 1.14 have been complied with.

Section 1.15 Acquisition of Controlling Interests. Sections 78.378 through 78.3793, inclusive, of the Nevada Revised Statutes (the "Acquisition of Controlling Interest Statute") shall apply to the Corporation beginning on the effective date, first hereinabove stated, of these Bylaws (the "Effective Date"); provided, however, that the Acquisition of Controlling Interest Statute shall not apply to APLD and its subsidiaries (each, an "Exempt Control Share Holder"), and shall not apply to any future acquisition of any controlling interest (at or above any threshold enumerated by the Acquisition of Controlling Interest Statute) by (i) any such Exempt Control Share Holder, or (ii) any trust or estate planning vehicle for the sole benefit of an Exempt Control Share Holder. Terms used but not otherwise defined in this Section 1.15, but defined in the Acquisition of Controlling Interest Statute, shall have the meanings provided therein.

ARTICLE II

Board of Directors

Section 2.1 Number; Qualifications. Except as otherwise provided by or pursuant to the Articles of Incorporation, the Board of Directors shall consist of one (1) or more members, the number thereof to be determined from time to time by resolution or resolutions of the Board of Directors. Directors need not be stockholders.

Section 2.2 Resignation; Vacancies and Newly Created Directorships. Any director may resign at any time upon notice to the Corporation. Subject to the rights, if any, of the holders of any class or series of capital stock of the Corporation as provided for or fixed by or pursuant to the Articles of Incorporation and then outstanding, newly created directorships resulting from an increase in the authorized number of directors or any vacancies on the Board of Directors resulting from the death, resignation, disqualification, removal or other cause, shall be filled solely and exclusively by a majority vote of the directors then in office, although less than a quorum, or by the sole remaining director. Any director so elected shall hold office until the expiration of the term of office of the director whom he or she has replaced and until his or her successor shall be elected and qualified, subject to such director's earlier death, resignation, disqualification or removal. No decrease in the number of directors shall shorten the term of any incumbent director.

Section 2.3 Regular Meetings. Regular meetings of the Board of Directors may be held at such places within or without the State of Nevada and at such times as the Board of Directors may from time to time determine.

Section 2.4 Special Meetings. Special meetings of the Board of Directors may be held at any time or place within or without the State of Nevada whenever called by the Chairman of the Board of Directors, the Chief Executive Officer, the President or any two (2) members of the Board of Directors. Notice of a special meeting of the Board of Directors shall be given by the Secretary or at the direction of the person or persons calling the meeting (a) in the case of notice delivered by U.S. mail, postage prepared, at least five (5) days before the special meeting, and (b) in the case of notice delivered by courier service, personal delivery or electronic transmission, at least forty-eight (48) hours before the special meeting.

Section 2.5 Telephonic Meetings Permitted. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting thereof by means of conference telephone or other communications equipment by means of which all individuals participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 2.5 shall constitute presence in person at such meeting.

Section 2.6 Quorum; Vote Required for Action. At all meetings of the Board of Directors the directors entitled to cast a majority of the votes of the whole Board of Directors shall constitute a quorum for the transaction of business. Except in cases in which the Articles of Incorporation, these Bylaws or applicable law otherwise provides, a majority of the votes entitled to be cast by the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. Notwithstanding the foregoing, for so long as there are at least two (2) APLD designees then serving on the Board of Directors, the presence of at least one (1) such ALPD designee shall be required to constitute a quorum of the Board of Directors.

Section 2.7 Organization. Meetings of the Board of Directors shall be presided over by the Chairman of the Board of Directors, if any, or in the absence of the Chairman of the Board of Directors, by the Chief Executive Officer, if any, or in the absence of the Chief Executive Officer, by the President, if any, or in the absence of the President, by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in the absence of the Secretary, the chairperson of the meeting may appoint any individual to act as secretary of the meeting.

Section 2.8 Action by Unanimous Consent of Directors. Unless otherwise restricted by or pursuant to the Articles of Incorporation or by these Bylaws, (a) any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of

Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission and (b) a consent may be documented, signed and delivered in any manner permitted by Chapters 75, 78, 92A or 720 of the Nevada Revised Statutes, as applicable. After action is taken, the consent or consents relating thereto shall be filed with the minutes of the proceedings of the Board of Directors, or the committee thereof, in the same paper or electronic form as the minutes are maintained.

ARTICLE III

Committees

Section 3.1 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more natural persons, including at least one of whom is a director of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by applicable law and to the extent provided in the resolution of the Board of Directors or these Bylaws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

Section 3.2 Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these Bylaws.

ARTICLE IV

Officers

Section 4.1 Officers; Election; Qualifications; Term of Office, Resignation; Removal; Vacancies. The Board of Directors shall elect a Chief Executive Officer, a President, a Treasurer, a Chief Financial Officer, and a Secretary, and may choose a Chairman of the Board of Directors from among its members. Any two or more offices may be held by the same person. The Board of Directors may also elect a Chief Operating Officer, one or more Vice Presidents, one or more Assistant Secretaries and one or more Assistant Treasurers and such other officers as it shall from time to time deem necessary or desirable. Each such officer shall hold office until the first meeting of the Board of Directors after the annual meeting of stockholders next succeeding his or her election, and until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. Any officer may resign at any time upon written notice to the Corporation. Except as otherwise provided by or pursuant to the Articles of Incorporation, the Board of Directors may remove any officer with or without cause at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation. Any number of offices may be held by the same person. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled for the unexpired portion of the term by the Board of Directors at any regular or special meeting.

Section 4.2 Powers and Duties of Officers. The officers of the Corporation shall have such powers and duties in the management of the Corporation as may be prescribed in these Bylaws or a resolution or resolutions of the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his or her duties.

Section 4.3 Chairman of the Board of Directors. The Chairman of the Board of Directors, if any, shall have the power and duty to confer with the Chief Executive Officer and/or the President on matters of general policy affecting the day-to-day management of the Corporation's business and preside at all meetings of the Board of Directors.

Section 4.4 Chief Executive Officer. The Chief Executive Officer shall, subject to the direction of the Board of Directors, have general charge of the Corporation's business and day-to-day management and shall have the power and duty to supervise the Corporation's other officers, see that all resolutions and orders of the Board of Directors are carried into effect, preside at all meetings of the stockholders and, in the absence of the Chairman of the Board of Directors, if any, preside at all meetings of the Board of Directors.

Section 4.5 President. The President shall, in the absence of the Chief Executive Officer, subject to the direction of the Board of Directors, have general charge of the Corporation's business and day-to-day management and shall have the power and duty to supervise the Corporation's other officers, see that all resolutions and orders of the Board of Directors are carried into effect, preside at all meetings of the stockholders and, in the absence of the Chairman of the Board of Directors, if any, or the Chief Executive Officer, if any, preside at all meetings of the Board of Directors.

Section 4.6 Chief Financial Officer. The Chief Financial Officer shall, under the direction of the Chief Executive Officer, if any, or in the absence of the Chief Executive Officer, the President, have the power and duty to oversee all financial and accounting matters of the Corporation, including maintaining custody of the Corporation's funds and securities and depositing, investing and disbursing the Corporation's funds, and shall have such additional powers and duties as the Chief Executive Officer, if any, or in the absence of the Chief Executive Officer, the President assigns.

Section 4.7 Chief Operating Officer. The Chief Operating Officer shall, under the direction of the Chief Executive Officer, if any, or in the absence of the Chief Executive Officer, the President, have the power and duty to oversee the Corporation's day-to-day business operations and shall have such additional powers and duties as the Chief Executive Officer, if any, or in the absence of the Chief Executive Officer, the President assigns.

Section 4.8 Vice Presidents. A Vice President, if one is elected, or, if there is more than one, the Vice Presidents, shall have the power and duty to assist the Chief Executive Officer, if any, or in the absence of the Chief Executive Officer, the President, as he or she directs in the management of the Corporation's business and the implementation of resolutions and orders of the Board of Directors. If there is more than one Vice President, the Board of Directors may give them titles that are descriptive of their respective functions or indicative of their relative seniority. In the event of the absence or inability to act of the Chief Executive Officer, if any, or in the absence of the Chief Executive Officer, the President, if any, or in the absence of the President, the Vice Presidents, or if there is more than one, the Vice Presidents in the order of their seniority as indicated by their titles or as otherwise determined by the Board of Directors, shall have the power and duty to perform the duties of the Chief Executive Officer or President, as applicable. A Vice President shall have such additional powers and duties as the Chief Executive Officer, if any, or in the absence of the Chief Executive Officer, the President assigns.

Section 4.9 Secretary. The Secretary shall have custody of the Corporation's corporate records and shall have the power and duty to send all notices to stockholders and directors required by applicable law, the Articles of Incorporation or these Bylaws and record all proceedings of meetings of the stockholders and the Board of Directors. The Secretary shall have the power to certify copies of these Bylaws, resolutions of the stockholders and the Board of Directors or any committee thereof and other documents of the Corporation as true and correct and shall have such additional powers and duties as the Chief Executive Officer, if any, or in the absence of the Chief Executive Officer, the President assigns.

Section 4.10 Assistant Officers. An Assistant Treasurer or Assistant Secretary (or if more than one is elected, the Assistant Treasurers and Assistant Secretaries in the order determined by the Board of Directors) shall, in the absence of the Treasurer, if any, or in the absence of the Secretary, if any, have the powers and duties of the Treasurer or the Secretary, respectively, and shall have such additional powers and duties as the Chief Executive Officer, if any, or in the absence of the Chief Executive Officer, the President assigns.

ARTICLE V

Stock

Section 5.1 Book Entry. The shares of the Corporation shall be uncertificated shares and shall be evidenced by a book-entry system maintained by the registrar of such shares, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its capital stock may be represented by certificates. Within a reasonable time after the issuance or transfer of uncertificated shares, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to Chapter 78 of the Nevada Revised Statutes.

ARTICLE VI

Indemnification

Section 6.1 Right to Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law, any individual (a "Covered Person") who was or is made or is threatened to be made a party or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, its participants or beneficiaries, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence or Section 6.2 of these Bylaws, except as otherwise provided in Section 6.3 of these Bylaws, the Corporation shall be required to indemnify a Covered Person or pay expenses in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of Directors.

Section 6.2 Prepayment of Expenses. The Corporation shall, to the fullest extent not prohibited by applicable law, pay the expenses (including attorneys' fees) incurred by a Covered Person in defending or otherwise participating in any proceeding as they are incurred and in advance of its final disposition, except as provided in the final sentence of Section 6.1 of these Bylaws; provided, however, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by or on behalf of the Covered Person to repay the amounts advanced if it is ultimately determined by a court of competent jurisdiction that the Covered Person is not entitled to be indemnified under this Article VI or otherwise.

Section 6.3 Claims. If (a) a claim for indemnification (following the final disposition of such proceeding) under Section 6.1 of these Bylaws is not paid in full within sixty (60) days after a written claim therefor by the Covered Person has been received by the Corporation or (b) a claim for advancement of expenses under Section 6.2 of these Bylaws is not paid in full within twenty (20) days after a written claim therefor by the Covered Person has been received by the Corporation, as applicable, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense (including attorneys' fees) of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law. In any such action to enforce a claim for indemnification under Section 6.1 of these Bylaws, neither the failure of the Corporation to have made a determination prior to the commencement of such action that indemnification of the Covered Person is proper in the circumstances because the Covered Person has met the applicable standard of conduct set forth in the Nevada Revised Statutes, nor an actual determination by the Corporation that the Covered Person has not met such applicable standard of conduct, shall create a presumption that the Covered Person has not met such applicable standard of conduct.

Section 6.4 Nonexclusivity of Rights. The rights conferred on any Covered Person by this Article VI shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of the Articles of Incorporation, these Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 6.5 Other Sources. The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit entity.

Section 6.6 Amendment or Repeal. Any amendment, repeal, modification or elimination of the foregoing provisions of this Article VI shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such amendment, repeal, modification or elimination.

Section 6.7 Other Indemnification and Prepayment of Expenses. This Article VI shall not limit the right of the Corporation, to the extent and in the manner permitted by applicable law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

Section 6.8 Certain Terms. For purposes of this Article VI: (a) references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article VI with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation as if its separate existence had continued; (b) references to "other enterprise" shall include employee benefit plans; (c) reference to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and (d) references to "serving at the request of the Corporation or any of its consolidated subsidiaries" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries.

ARTICLE VII

Miscellaneous

Section 7.1 Fiscal Year. The fiscal year of the Corporation shall be determined by resolution or resolutions of the Board of Directors.

Section 7.2 Seal. The corporate seal of the Corporation shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors.

Section 7.3 Manner of Notice. Except as otherwise provided in these Bylaws or permitted by applicable law, notices to directors and stockholders shall be in writing or electronic transmission and delivered by mail, courier service or electronic mail to the directors or stockholders at their addresses appearing on the records of the Corporation.

Section 7.4 Waiver of Notice of Meetings of Stockholders, Directors and Committees. Any waiver of notice, given by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called

or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in a waiver of notice.

Section 7.5 Form of Records. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases); provided that the records so kept can be converted into clearly legible paper form within a reasonable time, and, with respect to the stock ledger, that the records so kept comply with applicable law.

Section 7.6 Amendment of Bylaws. For so long as APLD Beneficially Owns at least thirty percent (30%) of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, these Bylaws may be altered, amended or repealed, and new bylaws made, by the Board of Directors, without the approval of the stockholders; provided, however, that at such time APLD Beneficially Owns less than thirty percent (30%) of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, either (i) the Board of Directors may make, alter, amend or repeal these Bylaws with the prior approval of the stockholders, or (ii) the stockholders may make, alter, amend or repeal these Bylaws with the prior approval of the Board of Directors. In addition to any affirmative vote required by or pursuant to the Articles of Incorporation, any bylaw that is to be made, altered, amended or repealed by the stockholders of the Corporation in accordance with these Bylaws shall require the affirmative vote of the holders of at least a majority in voting power of all of the then outstanding shares of capital stock of the Corporation entitled to vote, voting together as a single class.

Section 7.7 Forum for Adjudication of Disputes.

(a) **Chosen Courts.** Unless the Corporation consents in writing to the selection of an alternative forum, the Eighth Judicial District Court of Clark County, Nevada (the “Nevada Court”) or the Court of Chancery of the State of Delaware (the “Court of Chancery” and together with the Nevada Court, the “Chosen Courts”) shall be the sole and exclusive forum for any and all actions, suits and proceedings, whether civil, administrative or investigative or that asserts any claim or counterclaim (each, an “Action”), provided that the Nevada Court shall be the sole and exclusive forum for any Action that constitutes an internal action (as such term is defined in Nevada Revised Statute 78.046 or any successor statute); provided, however, in the event that the Chosen Courts lack jurisdiction over such Action, the sole and exclusive forum for such Action shall be another state or federal court located within the State of Nevada or the State of Delaware, in all cases, subject to such court having personal jurisdiction over the indispensable parties named as defendants. For the avoidance of doubt, this Section 7.7(a) shall not apply to the resolution of any complaint asserting a cause of action arising under the Securities Act.

(b) **Federal Courts.** Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act.

(c) **Application.** Failure to enforce the foregoing provisions of this Section 7.7 would cause the Corporation irreparable harm and the Corporation shall, to the fullest extent permitted by applicable law, be entitled to equitable relief, including injunctive relief and specific performance, to enforce the foregoing provisions. Any person purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 7.7.

Adopted effective as of [●], 2026.

EXHIBIT D RESTATED ISSUER ARTICLES

SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION OF CHRONOSCALE CORPORATION

ChronoScale Corporation, a corporation organized and existing under and by virtue of the provisions of the Nevada Revised Statutes (the “NRS”),

DOES HEREBY CERTIFY:

1. That the name of the corporation is ChronoScale Corporation, and that the corporation was organized as a Nevada corporation pursuant to the Chapter 78 of the NRS on January 30, 2012, under the name PN Med Group Inc.
2. The corporation previously amended its Articles of Incorporation on December 18, 2013 in order to change its name to Ekso Bionics Holdings, Inc. and to authorize additional stock.
3. The corporation filed a Certificate of Designation on December 24, 2015, in order to authorize certain Series A Preferred Convertible Stock (“*Series A Certificate of Designation*”).
4. The corporation amended the Certificate of Designation on April 4, 2016, in order to revise the preferences provided to the Series A Preferred Convertible Stock.
5. The corporation filed a Certificate of Change on April 29, 2016, in order to change the number of authorized common shares.
6. The corporation further amended its Articles of Incorporation on December 22, 2017, in order to update the authorized shares.
7. The corporation further amended its Articles of Incorporation on March 24, 2020, in order to effect a reverse stock split.
8. The corporation withdrew the Series A Certificate of Designation pursuant to the Certificate of Withdrawal filed April 25, 2023, in order to withdraw the Series A Preferred Convertible Stock.
9. The corporation further amended and restated in its entirety its Articles of Incorporation on April 25, 2023.
10. The corporation further amended its Articles of Incorporation on June 2, 2025, in order to effect a reverse stock split.

11. The corporation filed a Certificate of Designation on January 22, 2026, in order to authorize certain Series B Preferred Convertible Stock (the “**Series B Certificate of Designation**”).
12. That the corporation’s board of directors duly adopted resolutions proposing to amend and restate the Restated Articles of Incorporation of this corporation currently in effect, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders.
13. That these Second Amended and Restated Articles of Incorporation, which amend and restate the provisions of the Corporation’s Restated Articles of Incorporation currently in effect, have been duly adopted in accordance with NRS 78.315 and 78.320.

RESOLVED, that Pursuant to the provisions of Title 7, Chapter 78 of the NRS, the Restated Articles of Incorporation of the corporation currently in effect be amended and restated in their entirety to read as follows:

FIRST. The name of the corporation is ChronoScale Corporation (the “**Corporation**”).

SECOND. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under Chapter 78 of the Nevada Revised Statutes.

THIRD. The total number of shares of capital stock which the Corporation shall have authority to issue is 300,000,000, consisting of 290,000,000 shares of common stock, par value of \$0.001 per share (the “**Common Stock**”), and 10,000,000 shares of preferred stock, par value of \$0.001 per share (the “**Preferred Stock**”). Each share of Common Stock shall entitle the holder thereof to one vote, in person or by proxy, on any matter on which action of the stockholders of the Corporation is sought. The holders of shares of Preferred Stock shall have no right to vote such shares, except (i) as determined by the board of directors of the Corporation (the “**Board of Directors**”) in accordance with the provisions of Section 3 of Article FOURTH of these Articles of Incorporation, or (ii) as otherwise provided by the NRS, as amended from time to time.

FOURTH. The Board of Directors of the Corporation shall be, and hereby is, authorized and empowered, subject to such limitations prescribed by law and the provisions of this Article FOURTH, to provide for the issuance of the shares of Preferred Stock in a class or series, and by filing a certificate of designation pursuant to NRS 78.1955, to establish from time to time the number of shares to be included in each such class or series, and to fix the designations, powers, preferences and rights of the shares of each such class or series and the qualifications, limitations or restrictions of each such class or series. The authority of the Board of Directors with respect to each class or series shall include, but not be limited to, determination of the following:

1. The number of shares constituting such class or series and the distinctive designation of such class or series;
2. The dividend rate on the shares of such class or series, whether dividends shall be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of such class or series;
3. Whether such class or series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;
4. Whether such class or series shall have conversion privileges, and, if so, the terms and conditions of such conversion privileges, including provision for the adjustment of the conversion rate, in such events as the Board of Directors shall determine;
5. Whether the shares of such class or series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or date upon or after which those shares shall be redeemable, and the amount per share payable in the event of redemption, which amount may vary in different circumstances and at different redemption dates;
6. Whether such class or series shall have a sinking fund for the redemption or purchase of shares of such class or series, and, if so, the terms and amount of such sinking fund;
7. The rights of the shares of such class or series in the event of voluntary or involuntary liquidation, dissolution or winding up of this corporation, and the relative rights of priority, if any, of payment of shares of such class or series; and
8. Any other relative rights, preferences and limitations of such class or series.

Dividends on issued and outstanding shares of Preferred Stock shall be paid or declared and set apart for payment prior to any dividends being paid or declared and set apart for payment on the shares of Common Stock with respect to the same dividend period.

If, upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to holders of shares of Preferred Stock of all classes and series shall be insufficient to pay such holders the full and complete preferential amount to which such holders are entitled, then such assets shall be distributed ratably among the shares of all classes and series of Preferred Stock in accordance with the respective preferential amounts, including unpaid cumulative dividends, if any, payable with respect thereto.

FIFTH. The personal liability of any director or officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the Nevada Revised Statutes. Any repeal or modification of this article by the stockholders of the Corporation shall not adversely affect any right or protection of any director of the Corporation existing at the time of such repeal or modification.

SIXTH. The Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in these Articles of Incorporation, and other provisions authorized by the laws of the State of Nevada at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of any nature conferred upon stockholders, directors or any other persons by and pursuant to these Articles of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this Article SIXTH.

SEVENTH. Capital stock issued by the Corporation after the amount of the subscription price or par value therefor has been paid in full shall not be subject to pay debts of the Corporation, and no capital stock issued by the Corporation and for which payment has been made shall ever be assessable or assessed.

EIGHTH. In furtherance and not in limitation of the powers conferred by the State of Nevada:

1. The management of the business and the conduct of the affairs of the Corporation shall be vested in the Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by, or in the manner provided in, the Bylaws. Directors shall be elected by the holders of shares entitled to vote thereon at the annual meeting of shareholders and until their respective successor has been elected and qualified.
2. Notwithstanding any other provisions of these Articles of Incorporation or the Bylaws (and notwithstanding the fact that some lesser percentage may be specified by law, these Articles of Incorporation or the Bylaws), any director or the entire Board of Directors may be removed at any time, but only for cause

and only by the affirmative vote of the holders of seventy-five percent (75%) or more of the voting power of the issued and outstanding stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders of the Corporation called for that purpose. Notwithstanding the foregoing, and except as otherwise required by law, whenever the holders of any one or more series of Preferred Stock shall have the right, voting separately as a class, to elect one or more directors of this corporation, the provisions of Section 2 of this Article EIGHTH shall not apply with respect to the director or directors elected by such holders of Preferred Stock.

3. Unless and except to the extent that the Bylaws shall so require, the election of directors of the Corporation need not be by written ballot.
4. Meetings of stockholders may be held within or without the State of Nevada, as the Bylaws may provide.

NINTH. The period of existence of the Corporation shall be perpetual.

TENTH. No contract or other transaction between this Corporation and any other corporation, whether or not a majority of the shares of the capital stock of such other corporation is owned by this Corporation, and no act of this corporation shall in any way be affected or invalidated solely by the fact that any of the directors of this Corporation are pecuniarily or otherwise interested in, or are directors or officers of such other corporation. Any director of the Corporation, individually, or any firm of which such director may be a member, may be a party to, or may be pecuniarily or otherwise interested in any contract or transaction of the Corporation; provided, however, that the fact that he or such firm is so interested shall be disclosed or shall have been known to the Board of Directors of the Corporation, or a majority thereof; and any director of this Corporation who is also a director or officer of such other corporation, or who is so interested, may be counted in determining the existence of a quorum at any meeting of the Board of Directors of this Corporation that shall authorize such contract or transaction, and may vote thereat to authorize such contract or transaction, with the same force and effect as if he or she were not such director or officer of such other corporation or not so interested.

ELEVENTH. All of the powers of the Corporation, insofar as the same may be lawfully vested by these Articles of Incorporation in the Board of Directors, are hereby conferred upon the Board of Directors of the Corporation. In furtherance and not in limitation of that power, the Board of Directors shall have the power to make, adopt, alter, amend and repeal from time to time bylaws of this Corporation, subject to the right of the shareholders entitled to vote with respect thereto to adopt, alter, amend and repeal bylaws made by the Board of Directors; provided, however, that bylaws shall not be adopted, altered, amended or repealed by the stockholders of this Corporation, except by the vote of the holders of not less than two thirds (2/3) of the voting power of the issued and outstanding stock entitled to vote upon the election of directors.

TWELFTH. Notwithstanding the execution and filing of these Second Amended and Restated Articles of Incorporation of the Corporation, that certain Series B Certificate of Designation, which was filed with the Nevada Secretary of State on January 22, 2026, a copy of which has been attached here as Exhibit A, is incorporated herein and shall remain in full force and effect as of the effective date hereof.

THIRTEENTH.

1. To the fullest extent permitted by the laws of the State of Nevada and in accordance with NRS 78.070(8), (i) the Corporation hereby renounces all interest and expectancy that it otherwise would be entitled to have in, and all rights to be offered an opportunity to participate in, any business opportunity that from time to time may be presented to (A) Applied Digital Corporation, a Nevada corporation (together with its subsidiaries, "**APLD**"), any directors who are employees of or Affiliates (other than the Corporation or its subsidiaries) of APLD or any of their respective principals, members, directors, partners, stockholders, officers, employees or other representatives (other than any such director who is also an employee of the Corporation or its subsidiaries), or (B) any director or stockholder who is not employed by the Corporation or its subsidiaries (each such person, an "**Exempt Person**"); (ii) no Exempt Person will have any duty to refrain from (X) engaging in a corporate opportunity in the same or similar lines of business in which the Corporation or its subsidiaries from time to time is engaged or proposes to engage or (Y) otherwise competing, directly or indirectly, with the Corporation or any of its subsidiaries; and (iii) if any Exempt Person acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity both for such Exempt Person or any of his or her respective Affiliates, on the one hand, and for the Corporation or its subsidiaries, on the other hand, such Exempt Person shall have no duty to communicate or offer such transaction or business opportunity to the Corporation or its subsidiaries and such Exempt Person may take any and all such transactions or opportunities for itself or offer such transactions or opportunities to any other person. Notwithstanding the foregoing, the preceding sentence of this Section 1 of Article THIRTEENTH shall not apply to any potential transaction or business opportunity that is expressly offered to a director, officer or employee of the Corporation or its subsidiaries, solely in his or her capacity as a director, officer or employee of the Corporation or its subsidiaries. For purposes of this Article THIRTEENTH, "**Affiliate**" means, with respect to any person, any other person that directly or indirectly controls, is controlled by, or is under common control with, such person. For purposes of this definition, "**control**" (including, with correlative meanings, the terms "**controlled by**" and "**under common control with**") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.
2. To the fullest extent permitted by the laws of the State of Nevada, no potential transaction or business opportunity may be deemed to be a corporate opportunity of the Corporation or its subsidiaries unless (i) the Corporation or its subsidiaries would be permitted to undertake such transaction or business opportunity in accordance with these Articles of Incorporation, (ii) the Corporation or its subsidiaries at such time have sufficient financial resources to undertake such transaction or business opportunity, (iii) the Corporation or its subsidiaries have an interest or expectancy in such transaction or opportunity and (iv) such transaction or opportunity would be in the same or similar line of business in which the Corporation or its subsidiaries are then engaged or a line of business that is reasonably related to, or a reasonable extension of, such line of business.
3. To the fullest extent permitted by law, no stockholder and no director will be liable to the Corporation or its subsidiaries or stockholders for breach of any duty solely by reason of any activities or omissions of the types referred to in this Article THIRTEENTH, except to the extent such actions or omissions are in breach of this Article THIRTEENTH.

FOURTEENTH. The Corporation expressly elects not to be governed by NRS 78.411 through NRS 78.444, inclusive, as from time to time in effect or any successor provision thereto.

IN WITNESS WHEREOF, these Second Amended and Restated Articles of Incorporation have been executed by a duly authorized officer of the Corporation on this [•] day of [•], 2026.

Name:
Title:

Exhibit A

Series B Certificate of Designation

**EXHIBIT E
2026 PLAN**

CHRONOSCALE CORPORATION

2026 OMNIBUS EQUITY INCENTIVE PLAN

1. Establishment and Purpose

(a) The purpose of the ChronoScale Corporation 2026 Omnibus Equity Incentive Plan (as amended, restated or otherwise modified from time to time, the “Plan”), is to provide a means whereby eligible employees, officers, non-employee directors and other service providers develop a sense of proprietorship and personal involvement in the development and financial success of the Company (as defined herein) and to encourage them to devote their best efforts to the business of the Company, thereby advancing the interests of the Company and its stockholders. The Company, by means of the Plan, seeks to retain the services of such eligible persons and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Subsidiaries.

(b) The Plan permits the grant of Nonqualified Stock Options, Incentive Stock Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Performance Shares, Performance Stock Units, Incentive Bonus Awards, Other Cash-Based Awards and Other Stock-Based Awards. This Plan shall become effective upon the date set forth in Section 17.1 hereof.

2. Definitions

Wherever the following capitalized terms are used in the Plan, they shall have the meanings specified below:

(a) “Affiliate” means, with respect to a Person, a Person that directly or indirectly Controls, or is Controlled by, or is under common Control with, such Person.

(b) “Applicable Law” means the requirements relating to the administration of equity-based awards or equity compensation plans under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction that applies to Awards.

(c) “Award” means an award of a Stock Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Unit, Performance Share, Performance Stock Unit, Incentive Bonus Award, Other Cash-Based Award and/or Other Stock-Based Award granted under the Plan.

(d) “Award Agreement” means either (i) a written or electronic agreement entered into between the Company and a Participant setting forth the terms and conditions of an Award, including any amendment or modification thereof, or (ii) a written or electronic statement issued by the Company to a Participant describing the terms and provisions of such Award, including any amendment or modification thereof. The Committee may provide for the use of electronic, internet or other non-paper Award Agreements, and the use of electronic, internet or other non-paper means for the acceptance thereof and actions thereunder by a Participant. Each Award Agreement shall be subject to the terms and conditions of the Plan and need not be identical.

(e) “Board” means the Board of Directors of the Company.

(f) “Cause” means a Participant’s (i) indictment for or conviction of, or the entry of a plea of guilty or no contest to, a felony or any other crime involving dishonesty or moral turpitude or that causes the Company or its Affiliates disgrace or disrepute, or adversely affects the Company’s or its Affiliates’ operations or financial performance or the relationship the Company or its Affiliates have with their respective customers, (ii) gross negligence or willful misconduct with respect to the Company or any of its Affiliates, including, without limitation fraud, embezzlement, misappropriation, theft or dishonesty (A) in the course of Awardee’s employment or other service or (B) otherwise which is injurious to the Company or any of its Affiliates; (iii) failure to perform at a level of effort or results commensurate with such Participant’s role or responsibilities; (iv) refusal to perform any obligation or fulfill any duty (other than any duty or obligation of the type described in clause (vi) below) to the Company or its Affiliates (other than due to a disability); (v) breach of any agreement with or duty owed to the Company or any of its Affiliates; (vi) any breach of any obligation or duty to the Company or any of its Affiliates (whether arising by statute, common law or agreement) relating to confidentiality, noncompetition, nonsolicitation or proprietary rights; (vii) any breach of any policy of the Company or its Affiliates or any action that the Board, determines is reasonably likely to cause the Company or its Affiliates disgrace or disrepute; (viii) repeatedly (i.e., on more than one occasion) being under the influence of drugs or alcohol (other than over-the-counter or prescription medicine or other medically-related drugs to the extent they are taken in accordance with their directions or under the supervision of a physician) which interferes with the performance of a Participant’s duties to the Company or any of its Affiliates, or, while under the influence of such drugs or alcohol, engaging in inappropriate conduct during the performance of a Participant’s duties to the Company or any of its Affiliates; or (ix) engaging in any act or discrimination or harassment or any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Notwithstanding the foregoing, if a Participant and the Company (or any of its Affiliates) have entered into an employment agreement, consulting agreement or other similar agreement that specifically defines “cause,” then with respect to such Participant, “Cause” shall have the meaning defined in that employment agreement, consulting agreement or other agreement.

(g) “Change in Control” shall be deemed to have occurred if any one of the following events shall occur, in a single transaction or in a series of related transactions:

(i) Any Person becomes the beneficial owner (as defined in Rule 13(d)-3 under the Exchange Act) of shares of Common Stock representing more than 50% of the total number of votes that may be cast for the election of directors of the Company; or

(ii) The consummation of any (a) merger, consolidation, acquisition, reorganization, statutory share exchange or other business combination in which either the Company or any of its subsidiaries is a party, (b) sale or other disposition of all or substantially all of the Company’s assets, in one or a series of related transactions, or (c) a combination of the foregoing transactions (each, a “Transaction”), other than a Transaction (A) involving only the Company and one or more of its now or hereafter existing subsidiaries, (B) immediately following which the shareholders of the Company immediately prior to the Transaction continue to hold a majority of the voting power in the resulting or surviving entity, or (C) following which the Incumbent Directors at the time of the execution of the initial agreement or other action of the Board providing for such Transaction continue to constitute a majority of the directors of the resulting or surviving entity; or

(iii) Within any twelve (12)-month period beginning on or after the Effective Date, the persons who were directors of the Company immediately before the beginning of such period (the “Incumbent Directors”) shall cease (for any reason other than death) to constitute at least a majority of the Board (or the board of directors of any successor to the Company); provided that any director who was not a director as of the date hereof shall be deemed to be an Incumbent Director if such director was elected

to the Board by, or on the recommendation of or with the approval of, at least two-thirds of the directors who then qualified as Incumbent Directors either actually or by prior operation of the foregoing unless such election, recommendation or approval was the result of an actual or threatened election contest of the type contemplated by Rule 14a-11 promulgated under the Exchange Act or any successor provision; or

(iv) The shareholders of the Company approve a plan of complete liquidation or dissolution of the Company.

Notwithstanding the foregoing, (i) no event or condition shall constitute a Change in Control to the extent that, if it were, a penalty tax would be imposed under Section 409A of the Code; provided that, in such a case, the event or condition shall continue to constitute a Change in Control to the maximum extent possible (e.g., if applicable, in respect of vesting without an acceleration of distribution) without causing the imposition of such penalty tax and (ii) no Change in Control shall be deemed to have occurred, and no rights arising upon a Change in Control as provided in the Plan or any Award Agreement shall exist, to the extent that the Board so determines by resolution adopted and not rescinded prior to the Change in Control; provided, however, that no such determination by the Board shall be effective if it would cause a Participant to be subject to a penalty tax under Section 409A of the Code.

(h) “Code” means the Internal Revenue Code of 1986, as amended. For purposes of this Plan, references to sections of the Code shall be deemed to include references to any applicable regulations thereunder and any successor or similar provision.

(i) “Committee” means the committee of the Board delegated with the authority to administer the Plan, or the full Board, as provided in Section 3 of the Plan. With respect to any decision relating to a Reporting Person, the Committee shall consist solely of two or more directors who are disinterested within the meaning of Rule 16b-3 promulgated under the Exchange Act, as amended from time to time, or any successor provision. The fact that a Committee member shall fail to qualify under any of these requirements shall not invalidate an Award if the Award is otherwise validly made under the Plan. The Board may at any time appoint additional members to the Committee, remove and replace members of the Committee with or without cause, and fill vacancies on the Committee however caused.

(j) “Common Stock” means the Company’s Common Stock, par value \$0.001 per share.

(k) “Company” means ChronoScale Corporation, a Nevada corporation, and any successor thereto as provided in Section 15.8.

(l) “Continuous Service” means that the Participant’s service with the Company or an Affiliate, whether as an employee, director or consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an employee, director or consultant or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant’s service with the Company or an Affiliate, will not terminate a Participant’s Continuous Service; provided, however, that if the entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Committee, such Participant’s Continuous Service will be considered to have terminated on the date such entity ceases to qualify as an Affiliate. For example, a change in status from an employee of the Company to a consultant of an Affiliate or to a director will not constitute an interruption of Continuous Service. Notwithstanding the foregoing, a leave of absence will be treated as Continuous Service for purposes of vesting in an Award only to such extent as may be provided in the Company’s (or an Affiliate’s) leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by Applicable Law or permitted by the Committee. Unless the Committee provides otherwise, or as otherwise required by Applicable Law, vesting of Awards shall be tolled during any unpaid leave of absence by a Participant.

(m) “Control” means, as to any Person, the power to direct or cause the direction of the management and policies of such Person, or the power to appoint directors of the Company, whether through the ownership of voting securities, by contract or otherwise (the terms “Controlled by” and “under common Control with” shall have correlative meanings).

(n) “Date of Grant” means the date on which an Award under the Plan is granted by the Committee, or such later date as the Committee may specify to be the effective date of an Award.

(o) “Disability” means a Participant being considered “disabled” within the meaning of Section 409A of the Code and Treasury Regulation 1.409A-3(i)(4), as well as any successor regulation or interpretation.

(p) “Effective Date” means the date set forth in Section 17.1 hereof.

(q) “Eligible Person” means any Person who is an employee, officer, director, consultant, advisor or other service provider of the Company or any Subsidiary, or any Person who is determined by the Committee to be a prospective employee, officer, director, consultant, advisor or other service provider of the Company or any Subsidiary.

(r) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(s) “Fair Market Value” of a share of Common Stock shall be, as applied to a specific date (i) the closing price of a share of Common Stock as of such date on the principal established stock exchange or national market system on which the Common Stock is then traded (or, if there is no trading in the Common Stock as of such date, the closing price of a share of Common Stock on the most recent date preceding such date on which trades of the Common Stock were recorded), or (ii) if the shares of Common Stock are not then traded on an established stock exchange or national market system but are then traded in an over-the-counter market, the average of the closing bid and asked prices for the shares of Common Stock in such over-the-counter market as of such date (or, if there are no closing bid and asked prices for the shares of Common Stock as of such date, the average of the closing bid and the asked prices for the shares of Common Stock on the most recent date preceding such date on which such closing bid and asked prices are available on such over-the-counter market), or (iii) if the shares of Common Stock are not then listed on a national securities exchange or national market system or traded in an over-the-counter market, the price of a share of Common Stock as determined by the Committee in a manner consistent with Section 409A of the Code and Treasury Regulation 1.409A-1(b)(5)(iv), as well as any successor regulation or interpretation.

(t) “Incentive Bonus Award” means an Award granted under Section 12 of the Plan.

(u) “Incentive Stock Option” means a Stock Option granted under Section 6 hereof that is intended to meet the requirements of Section 422 of the Code and the regulations promulgated thereunder.

(v) “Nonqualified Stock Option” means a Stock Option granted under Section 6 hereof that by its terms does not qualify, or is not intended to qualify, as an Incentive Stock Option.

(w) “Other Cash-Based Award” means a contractual right granted to an Eligible Person under Section 13 hereof entitling such Eligible Person to receive a cash payment at such times, and subject to such conditions, as are set forth in the Plan and the applicable Award Agreement.

(x) “Other Stock-Based Award” means a contractual right granted to an Eligible Person under Section 13 representing a notional unit interest equal in value to a share of Common Stock to be paid and distributed at such times, and subject to such conditions as are set forth in the Plan and the applicable Award Agreement.

(y) “Outside Director” means a director of the Board who is not an employee of the Company or a Subsidiary.

- (z) “Participant” means any Eligible Person who holds an outstanding Award under the Plan.
- (aa) “Person” shall mean, unless otherwise provided, any individual, partnership, firm, trust, corporation, limited liability company or other similar entity. When two or more Persons act as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of Common Stock, such partnership, limited partnership, syndicate or group shall be deemed a “Person”.
- (bb) “Performance Goals” shall mean performance goals established by the Committee as contingencies for the grant, exercise, vesting, distribution, payment and/or settlement, as applicable, of Awards.
- (cc) “Performance Shares” means a contractual right granted to an Eligible Person under Section 10 hereof representing a notional unit interest equal in value to a share of Common Stock to be paid and distributed at such times, and subject to such conditions, as are set forth in the Plan and the applicable Award Agreement.
- (dd) “Performance Stock Unit” means a contractual right granted to an Eligible Person under Section 11 hereof representing a notional dollar interest as determined by the Committee to be paid and distributed at such times, and subject to such conditions, as are set forth in the Plan and the applicable Award Agreement.
- (ee) “Plan” has the meaning given to such term in Section 1 hereof.
- (ff) “Reporting Person” means an officer, director or greater than ten (10) percent stockholder of the Company within the meaning of Rule 16a-2 under the Exchange Act, who is required to file reports pursuant to Rule 16a-3 under the Exchange Act.
- (gg) “Restricted Stock Award” means a grant of shares of Common Stock to an Eligible Person under Section 8 hereof that are issued subject to such vesting and transfer restrictions and such other conditions as are set forth in the Plan and the applicable Award Agreement.
- (hh) “Restricted Stock Unit Award” means a contractual right granted to an Eligible Person under Section 9 hereof representing notional unit interests equal in value to a share of Common Stock to be paid and distributed at such times, and subject to such conditions, as are set forth in the Plan and the applicable Award Agreement.
- (ii) “Securities Act” means the Securities Act of 1933, as amended.
- (jj) “Stock Appreciation Right” or “SAR” means a contractual right granted to an Eligible Person under Section 7 hereof entitling such Eligible Person to receive a payment, upon the exercise of such right, in such amount and at such time, and subject to such conditions, as are set forth in the Plan and the applicable Award Agreement.
- (kk) “Stock Option” means a contractual right granted to an Eligible Person under Section 6 hereof to purchase shares of Common Stock at such time and price, and subject to such conditions, as are set forth in the Plan and the applicable Award Agreement.
- (ll) “Subsidiary” means an entity (whether or not a corporation) that is wholly or majority owned or controlled, directly or indirectly, by the Company; provided, however, that with respect to Incentive Stock Options, the term “Subsidiary” shall include only an entity that qualifies under section 424(f) of the Code as a “subsidiary corporation” with respect to the Company.

3. Administration

- (a) Committee Members. The Plan shall be administered by the Committee; provided that the entire Board may act in lieu of the Committee on any matter, subject to Section 16b-3 Award requirements referred to in Section 2.9 of the Plan. If and to the extent permitted by Applicable Law, the Committee may authorize one or more Reporting Persons (or other officers) to make Awards to Eligible Persons who are not Reporting Persons (or other officers whom the Committee has specifically authorized to make Awards). Subject to Applicable Law and the restrictions set forth in the Plan, the Committee may delegate administrative functions to individuals who are Reporting Persons, officers, or employees of the Company or its Subsidiaries.
- (b) Committee Authority. The Committee shall have such powers and authority as may be necessary or appropriate for the Committee to carry out its functions as described in the Plan. Subject to the express limitations of the Plan, the Committee shall have authority to determine the Eligible Persons to whom, and the time or times at which, Awards may be granted, the number of shares, units or other rights subject to each Award, the exercise, base or purchase price of an Award (if any), the time or times at which an Award will become vested, exercisable or payable, the performance criteria, performance goals and other conditions of an Award, the duration of the Award, and all other terms of the Award. Subject to the terms of the Plan, the Committee shall have authority to amend the terms of an Award in any manner that is not inconsistent with the Plan (including without limitation to determine, add, cancel, waive, amend or otherwise alter any restrictions, terms or conditions of any Award, or extend the post-termination exercisability period of any Stock Option and/or Stock Appreciation Right); provided, no such action shall materially and adversely affect the rights of a Participant with respect to an outstanding Award without the Participant’s consent (for purposes of the foregoing, any action that causes an Incentive Stock Option to be treated as a Nonqualified Stock Option shall not be considered to have adversely affected a Participant’s rights). Notwithstanding anything herein or in any Award Agreement to the contrary, the Committee shall retain the discretion to adjust, up or down, or add, remove or otherwise modify, waive or suspend, any Performance Goals, either on a formula or discretionary basis or any combination thereof, with respect to an outstanding Award in any respect without the Participant’s consent. The Committee shall also have authority to approve forms of Award Agreement, interpret the Plan, to make all factual determinations under the Plan, and to make all other determinations necessary or advisable for Plan administration, including, without limitation, to correct any defect, to supply any omission or to reconcile any inconsistency in the Plan or any Award Agreement. The Committee may prescribe, amend, and rescind rules and regulations relating to the Plan. The Committee’s determinations under the Plan need not be uniform and may be made by the Committee selectively among Participants and Eligible Persons, whether or not such persons are similarly situated. The Committee shall consider such factors as it deems relevant in making its interpretations, determinations and actions under the Plan including, without limitation, the recommendations or advice of any officer or employee of the Company or such attorneys, consultants, accountants or other advisors as it may select. All determinations, interpretations, exercises of authority or other actions made by the Committee or Company under the Plan and any Award Agreement shall be taken or made by the Committee or Company, as applicable, in their sole and absolute discretion, and shall be final and binding on all persons, including, without limitation, the Company and all Participants.

3.3 No Liability; Indemnification. Neither the Board nor any Committee member, nor any Person acting at the direction of the Board or the Committee, shall be liable for any act, omission, interpretation, construction or determination made in good faith with respect to the Plan or any Award or Award Agreement. The Company and its Subsidiaries shall pay or reimburse any member of the Committee, as well as any other Person who takes action on behalf of the Plan, for all reasonable expenses incurred with respect to the Plan, and to the full extent allowable under Applicable Law shall indemnify each and every one of them for any claims, liabilities, and costs (including reasonable attorney’s fees) arising out of their good faith performance of duties on behalf of the Company with respect to the Plan. The Company and its Subsidiaries may, but shall not be required to, obtain liability insurance for this purpose.

4. Shares Subject to the Plan

4.1 Plan Share Limitation.

- (a) Subject to adjustment pursuant to Section 4.3 and any other applicable provisions hereof, the maximum aggregate number of shares of Common Stock which may be issued under all Awards granted to Participants under the Plan shall be 22,500,000 shares. In no event will the aggregate number of shares of Common Stock that may be issued upon the exercise of Incentive Stock Options exceed 22,500,000.

(b) Shares of Common Stock issued under the Plan may be either authorized but unissued shares or shares held in the Company's treasury. To the extent that any Award payable in shares of Common Stock is forfeited, canceled, returned to the Company for failure to satisfy vesting requirements or upon the occurrence of other forfeiture events, or otherwise terminates without payment being made thereunder, the shares of Common Stock covered thereby will no longer be counted against the foregoing maximum share limitations and may again be made subject to Awards under the Plan pursuant to such limitations. Awards settled in cash shall not count against the foregoing maximum share limitation. Shares of Common Stock that otherwise would have been issued upon the exercise of a Stock Option or SAR or in payment with respect to any other form of Award, but are surrendered in payment or partial payment of the exercise price thereof and/or taxes withheld with respect to the exercise thereof or the making of such payment, will no longer be counted against the foregoing maximum share limitations and may again be made subject to Awards under the Plan pursuant to such limitations. This Section 4.1(b) shall be construed and interpreted in accordance with the requirements of Section 422 of the Code.

4.2 Outside Director Limitation. Subject to adjustment as provided in Section 4.3, the aggregate Fair Market Value of Awards granted under the Plan to any Outside Director during any calendar year shall not exceed \$750,000 (inclusive of any cash awards to an Outside Director for such year that are not made pursuant to the Plan); provided that in the case of a new Outside Director, such amount shall be increased to \$1,000,000 for the initial year of the Outside Director's term.

4.3 Adjustments. If there shall occur any change with respect to the outstanding shares of Common Stock by reason of any recapitalization, reclassification, stock dividend, extraordinary dividend, stock split, reverse stock split, or other distribution with respect to the shares of Common Stock, or any merger, reorganization, consolidation, combination, spin-off or other similar corporate change, or any other change affecting the Common Stock, or any other corporate transaction directly or indirectly affecting the Awards or the Performance Goals or the Company's financial performance, condition or results of operations, the Committee shall, in the manner and to the extent that it deems appropriate and equitable to the Participants and consistent with the terms of the Plan, cause an adjustment to be made in (i) the maximum numbers and kind of shares provided in Section 4.1 hereof, (ii) the numbers and kind of shares of Common Stock, units, or other rights subject to then outstanding Awards, (iii) the price for each share or unit or other right subject to then outstanding Awards, (iv) the performance measures or goals relating to the vesting of an Award, including without limitation, any Performance Goals, and (v) any other terms of an Award that are affected by the event to prevent dilution or enlargement of a Participant's rights under an Award. The Committee shall also make appropriate adjustments in the terms of any Awards to reflect or relate to such changes and to modify any other terms of outstanding Awards, such as modifying performance goals and changing the length of any performance period without Participant consent. Notwithstanding the foregoing, in the case of Incentive Stock Options, any such adjustments shall, to the extent practicable, be made in a manner consistent with the requirements of Section 424(a) of the Code.

Notwithstanding the foregoing, to the extent of any conflict between this Section 4.3 and the terms of any Award Agreement, this Section 4.3 shall control, unless such Award Agreement specifically references that it controls over this Section 4.3.

5. Participation and Awards

5.1 Designation of Participants. All Eligible Persons are eligible to be designated by the Committee to receive Awards and become Participants under the Plan. The Committee has the authority to determine and designate from time to time those Eligible Persons who are to be granted Awards, the types of Awards to be granted and the number of shares of Common Stock or units subject to Awards granted under the Plan. In selecting Eligible Persons to be Participants and in determining the type and amount of Awards to be granted under the Plan, the Committee shall consider any and all factors that it deems relevant or appropriate.

5.2 Determination of Awards. The Committee shall determine the terms and conditions of all Awards granted to Participants in accordance with its authority under Section 3.2 hereof. An Award may consist of one type of right or benefit hereunder or of two or more such rights or benefits granted in tandem or in the alternative. To the extent deemed appropriate by the Committee, an Award shall be evidenced by an Award Agreement as described in Section 15.1 hereof.

6. Stock Options

6.1 Grant of Stock Option. A Stock Option may be granted to any Eligible Person selected by the Committee. Subject to the provisions of Section 6.6 hereof and Section 422 of the Code, each Stock Option shall be designated by the Committee as an Incentive Stock Option or as a Nonqualified Stock Option.

6.2 Exercise Price. The exercise price per share of a Stock Option shall not be less than 100% of the Fair Market Value of a share of Common Stock on the Date of Grant, subject to adjustments as provided for under Section 4.3.

6.3 Vesting of Stock Options. The Committee shall prescribe the time or times at which, or the conditions upon which, a Stock Option or portion thereof shall become vested and/or exercisable in an Award Agreement or as otherwise may be adjusted from time to time, including by way of adjustment contemplated by this Plan. The requirements for vesting and exercisability of a Stock Option may be based on the Continuous Service of the Participant for a specified time period (or periods) and/or on the attainment of a specified performance goal (or goals) established by the Committee. The Committee may accelerate the vesting or exercisability of any Stock Option at any time. The Committee may allow a Participant to exercise unvested Nonqualified Stock Options, in which case the shares of Common Stock then issued shall be Restricted Stock having analogous vesting restrictions to the unvested Nonqualified Stock Options.

6.4 Term of Stock Options. The Committee shall prescribe in an Award Agreement the period during which a vested Stock Option may be exercised, provided that the maximum term of a Stock Option shall be ten (10) years from the Date of Grant. A Stock Option may be earlier terminated as specified by the Committee and set forth in an Award Agreement upon or following the termination of a Participant's Continuous Service for any reason, including by reason of voluntary resignation, death, Disability, termination for Cause or any other reason. Except as otherwise provided in this Section 6 or in an Award Agreement as such agreement may be amended from time to time upon authorization of the Committee, no Stock Option may be exercised at any time during the term thereof unless the Participant is then in Continuous Service. Notwithstanding the foregoing, unless an Award Agreement provides otherwise:

(i) If a Participant's Continuous Service terminates by reason of his or her death, any Stock Option held by such Participant may, to the extent then exercisable, be exercised by such Participant's estate or any Person who acquires the right to exercise such Stock Option by bequest or inheritance at any time in accordance with its terms for up to one (1) year after the date of such Participant's death (but in no event after the earlier of the expiration of the term of such Stock Option or such time as the Stock Option is otherwise canceled or terminated in accordance with its terms). Upon expiration of such one-year period, no portion of the Stock Option held by such Participant shall be exercisable and the Stock Option shall be deemed to be canceled, forfeited and of no further force or effect.

(ii) If a Participant's Continuous Service terminates by reason of his or her Disability, any Stock Option held by such Participant may, to the extent then exercisable, be exercised by the Participant or his or her personal representative at any time in accordance with its terms for up to one (1) year after the date of such Participant's termination of Continuous Service (but in no event after the earlier of the expiration of the term of such Stock Option or such time as the Stock Option is otherwise canceled or terminated in accordance with its terms). Upon expiration of such one-year period, no portion of the Stock Option held by such Participant shall be exercisable and the Stock Option shall be deemed to be canceled, forfeited and of no further force or effect.

(iii) If a Participant's Continuous Service terminates for any reason other than death, Disability or Cause, any Stock Option held by such Participant may, to the extent then exercisable, be exercised by the Participant up until ninety (90) days following such termination of Continuous Service (but in no event after the earlier of the expiration of the term of such Stock Option or such time as the Stock Option is otherwise canceled or terminated in accordance with its terms). Upon expiration of such 90-day period, no portion of the Stock Option held by such Participant shall be exercisable and the Stock Option shall be deemed to be canceled, forfeited and of no further force or effect.

(iv) To the extent that a Stock Option of a Participant whose Continuous Service terminates for any reason other than Cause is not exercisable, such Stock Option shall be deemed forfeited and canceled on the ninetieth (90th) day after such termination of Continuous Service or at such earlier time as the Committee may determine.

6.5 Stock Option Exercise. Subject to such terms and conditions as shall be specified in an Award Agreement, a Stock Option may be exercised in whole or in part at any time during the term thereof by notice in the form required by the Company, and payment of the aggregate exercise price by certified or bank check, or such other means as the Committee may accept. As set forth in an Award Agreement or otherwise determined by the Committee, at or after grant, payment in full or in part of the exercise price of an Option may be made: (i) in the form of shares of Common Stock that have been held by the Participant for such period as the Committee may deem appropriate for accounting purposes or otherwise, valued at the Fair Market Value of such shares on the date of exercise; (ii) by surrendering to the Company shares of Common Stock otherwise receivable on exercise of the Option; (iii) by a cashless exercise program implemented by the Committee in connection with the Plan; (iv) subject to the approval of the Committee, by a full recourse, interest bearing promissory note having such terms as the Committee may permit and/or (v) by such other method as may be approved by the Committee. Subject to any governing rules or regulations, as soon as practicable after receipt of written notification of exercise and full payment of the exercise price and satisfaction of any applicable tax withholding pursuant to Section 16.5, the Company shall deliver to the Participant evidence of book entry shares of Common Stock or Common Stock certificates in an appropriate amount based upon the number of shares of Common Stock purchased under the Option. Unless otherwise determined by the Committee, all payments under all of the methods indicated above shall be paid in United States dollars or shares of Common Stock, as applicable.

6.6 Additional Rules for Incentive Stock Options.

(a) Eligibility. An Incentive Stock Option may only be granted to an Eligible Person who is considered an employee under Treasury Regulation §1.421-1(h) of the Company or any Subsidiary.

(b) Annual Limits. No Incentive Stock Option shall be granted to an Eligible Person as a result of which the aggregate Fair Market Value (determined as of the Date of Grant) of the stock with respect to which Incentive Stock Options are exercisable for the first time in any calendar year under the Plan and any other stock option plans of the Company or any Subsidiary would exceed \$100,000, determined in accordance with Section 422(d) of the Code. This limitation shall be applied by taking Incentive Stock Options into account in the order in which granted.

(c) Ten Percent Stockholders. If a Stock Option granted under the Plan is intended to be an Incentive Stock Option, and if the Participant, at the time of grant, owns stock possessing ten percent (10%) or more of the total combined voting power of all classes of Common Stock of the Company or any Subsidiary, then (i) the Stock Option exercise price per share shall in no event be less than 110% of the Fair Market Value of the Common Stock on the date of such grant and (ii) such Stock Option shall not be exercisable after the expiration of five (5) years following the date such Stock Option is granted.

(d) Termination of Employment. An Award of an Incentive Stock Option shall provide that such Stock Option may be exercised not later than three (3) months following termination of employment of the Participant with the Company and all Subsidiaries, or not later than one (1) year following death or a permanent and total disability within the meaning of Section 22(e)(3) of the Code, as and to the extent determined by the Committee to be necessary to comply with the requirements of Section 422 of the Code.

(e) Disqualifying Dispositions. If shares of Common Stock acquired by exercise of an Incentive Stock Option are disposed of within two (2) years following the Date of Grant or one (1) year following the transfer of such shares to the Participant upon exercise, the Participant shall, immediately following such disposition, notify the Company in writing of the date and terms of such disposition and provide such other information regarding the disposition as the Company may reasonably require.

7. Stock Appreciation Rights

7.1 Grant of Stock Appreciation Rights. A Stock Appreciation Right may be granted to any Eligible Person selected by the Committee. Stock Appreciation Rights may be granted on a basis that allows for the exercise of the right by the Participant or that provides for the automatic payment of the right upon a specified date or event.

7.2 Base Price. The base price of a Stock Appreciation Right shall be determined by the Committee; provided, however, that the base price for any grant of a Stock Appreciation Right shall not be less than 100% of the Fair Market Value of a share of Common Stock on the Date of Grant, subject to adjustments as provided for under Section 4.3.

7.3 Vesting Stock Appreciation Rights. The Committee shall prescribe the time or times at which, or the conditions upon which, a Stock Appreciation Right or portion thereof shall become vested and/or exercisable in an Award Agreement or as otherwise may be adjusted from time to time, including by way of adjustment contemplated by this Plan. The requirements for vesting and exercisability of a Stock Appreciation Right may be based on the Continuous Service of a Participant for a specified time period (or periods) or on the attainment of a specified performance goal (or goals) established by the Committee. The Committee may accelerate the vesting or exercisability of any Stock Appreciation Right at any time.

7.4 Term of Stock Appreciation Rights. The Committee shall prescribe in an Award Agreement the period during which a vested Stock Appreciation Right may be exercised, provided that the maximum term of a Stock Appreciation Right shall be ten (10) years from the Date of Grant. A Stock Appreciation Right may be earlier terminated as specified by the Committee and set forth in an Award Agreement upon or following the termination of a Participant's Continuous Service for any reason, including by reason of voluntary resignation, death, Disability, termination for Cause or any other reason. Except as otherwise provided in this Section 7 or in an Award Agreement, as such agreement may be amended from time to time upon authorization of the Committee, no Stock Appreciation Right may be exercised at any time during the term thereof unless the Participant is then in Continuous Service.

7.5 Payment of Stock Appreciation Rights. Subject to such terms and conditions as shall be specified in an Award Agreement, a vested Stock Appreciation Right may be exercised in whole or in part at any time during the term thereof by notice in the form required by the Company and payment of any exercise price. Upon the exercise of a Stock Appreciation Right and payment of any applicable exercise price, a Participant shall be entitled to receive an amount determined by multiplying: (i) the excess of the Fair Market Value of a share of Common Stock on the date of exercise of the Stock Appreciation Right over the base price of such Stock Appreciation Right, by (ii) the number of shares as to which such Stock Appreciation Right is exercised. Payment of the amount determined under the immediately preceding sentence may be made, as approved by the Committee and set forth in the Award Agreement, in shares of Common Stock valued at their Fair Market Value on the date of exercise, in cash, or in a combination of shares of Common Stock and cash, subject to applicable tax withholding requirements set forth in Section 16.5. If Stock Appreciation Rights are settled in shares of Common Stock, then as soon as practicable following the date of settlement the Company shall deliver to the Participant evidence of book entry shares of Common Stock or Common Stock certificates in an appropriate amount.

8. Restricted Stock Awards

8.1 Grant of Restricted Stock Awards. A Restricted Stock Award may be granted to any Eligible Person selected by the Committee. The Committee may require the payment by the Participant of a specified purchase price in connection with any Restricted Stock Award. The Committee may provide in an Award Agreement for the payment of dividends and distributions to the Participant such times as paid to stockholders generally or at the times of vesting or other payment of the Restricted Stock Award. If any dividends or distributions are paid in stock while a Restricted Stock Award is subject to restrictions under Section 8.3 of the Plan, the dividends or other distributions shares shall be subject to the same restrictions on transferability as the shares of Common Stock to which they were paid unless otherwise set forth in the

Award Agreement. The Committee may also subject the grant of any Restricted Stock Award to the execution of a voting agreement with the Company or with any Affiliate of the Company.

8.2 Vesting Requirements. The restrictions imposed on shares of Common Stock granted under a Restricted Stock Award shall lapse in accordance with the vesting requirements specified by the Committee in the Award Agreement or as otherwise may be adjusted from time to time, including by way of adjustment contemplated by this Plan. Upon vesting of a Restricted Stock Award, such Award shall be subject to the tax withholding requirement set forth in Section 16.5. The requirements for vesting of a Restricted Stock Award may be based on the Continuous Service of the Participant for a specified time period (or periods) or on the attainment of a specified performance goal (or goals) established by the Committee. The Committee may accelerate the vesting of a Restricted Stock Award at any time. If the vesting requirements of a Restricted Stock Award shall not be satisfied, the Award shall be forfeited and the shares of Common Stock subject to the Award shall be returned to the Company. In the event that the Participant paid any purchase price with respect to such forfeited shares, unless otherwise provided by the Committee in an Award Agreement, the Company will refund to the Participant the lesser of (i) such purchase price and (ii) the Fair Market Value of such shares on the date of forfeiture.

8.3 Restrictions. Shares granted under any Restricted Stock Award may not be transferred, assigned or subject to any encumbrance, pledge, or charge until all applicable restrictions are removed or have expired, unless otherwise allowed by the Committee. The Committee may require in an Award Agreement that certificates representing the shares granted under a Restricted Stock Award bear a legend making appropriate reference to the restrictions imposed, and that certificates representing the shares granted or sold under a Restricted Stock Award will remain in the physical custody of an escrow holder until all restrictions are removed or have expired.

8.4 Rights as Stockholder. Subject to the foregoing provisions of this Section 8 and the applicable Award Agreement, the Participant to whom a Restricted Stock Award is made shall have all rights of a stockholder with respect to the shares granted to the Participant under the Restricted Stock Award, including the right to vote the shares and receive all dividends and other distributions paid or made with respect thereto, unless the Committee determines otherwise at the time the Restricted Stock Award is granted.

8.5 Section 83(b) Election. If a Participant makes an election pursuant to Section 83(b) of the Code with respect to a Restricted Stock Award, the Participant shall file, within thirty (30) days following the Date of Grant, a copy of such election with the Company (directed to the Secretary thereof) and with the Internal Revenue Service, in accordance with the regulations under Section 83 of the Code. The Committee may provide in an Award Agreement that the Restricted Stock Award is conditioned upon the Participant's making or refraining from making an election with respect to the Award under Section 83(b) of the Code.

9. Restricted Stock Unit Awards

9.1 Grant of Restricted Stock Unit Awards. A Restricted Stock Unit Award may be granted to any Eligible Person selected by the Committee. The value of each stock unit under a Restricted Stock Unit Award is equal to the Fair Market Value of the Common Stock on the applicable date or time period of determination, as specified by the Committee. A Restricted Stock Unit Award shall be subject to such restrictions and conditions as the Committee shall determine. A Restricted Stock Unit Award may be granted together with a dividend equivalent right with respect to the shares of Common Stock subject to the Award, which may be accumulated and may be deemed reinvested in additional stock units, as determined by the Committee. If any dividend equivalents are paid while a Restricted Stock Unit Award is subject to restrictions under Section 9 of the Plan, the Committee may provide in the Award Agreement for such dividend equivalents to immediately be paid to the Participant holding such Restricted Stock Unit Award or pay such dividend equivalents subject to the same restrictions on transferability as the Restricted Stock Units to which they relate.

9.2 Vesting of Restricted Stock Unit Awards. On the Date of Grant, the Committee shall determine any vesting requirements with respect to a Restricted Stock Unit Award, which shall be set forth in the Award Agreement or as otherwise may be adjusted from time to time, including by way of adjustment contemplated by this Plan. The requirements for vesting of a Restricted Stock Unit Award may be based on the Continuous Service of the Participant for a specified time period (or periods) or on the attainment of a specified performance goal (or goals) established by the Committee. The Committee may accelerate the vesting of a Restricted Stock Unit Award at any time. A Restricted Stock Unit Award may also be granted on a fully vested basis, with a deferred payment date as may be determined by the Committee or elected by the Participant in accordance with rules established by the Committee and in compliance with Applicable Law including Section 409A of the Code.

9.3 Payment of Restricted Stock Unit Awards. A Restricted Stock Unit Award shall become payable to a Participant at the time or times determined by the Committee and set forth in the Award Agreement, which may be upon or following the vesting of the Award. Payment of a Restricted Stock Unit Award may be made, as determined by the Committee, in cash or in shares of Common Stock, or in a combination thereof as described in the Award Agreement, subject to applicable tax withholding requirements set forth in Section 16.5. Any cash payment of a Restricted Stock Unit Award shall be made based upon the Fair Market Value of the Common Stock, determined on such date or over such time period as determined by the Committee. Notwithstanding the foregoing, unless specified otherwise in the Award Agreement, any Restricted Stock Unit, whether settled in Common Stock or cash, shall be paid no later than two-and-a-half (2 ½) months after the later of the calendar year or fiscal year in which the Restricted Stock Units vest. If Restricted Stock Unit Awards are settled in shares of Common Stock, then as soon as practicable following the date of settlement, the Company shall deliver to the Participant evidence of book entry shares of Common Stock or Common Stock certificates in an appropriate amount.

10. Performance Shares

10.1 Grant of Performance Shares. Performance Shares may be granted to any Eligible Person selected by the Committee. A Performance Share Award shall be subject to such restrictions and conditions as the Committee shall specify in a Participant's Award Agreement or as otherwise may be adjusted from time to time, including by way of adjustment contemplated by this Plan. A Performance Share Award may be granted with a dividend equivalent right with respect to the shares of Common Stock subject to the Award, which may be accumulated and may be deemed reinvested in additional stock units, as determined by the Committee. Any shares of Common Stock issued to a Participant under this Section 10.1 may be subject to any restrictions deemed appropriate by the Committee.

10.2 Value of Performance Shares. Each Performance Share shall have an initial value equal to the Fair Market Value of a Share on the Date of Grant. The Committee shall set performance goals that, depending on the extent to which they are met over a specified time period, shall determine the number of Performance Shares that shall be issued to a Participant.

10.3 Earning of Performance Shares. After the applicable time period has ended, the number of Performance Shares earned by the Participant over such time period shall be determined as a function of the extent to which the applicable corresponding performance goals have been achieved. This determination shall be made solely by the Committee. The Committee may reduce the number of Performance Shares that may vest upon achievement of Performance Goals, modify any Performance Goals in a manner the Committee deems appropriate, or waive any performance or vesting conditions relating to a Performance Share Award.

11. Performance Stock Units

11.1 Grant of Performance Stock Units. Performance Stock Units may be granted to any Eligible Person selected by the Committee. A Performance Stock Unit Award shall be subject to such restrictions and conditions as the Committee shall specify in a Participant's Award Agreement or as otherwise may be adjusted from time to time, including by way of adjustment contemplated by this Plan.

11.2 Value of Performance Stock Units. Each Performance Stock Unit shall have an initial notional value equal to a dollar amount determined by the Committee. The Committee shall set performance goals that, depending on the extent to which they are met over a specified time period, will determine the number of Performance Stock Units that shall be settled and paid to the Participant.

11.3 Earning of Performance Stock Units. After the applicable time period has ended, the number of Performance Stock Units earned by the Participant, and the amount payable in cash, in shares or in a combination thereof, over such time period shall be determined as a function of the extent to which the applicable corresponding performance goals have been achieved. This determination shall be made solely by the Committee. The Committee may reduce the number of Performance Stock Units that may vest upon achievement of Performance Goals, modify any Performance Goals in a manner the Committee deems appropriate, or waive any performance or vesting conditions relating to a Performance Stock Unit Award.

11.4 Form and Timing of Payment of Performance Stock Units. The Committee shall pay at the close of the applicable Performance Period, or as soon as practicable thereafter, any earned Performance Stock Units in the form of cash or in shares of Common Stock or in a combination thereof, as specified in a Participant's Award Agreement, subject to applicable tax withholding requirements set forth in Section 16.5. Notwithstanding the foregoing, unless specified otherwise in the Award Agreement, all Performance Stock Units shall be paid no later than two-and-a-half (2 ½) months following the later of the calendar year or fiscal year in which such Performance Stock Units vest. Any shares of Common Stock paid to a Participant under this Section 11.4 may be subject to any restrictions deemed appropriate by the Committee. If Performance Stock Units are settled in shares of Common Stock, then as soon as practicable following the date of settlement the Company shall deliver to the Participant evidence of book entry shares of Common Stock or Common Stock certificates in an appropriate amount.

12. Incentive Bonus Awards

12.1 Incentive Bonus Awards. The Committee may grant Incentive Bonus Awards to such Participants as it may designate from time to time. The terms of a Participant's Incentive Bonus Award shall be set forth in the Participant's Award Agreement or as otherwise may be adjusted from time to time, including by way of adjustment contemplated by this Plan. Each Award Agreement shall specify such general terms and conditions as the Committee shall determine.

12.2 Incentive Bonus Award Performance Criteria. The determination of Incentive Bonus Awards for a given year or years may be based upon the attainment of specified levels of Company or Subsidiary performance as measured by pre-established, objective performance criteria determined by the Committee. The Committee shall (i) select those Participants who shall be eligible to receive an Incentive Bonus Award, (ii) determine the performance period, (iii) determine target levels of performance, and (iv) determine the level of Incentive Bonus Award to be paid to each selected Participant upon the achievement of each performance level. The Committee generally shall make the foregoing determinations prior to the commencement of services to which an Incentive Bonus Award relates, to the extent applicable, and while the outcome of the performance goals and targets is uncertain. The Committee shall have the power to adjust, modify, increase, decrease or otherwise change any of the foregoing determinations from time to time.

12.3 Payment of Incentive Bonus Awards.

(a) Incentive Bonus Awards shall be paid in cash or Common Stock, as set forth in a Participant's Award Agreement. Payments shall be made following a determination by the Committee that the performance targets were attained and shall be made within two and one-half months after the later of the end of the fiscal or calendar year in which the Incentive Award is no longer subject to a substantial risk of forfeiture.

(b) The amount of an Incentive Bonus Award to be paid upon the attainment of each targeted level of performance shall equal a percentage of a Participant's base salary for the fiscal year, a fixed dollar amount, or such other formula, as determined by the Committee. The Committee may reduce the size of any Incentive Bonus Award that the Participant may vest in upon achievement of Performance Goals, modify any Performance Goals in a manner the Committee deems appropriate, or waive any performance or vesting conditions relating to an Incentive Bonus Award.

13. Other Cash-Based Awards and Other Stock-Based Awards

13.1 Other Cash-Based and Stock-Based Awards. The Committee may grant other types of equity-based or equity-related Awards not otherwise described by the terms of this Plan (including the grant or offer for sale of unrestricted Shares) in such amounts and subject to such terms and conditions, as the Committee shall determine and specify in a Participant's Award Agreement or as otherwise may be adjusted from time to time, including by way of adjustment contemplated by this Plan. Such Awards may involve the transfer of actual shares of Common Stock to a Participant, or payment in cash or otherwise of amounts based on the value of shares of Common Stock. In addition, the Committee, at any time and from time to time, may grant Other Cash-Based Awards to a Participant in such amounts and upon such terms as the Committee shall determine and specify in a Participant's Award Agreement or as otherwise may be adjusted from time to time, including by way of adjustment contemplated by this Plan.

13.2 Value of Cash-Based Awards and Other Stock-Based Awards. Each Other Stock-Based Award shall be expressed in terms of shares of Common Stock or units based on shares of Common Stock, as determined by the Committee. Each Other Cash-Based Award shall specify a payment amount or payment range as determined by the Committee. If the Committee exercises discretion to establish performance goals, the value of Other Cash-Based Awards that shall be paid to the Participant will depend on the extent to which such performance goals are met.

13.3 Payment of Cash-Based Awards and Other Stock-Based Awards. Payment, if any, with respect to Other Cash-Based Awards and Other Stock-Based Award shall be made in accordance with the terms of the Award, in cash or shares of Common Stock as the Committee determines.

14. Change in Control

14.1 Effect of a Change in Control.

(a) The Committee may, at the time of the grant of an Award and as set forth in an Award Agreement, provide for the effect of a "Change in Control" on an Award. Such provisions may include any one or more of the following: (i) the acceleration or extension of time periods for purposes of exercising, vesting in, or realizing gain from any Award, (ii) the elimination, suspension, adjustment or other modification of performance or other conditions related to the payment or other rights under an Award, (iii) provision for the cash settlement of an Award for an equivalent cash value, as determined by the Committee, or (iv) such other modification or adjustment to an Award as the Committee deems appropriate to maintain and protect the rights and interests of Participants upon or following a Change in Control. To the extent necessary for compliance with Section 409A of the Code, an Award Agreement shall provide that an Award subject to the requirements of Section 409A that would otherwise become payable upon a Change in Control shall only become payable to the extent that the requirements for a "change in control" for purposes of Section 409A have been satisfied.

(b) Notwithstanding anything to the contrary set forth in the Plan, unless otherwise provided by an Award Agreement, upon or in anticipation of any Change in Control, the Committee may and without the need for the consent of any Participant, take one or more of the following actions contingent upon the occurrence of that Change in Control: (i) cause any or all outstanding Stock Options and Stock Appreciation Rights held by Participants affected by the Change in Control to become vested and immediately exercisable, in whole or in part; (ii) cause any or all outstanding Restricted Stock, Restricted Stock Units, Performance Shares, Performance Stock Units, Incentive Bonus Award and any other Award held by Participants affected by the Change in Control to become non-forfeitable, in whole or in part; (iii) cancel any Stock Option or Stock Appreciation Right in exchange for a substitute option in a manner consistent with the requirements of Treasury Regulation. §1.424-1(a) or §1.409A-1(b)(5)(v)(D), as applicable (notwithstanding the fact that the original Stock Option may never have been intended to satisfy the requirements for treatment as an Incentive Stock Option); (iv) cancel any Restricted Stock, Restricted Stock Units, Performance Shares or Performance Stock Units held by a Participant in exchange for restricted stock or performance shares of or stock or performance units in respect of the capital stock of any successor corporation; (v) redeem any Restricted Stock held by a Participant affected by the Change in Control for cash and/or other substitute consideration with a value equal to the Fair Market Value of an unrestricted share of Common Stock on the date of the Change in Control; (vi) terminate any Award in exchange for an amount of cash and/or property equal to the amount, if any, that would have been attained

upon the exercise of such Award or realization of the Participant's rights as of the date of the occurrence of the Change in Control (the "Change in Control Consideration"); provided, however that if the Change in Control Consideration with respect to any Option or Stock Appreciation Right does not exceed the exercise price of such Option or Stock Appreciation Right, the Committee may cancel the Option or Stock Appreciation Right without payment of any consideration therefor; and/or (vii) take any other action necessary or appropriate to carry out the terms of any definitive agreement controlling the terms and conditions of the Change in Control or that the Committee otherwise deems appropriate, necessary, advisable or convenient in order to further the intent and purposes of such Change in Control, including, without limitation, cancel any unvested Award without payment of any consideration therefore. Any such Change in Control Consideration may be subject to any escrow, indemnification and similar obligations, contingencies and encumbrances applicable in connection with the Change in Control to holders of Common Stock. Without limitation of the foregoing, if as of the date of the occurrence of the Change in Control the Committee determines that no amount would have been attained upon the realization of the Participant's rights, then such Award may be terminated by the Company without payment. The Committee may cause the Change in Control Consideration to be subject to vesting conditions (whether or not the same as the vesting conditions applicable to the Award prior to the Change in Control) and/or make such other modifications, adjustments or amendments to outstanding Awards or this Plan as the Committee deems appropriate, necessary, advisable or convenient. In taking any of the actions permitted under this Section 14, the Committee will not be obligated to treat all Awards, all Awards held by a Participant, all Awards of the same type, or all portions of Awards, similarly.

(c) The Committee may require a Participant to (i) represent and warrant as to the unencumbered title to the Participant's Awards, (ii) bear such Participant's pro rata share of any post-closing indemnity obligations, and be subject to the same or similar post-closing purchase price adjustments, escrow terms, offset rights, holdback terms and similar conditions as the other holders of Common Stock, and (iii) execute and deliver such documents and instruments as the Committee may reasonably require for the Participant to be bound by such obligations. The Committee will endeavor to take action under this Section 14 in a manner that does not cause a violation of Section 409A of the Code with respect to an Award.

15. General Provisions

15.1 Award Agreement. To the extent deemed necessary by the Committee, an Award under the Plan shall be evidenced by an Award Agreement in a written or electronic form approved by the Committee and to the extent applicable, setting forth the number of shares of Common Stock or units subject to the Award, the exercise price, base price, or purchase price of the Award, the time or times at which an Award will become vested, exercisable or payable and the term of the Award. The Award Agreement may also set forth the effect on an Award of termination of Continuous Service under certain circumstances. The Award Agreement shall be subject to and incorporate, by reference or otherwise, all of the applicable terms and conditions of the Plan, and may also set forth other terms and conditions applicable to the Award as determined by the Committee consistent with the limitations of the Plan. Award Agreements evidencing Incentive Stock Options shall contain such terms and conditions as may be necessary to meet the applicable provisions of Section 422 of the Code. The grant of an Award under the Plan shall not confer any rights upon the Participant holding such Award other than such terms, and subject to such conditions, as are specified in the Plan as being applicable to such type of Award (or to all Awards) or as are expressly set forth in the Award Agreement.

15.2 Forfeiture Events/Representations. The Committee may specify in an Award Agreement at the time of the Award that the Participant's rights, payments and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events shall include, but shall not be limited to, termination of Continuous Service for Cause, violation of Company policies, breach of noncompetition, confidentiality or other restrictive covenants that may apply to the Participant, or other conduct by the Participant that is detrimental to the business or reputation of the Company. The Committee may also specify in an Award Agreement that the Participant's rights, payments and benefits with respect to an Award shall be conditioned upon the Participant making a representation regarding compliance with noncompetition, confidentiality or other restrictive covenants that may apply to the Participant and providing that the Participant's rights, payments and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture or recoupment on account of a breach of such representation. Notwithstanding the foregoing, the confidentiality restrictions set forth in an Award Agreement shall not, and shall not be interpreted to, impair a Participant from exercising any legally protected whistleblower rights (including under Rule 21 of the Exchange Act). Notwithstanding anything to the contrary contained herein or in any Award Agreement, any amounts paid hereunder shall be subject to recoupment in accordance with The Dodd-Frank Wall Street Reform and Consumer Protection Act and any implementing regulations thereunder, any "clawback" policy adopted by the Company, as in effect from time to time, or as is otherwise required by Applicable Law.

15.3 No Assignment or Transfer; Beneficiaries.

(a) Awards under the Plan shall not be assignable or transferable by the Participant, except by will or by the laws of descent and distribution, and shall not be subject in any manner to assignment, alienation, pledge, encumbrance or charge. Notwithstanding the foregoing, the Committee may provide in an Award Agreement that the Participant shall have the right to designate a beneficiary or beneficiaries who shall be entitled to any rights, payments or other benefits specified under an Award following the Participant's death. During the lifetime of a Participant, an Award shall be exercised only by such Participant or such Participant's guardian or legal representative. In the event of a Participant's death, an Award may, to the extent permitted by the Award Agreement, be exercised by the Participant's beneficiary as designated by the Participant in the manner prescribed by the Committee or, in the absence of an authorized beneficiary designation, by the legatee of such Award under the Participant's will or by the Participant's estate in accordance with the Participant's will or the laws of descent and distribution, in each case in the same manner and to the same extent that such Award was exercisable by the Participant on the date of the Participant's death.

(b) Limited Transferability Rights. Notwithstanding anything else in this Section 15.3 to the contrary, the Committee may provide in an Award Agreement that an Award in the form of a Nonqualified Stock Option, share-settled Stock Appreciation Right, Restricted Stock, Performance Share or share-settled Other Stock-Based Award may be transferred, on such terms and conditions as the Committee deems appropriate, either (i) by instrument to the Participant's "Immediate Family" (as defined below), (ii) by instrument to an inter vivos or testamentary trust (or other entity) in which the Award is to be passed to the Participant's designated beneficiaries, or (iii) by gift to charitable institutions. Any transferee of the Participant's rights shall succeed and be subject to all of the terms of the applicable Award Agreement and the Plan. "Immediate Family" means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and shall include adoptive relationships.

15.4 Rights as Stockholder. A Participant shall have no rights as a holder of shares of Common Stock with respect to any unissued shares of Common Stock covered by an Award until the date the Participant becomes the holder of record of such securities. Except as provided in Section 4.3 hereof, no adjustment or other provision shall be made for dividends or other stockholder rights, except to the extent that the Award Agreement provides for dividend payments or dividend equivalent rights.

15.5 Employment or Continuous Service. Nothing in the Plan, in the grant of any Award or in any Award Agreement shall confer upon any Eligible Person or Participant any right to continue in Continuous Service, or interfere in any way with the right of the Company or any of its Subsidiaries to terminate the employment or other service relationship of an Eligible Person or Participant for any reason at any time.

15.6 Fractional Shares. In the case of any fractional share or unit resulting from the grant, vesting, payment or crediting of dividends or dividend equivalents under an Award, the Committee shall have the authority to (i) disregard such fractional share or unit, (ii) round such fractional share or unit to the nearest lower or higher whole share or unit, or (iii) convert such fractional share or unit into a right to receive a cash payment.

15.7 Other Compensation and Benefit Plans. The amount of any compensation deemed to be received by a Participant pursuant to an Award shall not constitute includable compensation for purposes of determining the amount of benefits to which a Participant is entitled under any other compensation or benefit plan or program of the Company or any Subsidiary, including, without limitation, under any bonus, pension, profit-sharing, life insurance, salary continuation or severance benefits plan, except to the extent specifically provided by the terms of any such plan.

15.8 Plan Binding on Transferees. The Plan shall be binding upon the Company, its transferees and assigns, and the Participant, the Participant's executor, administrator and permitted transferees and beneficiaries. In addition, all obligations of the Company under this Plan with respect to Awards granted hereunder shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Company.

15.9 Foreign Jurisdictions. The Committee may adopt, amend and terminate such arrangements and grant such Awards, not inconsistent with the intent of the Plan, as it may deem necessary or desirable to comply with any tax, securities, regulatory or other laws of other jurisdictions with respect to Awards that may be subject to such laws. The terms and conditions of such Awards may vary from the terms and conditions that would otherwise be required by the Plan solely to the extent the Committee deems necessary for such purpose. Moreover, the Board may approve such supplements to or amendments, restatements or alternative versions of the Plan, not inconsistent with the intent of the Plan, as it may consider necessary or appropriate for such purposes, without thereby affecting the terms of the Plan as in effect for any other purpose.

15.10 No Obligation to Notify or Minimize Taxes. The Company will have no duty or obligation to any Participant to advise such holder as to the time or manner of exercising an Award. Furthermore, the Company will have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of an Award or a possible period in which the Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of an Award to the holder of such Award.

15.11 Corporate Action Constituting Grant of Awards. Corporate action constituting a grant by the Company of an Award to any Participant will be deemed completed as of the date of such corporate action, unless otherwise determined by the Committee or the Board, regardless of when the instrument, certificate, or letter evidencing the Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (e.g., Board or Committee consents, resolutions or minutes) documenting the corporate action constituting the grant contain terms (e.g., exercise price, vesting schedule or number of shares) that are inconsistent with those in the Award Agreement as a result of a clerical error in the papering of the Award Agreement, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Award Agreement.

15.12 Change in Time Commitment. In the event a Participant's regular level of time commitment in the performance of the Participant's services for the Company and any Affiliates is reduced (for example, and without limitation, if the Participant is an employee of the Company and the employee has a change in status from a full-time employee to a part-time employee) after the date of grant of any Award to the Participant, the Committee has the right to (i) make a corresponding reduction in the number of shares subject to any portion of such Award that is scheduled to vest or become payable after the date of such change in time commitment and (ii) in lieu of or in combination with such a reduction, extend the vesting or payment schedule applicable to such Award. In the event of any such reduction, the Participant will have no right with respect to any portion of the Award that is so reduced or extended.

15.13 Substitute Awards in Corporate Transactions. Nothing contained in the Plan shall be construed to limit the right of the Committee to grant Awards under the Plan in connection with the acquisition, whether by purchase, merger, consolidation or other corporate transaction, of the business or assets of any corporation or other entity. Without limiting the foregoing, the Committee may grant Awards under the Plan to an employee or director of another corporation who becomes an Eligible Person by reason of any such corporate transaction in substitution for awards previously granted by such corporation or entity to such person. The terms and conditions of the substitute Awards may vary from the terms and conditions that would otherwise be required by the Plan solely to the extent the Committee deems necessary for such purpose. Any shares of Common Stock subject to these substitute Awards shall not be counted against any of the maximum share limitations set forth in the Plan; provided, that, these substitute Awards issued in connection with the assumption of, or in substitution for, outstanding Options that are intended to qualify as Incentive Stock Options shall be counted against the number of shares of Common Stock set forth in Section 4.1(a) that may be granted as Incentive Stock Options.

16. Legal Compliance

16.1 Securities Laws. No shares of Common Stock will be issued or transferred pursuant to an Award unless and until all then applicable requirements imposed by Federal and state securities and other laws, rules and regulations and by any regulatory agencies having jurisdiction, and by any exchanges upon which the shares of Common Stock may be listed, have been fully met. As a condition precedent to the issuance of shares pursuant to the grant or exercise of an Award, the Company may require the Participant to take any reasonable action to meet such requirements. The Committee may impose such conditions on any shares of Common Stock issuable under the Plan as it may deem advisable, including, without limitation, restrictions under the Securities Act, as amended, under the requirements of any exchange upon which such shares of the same class are then listed, and under any blue sky or other securities laws applicable to such shares. The Committee may also require the Participant to represent and warrant at the time of issuance or transfer that the shares of Common Stock are being acquired only for investment purposes and without any current intention to sell or distribute such shares. All Common Stock issued pursuant to the terms of this Plan shall constitute "restricted securities," as that term is defined in Rule 144 promulgated pursuant to the Securities Act, and may not be transferred except in compliance herewith and with the registration requirements of the Securities Act or an exemption therefrom. Certificates representing Common Stock acquired pursuant to an Award may bear such legend as the Company may consider appropriate under the circumstances.

16.2 Incentive Arrangement. The Plan is designed to provide an on-going, pecuniary incentive for Participants to produce their best efforts to increase the value of the Company. The Plan is not intended to provide retirement income or to defer the receipt of payments hereunder to the termination of a Participant's employment or beyond. The Plan is thus intended not to be a pension or welfare benefit plan that is subject to Employee Retirement Income Security Act of 1974 ("ERISA"), and shall be construed accordingly. All interpretations and determinations hereunder shall be made on a basis consistent with the Plan's status as not an employee benefit plan subject to ERISA.

16.3 Unfunded Plan. The adoption of the Plan and any reservation of shares of Common Stock or cash amounts by the Company to discharge its obligations hereunder shall not be deemed to create a trust or other funded arrangement. Except upon the issuance of Common Stock pursuant to an Award, any rights of a Participant under the Plan shall be those of a general unsecured creditor of the Company, and neither a Participant nor the Participant's permitted transferees or estate shall have any other interest in any assets of the Company by virtue of the Plan. Notwithstanding the foregoing, the Company shall have the right to implement or set aside funds in a grantor trust, subject to the claims of the Company's creditors or otherwise, to discharge its obligations under the Plan.

16.4 Section 409A Compliance. To the extent applicable, it is intended that the Plan and all Awards hereunder comply with the requirements of Section 409A of the Code or an exemption thereto, and the Plan and all Award Agreements shall be interpreted and applied by the Committee in a manner consistent with this intent in order to avoid the imposition of any additional tax under Section 409A of the Code. Notwithstanding anything in the Plan or an Award Agreement to the contrary, in the event that any provision of the Plan or an Award Agreement is determined by the Committee, to not comply with the requirements of Section 409A of the Code or an exemption thereto, the Committee shall have the authority to take such actions and to make such interpretations or changes to the Plan or an Award Agreement as the Committee deems necessary, regardless of whether such actions, interpretations, or changes shall adversely affect a Participant, subject to the limitations, if any, of Applicable Law. If an Award is subject to Section 409A of the Code, any payment made to a Participant who is a "specified employee" of the Company or any Subsidiary shall not be made before the date that is six (6) months after the Participant's "separation from service" to the extent required to avoid the adverse consequences of Section 409A of the Code. For purposes of this Section 16.4, the terms "separation from service" and "specified employee" shall have the meanings set forth in Section 409A of the Code. In no event whatsoever shall the Company be liable for any additional tax, interest or penalties that may be imposed on any Participant by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code.

16.5 Tax Withholding.

(a) The Company shall have the power and the right to deduct or withhold, or require a participant to remit to the Company, the minimum statutory amount to satisfy federal, state, and local taxes, domestic or foreign, required by law or regulation to be withheld with respect to any taxable event arising as a result of this Plan, but in no event shall such deduction or withholding or remittance exceed the minimum statutory withholding requirements unless permitted by the Company and such additional withholding amount will not cause adverse accounting consequences and is permitted under Applicable Law.

(b) Subject to such terms and conditions as shall be specified in an Award Agreement, a Participant may, in order to fulfill the withholding obligation, (i) tender previously-acquired shares of Common Stock or have shares of stock withheld from the exercise, provided that the shares have an aggregate Fair Market Value sufficient to satisfy in whole or in part the applicable withholding taxes; and/or (ii) utilize the broker-assisted exercise procedure described in Section 6.5 to satisfy the withholding requirements related to the exercise of a Stock Option.

(c) Notwithstanding the foregoing, a Participant may not use shares of Common Stock to satisfy the withholding requirements to the extent that (i) there is a substantial likelihood that the use of such form of payment or the timing of such form of payment would subject the Participant to a substantial risk of liability under Section 16 of the Exchange Act; (ii) such withholding would constitute a violation of the provisions of any law or regulation, or (iii) such withholding would cause adverse accounting consequences for the Company.

16.6 No Guarantee of Tax Consequences. Neither the Company, the Board, the Committee nor any other Person make any commitment or guarantee that any federal, state, local or foreign tax treatment will apply or be available to any Participant or any other Person hereunder.

16.7 Severability. If any provision of the Plan or any Award Agreement shall be determined to be illegal or unenforceable by any court of law in any jurisdiction, the remaining provisions hereof and thereof shall be severable and enforceable in accordance with their terms, and all provisions shall remain enforceable in any other jurisdiction.

16.8 Stock Certificates; Book Entry Form. Notwithstanding any provision of the Plan to the contrary, unless otherwise determined by the Committee or required by any Applicable Law, rule or regulation, any obligation set forth in the Plan pertaining to the delivery or issuance of stock certificates evidencing shares of Common Stock may be satisfied by having issuance and/or ownership of such shares recorded on the books and records of the Company (or, as applicable, its transfer agent or stock plan administrator).

16.9 Governing Law. The Plan and all rights hereunder shall be subject to and interpreted in accordance with the laws of the State of Texas, without reference to the principles of conflicts of laws, and to applicable Federal securities laws. This Agreement to arbitrate is entered into in accordance with the Federal Arbitration Act. Any controversy or claim arising out of or relating to (i) a Participant's employment with the Company or a Subsidiary or Affiliate and/or (ii) the Plan, or the breach thereof, shall be settled by arbitration administered by JAMS in accordance with its Employment Arbitration Rules before a single arbitrator in Dallas, Texas, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The Company and the Participant will each be responsible for their own attorneys' fees and expenses incurred in connection with any such arbitration. The decision arrived at by the arbitrator shall be binding upon all parties to the arbitration and no appeal shall lie therefrom, except as provided by the Federal Arbitration Act. These arbitration procedures are intended to be the exclusive method of resolving any claim or dispute arising out of or related to this Plan, including the applicability of this Section; provided, however, that any party seeking injunctive relief in connection with a breach or anticipated breach of the Plan will do so in a state or federal court of competent jurisdiction within Dallas, Texas. Neither an application for temporary emergency relief, nor a court's consideration of granting such relief shall (i) constitute a waiver of the right to pursue arbitration under this provision or (ii) delay the appointment of the arbitrator(s) or the progress of arbitration proceedings. Each Participant knowingly, voluntarily and expressly waives any and all rights to initiate, participate in, or receive money or any other form of relief from any class, collective or representative proceeding and agrees each arbitration proceeding shall proceed on an individualized basis.

16.10 Reduction of Excess Parachute Payments. Except as may be provided in an employment or severance compensation or other service agreement between the Company and the Participant, if, in connection with a Change in Control, a Participant's payment of any Awards will cause the Participant to be liable for federal excise tax under Section 4999 of the Code levied on certain "excess parachute payments" as defined in Section 280G of the Code ("Excise Tax"), then the payments made pursuant to the Awards shall be reduced (or repaid to the Company, if previously paid or provided) as provided below:

(a) If the payments due upon a Change in Control under this Plan and any other agreement between a Participant and the Company, exceed 2.99 times the Participant's "base amount," as defined in Section 280G of the Code, a reduced payment amount shall be calculated by reducing the payments to the minimum extent necessary so that no portion of any payment, as so reduced or repaid, constitutes an excess parachute payment.

(b) Whether payments are to be reduced pursuant to this Section 16.10, and to the extent to which they are to be so reduced, will be determined solely by the Company and the Company will notify the Participant in writing of its determination.

(c) In no event shall a Participant be entitled to receive any kind of gross-up payment or Excise Tax reimbursement from the Company.

17. Effective Date, Amendment and Termination

17.1 Effective Date. The effective date of the Plan shall be the date on which the Plan is approved by the requisite percentage of the holders of the Common Stock of the Company; provided, however, that Awards granted under the Plan subsequent to the approval of the Plan by the Board shall be valid if such stockholder approval occurs within one (1) year of the date on which such Board approval occurs.

17.2 Amendment; Termination. The Board may suspend or terminate the Plan (or any portion thereof) at any time and may amend the Plan at any time and from time to time in such respects as the Board may deem advisable or in the best interests of the Company or any Subsidiary; provided, however, that (a) except as expressly permitted pursuant to Sections 3.2, 4.3, 10.3, 11.3 12.3, and 14.1, no such amendment, suspension or termination shall materially and adversely affect the rights of any Participant under any outstanding Awards, without the consent of such Participant, provided that no modification or amendment of any Incentive Stock Option shall require a Participant's consent as a result of such modification or amendment causing such Incentive Stock Option (i) to become a Nonqualified Stock Option or (ii) to be considered granted as of the date of such modification or amendment pursuant to Section 424 of the Code and Treasury Regulations Section 1.424-1(e), (b) to the extent necessary and desirable to comply with any Applicable Law, regulation, or stock exchange rule, the Company shall obtain stockholder approval of any Plan amendment in such a manner and to such a degree as required, and (c) stockholder approval is required for any amendment to the Plan that (i) increases the number of shares of Common Stock available for issuance under the Plan, or (ii) changes the persons or class of persons eligible to receive Awards. The Plan will continue in effect until terminated in accordance with this Section 17.2; provided, however, that no Award will be granted hereunder on or after the 10th anniversary of the date of the Plan's initial adoption by the Board (the "Expiration Date"); but provided further, that Awards granted prior to such Expiration Date may extend beyond that date.

INITIAL BOARD APPROVAL: February 14, 2026

INITIAL STOCKHOLDER APPROVAL: _____, 2026

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-1 (No. 333-195783, No. 333-239679 and No. 333-281081), Form S-3 (No. 333-205168, No. 333-218517, No. 333-220807, No. 333-239203, No. 333-272607, and No. 333-286463) and Form S-8 (No. 333-198357, No. 333-207131, No. 333-220808, No. 333-222663, No. 333-226037, No. 333-230404, No. 333-232512, No. 333-236412, No. 333-237527, No. 333-253526, No. 333-253529, No. 333-263035, No. 333-266218, No. 333-270961, No. 333-272610, No. 333-278030, No. 333-281086, No. 333-285500, and 333-287647) of Ekso Bionics Holdings, Inc. of our report dated February 23, 2026, which includes an explanatory paragraph regarding Ekso Bionics Holdings, Inc.'s ability to continue as a going concern, relating to the consolidated financial statements of Ekso Bionics Holdings, Inc. which appears in this Form 10-K as of and for the years ended December 31, 2025 and 2024.

/s/ WithumSmith+Brown, PC

San Francisco, California
February 23, 2026

CERTIFICATION

I, Scott G. Davis, certify that:

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

Date: February 23, 2026

/s/ Scott G. Davis

Scott G. Davis
Principal Executive Officer

CERTIFICATION

I, Jerome Wong, certify that:

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

Date: February 23, 2026

/s/ Jerome Wong
Jerome Wong
Principal Financial Officer

**CERTIFICATION BY THE PRINCIPAL EXECUTIVE OFFICER PURSUANT TO
18 U.S.C. SECTION 1350**

In connection with the Annual Report on Form 10-K of Ekso Bionics Holdings, Inc. (the "Company"), for the fiscal year ended December 31, 2025 as filed with the Securities and Exchange Commission (the "Report"), I, Scott G. Davis, President and Chief Executive Officer and principal executive officer, hereby certify as of the date hereof, solely for purposes of 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

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

Dated: February 23, 2026

/s/ Scott G. Davis

Scott G. Davis
Principal Executive Officer

**CERTIFICATION BY THE PRINCIPAL FINANCIAL OFFICER PURSUANT TO
18 U.S.C. SECTION 1350**

In connection with the Annual Report on Form 10-K of Ekso Bionics Holdings, Inc. (the "Company"), for the fiscal year ended December 31, 2025 as filed with the Securities and Exchange Commission (the "Report"), I, Jerome Wong, Chief Financial Officer and principal financial officer, hereby certify as of the date hereof, solely for purposes of 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

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

Dated: February 23, 2026

/s/ Jerome Wong
Jerome Wong
Principal Accounting and Financial Officer