

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

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FILER

PHYSIOMETRIX INC

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SIC: **3845** Electromedical & electrotherapeutic apparatus

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SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported) **May 2, 2005**

PHYSIOMETRIX, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction
of Incorporation)

000-27956

(Commission File No.)

77-0248588

(IRS Employer
Identification No.)

**FIVE BILLERICA PARK
101 BILLERICA AVENUE
N. BILLERICA, MA 01862**

(Address of Principal Executive Offices) (Zip Code)

(978) 670-2422

(Registrant's Telephone Number, Including Area Code)

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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ITEM 1.01 Entry into a Material Definitive Contract

On April 28, 2005, the Registrant completed a \$1,000,000 secured non-formula revolving line of credit with Silicon Valley Bank East. The line is secured by all corporate assets and matures twelve months from closing. The loan calls for interest payable monthly at prime plus 3% and principal is due at maturity. In conjunction with the line of credit, the company issued a stock purchase warrant to Silicon Valley Bank for 72,464 shares of common stock at a purchase price of \$0.69 per share.

On April 29, 2005, the Compensation Committee of the Board of Directors of the Registrant approved employment agreements for the company's two executive officers, John A. Williams, Chief Executive Officer and Daniel W. Muehl, Chief Financial Officer. These agreements provide for severance upon termination of employment without cause as well as for acceleration of vesting of unvested stock options upon a change of control of the Registrant.

Item 9.01 Financial Statements and Exhibits

(c) Exhibits

<u>Item No.</u>	<u>Description</u>
10.15	Loan and Security Agreement between Registrant and Silicon Valley Bank effective as of April 28, 2005
10.16	Warrant to Purchase Stock issued by the Registrant to Silicon Valley Bank effective as of April 28, 2005
10.17	Employment Agreement effective as of April 29, 2005 between the Registrant and John A. Williams, Chief Executive Officer
10.18	Employment Agreement effective as of April 29, 2005 between the Registrant and - Daniel W. Muehl, Chief Financial Officer

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report on Form 8-K to be signed on its behalf by the undersigned hereunto duly authorized.

PHYSIOMETRIX, INC.

By: /s/ Daniel W. Muehl
Daniel W. Muehl
Vice President and
Chief Financial Officer

Date: May 2, 2005

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Exhibit Index

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LOAN AND SECURITY AGREEMENT

This **LOAN AND SECURITY AGREEMENT** (this “Agreement”) dated as of April 20, 2005, between **SILICON VALLEY BANK**, a California chartered bank, with its principal place of business at 3003 Tasman Drive, Santa Clara, California 95054 and with a loan production office located at One Newton Executive Park, Suite 200, 2221 Washington Street, Newton, Massachusetts 02462, (“Bank”) and **PHYSIOMETRIX, INC.** a Delaware corporation (“Borrower”), provides the terms on which Bank shall extend credit to Borrower and Borrower shall repay Bank. The parties agree as follows:

1 ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP. The term “financial statements” includes the notes, exhibits, and schedules; provided, however, Bank acknowledges that unaudited interim financial statements are subject to normal year-end adjustments, lack of footnotes or other presentation items. The terms “including” and “includes” always mean “including (or includes) without limitation,” in this or any Loan Document. Capitalized terms in this Agreement shall have the meanings set forth in Article 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code, to the extent such terms are defined therein.

2 LOAN AND TERMS OF PAYMENT

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay Bank the unpaid principal amount of all Credit Extensions and interest on the unpaid principal amount of the Credit Extensions as and when due in accordance with this Agreement.

2.1.1 Revolving Advances.

(a) Revolving Line Availability. Bank shall make Advances not exceeding the following (“Revolving Line Availability”): (i) the Revolving Line, minus (ii) the aggregate outstanding Advances hereunder. Amounts borrowed under this Section may be repaid and reborrowed during the term of this Agreement.

(b) Borrowing Procedure. To obtain an Advance, Borrower must notify Bank (which notice shall be irrevocable) by facsimile or telephone by 3:00 p.m. Eastern time on the Business Day the Advance is to be made. If such notification is by telephone, Borrower must promptly confirm the notification by delivering to Bank a completed Payment/Advance Form. Bank shall credit Advances to Borrower’s deposit account. Bank may make Advances under this Agreement based on instructions from a Responsible Officer or his or her designee or without instructions if the Advances are necessary to meet Obligations which have become due. Bank may rely on any telephone notice given by a person whom Bank reasonably believes is a Responsible Officer or designee. Borrower shall indemnify Bank for any loss Bank suffers due to such reliance.

(c) Interest Rate. The principal amounts outstanding under the Revolving Line shall accrue interest at a per annum rate equal to the aggregate of the Prime Rate and three percent (3.0%), which interest shall be payable monthly.

(d) Termination; Repayment. The Revolving Line terminates on the Revolving Line Maturity Date, when the principal amount of all Advances, the unpaid interest thereon, and all other Obligations relating to the Revolving Line shall be immediately due and payable.

2.1.2 Undisbursed Credit Extensions. Bank’s obligation to lend the undisbursed portion of the Obligations shall terminate if, in Bank’s sole discretion, there has been a material adverse change in the general affairs, management, results of operation, condition (financial or otherwise) or the prospect of repayment of the Obligations, or there has been any material adverse deviation by Borrower from the most recent business plan of Borrower presented to and accepted by Bank prior to the execution of this Agreement.

2.2 Interest Rate.

- (a) Default Rate. After an Event of Default, Obligations shall bear interest at five percent (5.0%) above the rate effective immediately before the Event of Default.
- (b) Adjustment to Interest Rate. The applicable interest rate hereunder shall increase or decrease when the Prime Rate changes.
- (c) 360-Day Year. Interest is computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed.
- (d) Debit of Accounts. Bank may debit any of Borrower' s deposit or operating accounts, including Account Number , for principal and interest payments when due, or any amounts Borrower owes Bank, when due. Bank shall promptly notify Borrower after it debits Borrower' s accounts. These debits shall not constitute a set off.
- (e) Payments. Interest is payable monthly on the first calendar day of each month. Payments received after 12:00 noon Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue.

2.3 Fees. Borrower shall pay to Bank:

- (a) Commitment Fee. A fully earned, non-refundable commitment fee of Ten Thousand Dollars (\$10,000.00) due and payable on the Closing Date; and
- (b) Success Fee. A fully earned, non-refundable fee of Fifteen Thousand Dollars (\$15,000.00) due and payable at the earlier of (i) the occurrence of the Sale Agreement Event, (ii) the Revolving Line Maturity Date, and (iii) the early termination of this Agreement; and
- (c) Bank Expenses. All Bank Expenses (including reasonable attorneys' fees and expenses) incurred through and after the Closing Date, when due.

3 CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Credit Extension. Bank' s obligation to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate, including, without limitation, the following:

- (a) this Agreement;
- (b) a certificate of the Secretary of Borrower with respect to articles, bylaws, incumbency and resolutions authorizing the execution and delivery of this Agreement, the Loan Documents, and all transactions related thereto, including the Warrant;
- (c) an Intellectual Property Security Agreement;
- (d) Perfection Certificate(s) by Borrower;
- (e) landlord' s waiver;
- (f) a legal opinion of Borrower' s counsel (authority and enforceability);
- (g) Warrant to Purchase Stock;
- (h) Account Control Agreement/ Investment Account Control Agreement;

- (i) insurance certificate;
- (j) payment of the fees and Bank Expenses;
- (k) Certificate of Foreign Qualification (if applicable);
- (l) Certificate of Good Standing/Legal Existence; and
- (m) such other documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

3.2 Conditions Precedent to all Credit Extensions. Bank's obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following:

- (a) timely receipt of any Payment/Advance Form; and
- (b) the representations and warranties in Article 5 shall be true in all material respects on the date of the Payment/Advance Form and on the effective date of each Credit Extension except that any representation or warranty made as of a specified earlier date shall be true in all material respects as of such earlier date and no Event of Default shall have occurred and be continuing, or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Article 5 remain true in all material respects unless such representation or warranty relates solely to an earlier date.

4 CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations and the performance of each of Borrower's duties under the Loan Documents, a continuing security interest in, and pledges and assigns to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Subject to Section 5.2, Borrower warrants and represents that the security interest granted herein shall be a first priority security interest in the Collateral.

Except as noted on the Perfection Certificate, Borrower is not a party to, nor is bound by, any material license (other than over the counter software that is commercially available to the public) or other material agreement with respect to which Borrower is the licensee that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property. Borrower shall provide written notice to Bank within ten (10) days of entering or becoming bound by, any such license or agreement which is reasonably likely to have a material impact on Borrower's business or financial condition. Borrower shall take such steps as Bank reasonably requests to obtain the consent of, authorization by or waiver by, any person whose consent or waiver is necessary for all such licenses or contract rights to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such license or agreement, whether now existing or entered into in the future.

If Borrower shall, at any time, acquire a commercial tort claim, Borrower shall promptly notify Bank in a writing signed by Borrower of the brief details thereof and grant to Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to Bank.

4.2 Termination by Borrower.

Borrower may terminate this Agreement by sending written notice to Bank and paying in full all Obligations. If this Agreement is terminated, Bank's lien and security interest in the Collateral shall continue until Borrower fully satisfies the Obligations. Upon the satisfaction in full of all Obligations and the termination of the Bank's obligation to make any Credit Extensions hereunder, this Agreement and the security interest granted herein shall terminate and all rights to the Collateral shall revert to Borrower. Upon such termination Bank will execute

and deliver to Borrower any documents or instruments as Borrower shall reasonably request to evidence such termination.

4.3 Authorization to File Financing Statements. Borrower hereby authorizes Bank to file UCC financing statements, without notice to Borrower, with all appropriate jurisdictions in order to perfect or protect Bank's interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, shall be deemed to violate the rights of Bank under the Code.

5 REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Bank as follows:

5.1 Due Organization and Authorization. Borrower, and each Subsidiary, is duly existing and in good standing in its state of formation and qualified and licensed to do business in, and in good standing in, any state in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to cause a Material Adverse Change. In connection with this Agreement, Borrower delivered to Bank a perfection certificate signed by Borrower (the "Perfection Certificate"). Borrower represents and warrants to Bank that: (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; and (b) Borrower is an organization of the type, and is organized in the jurisdiction, set forth in the Perfection Certificate; and (c) the Perfection Certificate accurately sets forth Borrower's organizational identification number or accurately states that Borrower has none; and (d) the Perfection Certificate accurately sets forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's mailing address if different, and (e) as of the date hereof, all other information set forth on the Perfection Certificate pertaining to Borrower is accurate and complete in all material respects. If Borrower does not now have an organizational identification number, but later obtains one, Borrower shall forthwith notify Bank of such organizational identification number.

The execution, delivery and performance of the Loan Documents have been duly authorized, and do not conflict with Borrower's organizational documents, nor shall they constitute an event of default under any material agreement (as such may be amended from time to time) by which Borrower is bound. Borrower is not in default under any agreement to which or by which it is bound in which the default could reasonably be expected to cause a Material Adverse Change.

5.2 Collateral. Borrower has good title to the Collateral, free of Liens except Permitted Liens. Borrower has no deposit account, other than the deposit accounts with Bank and deposit accounts described in the Perfection Certificate delivered to Bank in connection herewith. The Collateral is not in the possession of any third party bailee (such as a warehouse), unless Borrower has complied with the provisions of this Section 5.2 with respect thereto. Except as hereafter disclosed to Bank in writing by Borrower, none of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate. In the event that Borrower, after the date hereof, intends to store or otherwise deliver any portion of the Collateral to a bailee, then Borrower will first receive the written consent of Bank and such bailee must acknowledge in writing that the bailee is holding such Collateral for the benefit of Bank. All Inventory is in all material respects of good and marketable quality, free from material defects. Borrower is the sole owner of the Intellectual Property, except for non-exclusive licenses granted to its customers in the ordinary course of business. Each Patent is valid and enforceable and no part of the Intellectual Property has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Intellectual Property violates the rights of any third party {except to the extent such claim could not reasonably be expected to cause a Material Adverse Change.

5.3 Litigation. Except as shown in the Perfection Certificate, as of the date hereof, there are no actions or proceedings pending or, to the knowledge of Borrower's Responsible Officers or legal counsel, threatened by or against Borrower or any Subsidiary in which an adverse decision could reasonably be expected to cause a Material Adverse Change.

5.4 No Material Deterioration in Financial Statements. All consolidated financial statements for Borrower and any Subsidiary delivered to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations as of the dates and for the periods specified.

There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to Bank.

5.5 Solvency. The fair salable value of Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; and Borrower is able to pay its debts (including trade debts) as they mature.

5.6 Regulatory Compliance. Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Borrower has not violated any laws, ordinances or rules, the violation of which could reasonably be expected to cause a Material Adverse Change. None of Borrower's or any Subsidiary's properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in compliance with applicable law. Borrower and each Subsidiary has timely filed all required material tax returns and paid, or made adequate provision to pay, all material taxes, except those being contested in good faith with adequate reserves under GAAP or for which extensions have been properly requested. Borrower and each Subsidiary has obtained all consents, approvals and authorizations of, made all declarations or filings with or obtained extensions for filing, and given all notices to, all government authorities that are necessary to continue its business as currently conducted except where the failure to obtain or make such consents, declarations, notices or filings would not reasonably be expected to cause a Material Adverse Change.

5.7 Subsidiaries; Investments. Borrower does not own any stock, partnership interest or other equity securities except for Permitted Investments.

5.8 Full Disclosure. No written representation, warranty or other statement of Borrower in any certificate or written statement given to Bank as of the date such representations, warranties or other statements were made contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (when taken as a whole, it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not to be viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

6 AFFIRMATIVE COVENANTS

Borrower shall do all of the following:

6.1 Government Compliance. Borrower shall maintain its, and all Subsidiaries', legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower shall comply, and have each Subsidiary comply, in all material respects, with all laws, ordinances and regulations to which it is subject, noncompliance with which could have a material adverse effect on Borrower's business or operations or would reasonably be expected to cause a Material Adverse Change.

6.2 Financial Statements, Reports, Certificates.

(a) Borrower shall deliver to Bank: (i) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations during the period certified by a Responsible Officer and in a form acceptable to Bank; (ii) within five (5) days of filing, Borrower shall provide Bank copies of or electronic notice of links to all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt and all reports on Form 10-K, and 10-Q filed with the Securities and Exchange Commission; (iv) a prompt report of any legal actions pending or threatened against Borrower or any Subsidiary that could result in damages or costs to Borrower or any Subsidiary of One Hundred Thousand Dollars (\$100,000.00) or more; (v) prompt notice of any material change in the composition of the Intellectual Property, or the registration of any Copyright (in accordance with Section 6.7), including any subsequent ownership right of Borrower in or to any Copyright, Patent

or Trademark not shown in any intellectual property security agreement between Borrower and Bank or knowledge of an event that materially adversely affects the value of the Intellectual Property; and (vi) other financial information reasonably requested by Bank.

6.3 Intentionally Deleted.

6.4 Taxes. Borrower shall make, and cause each Subsidiary to make, timely payment or timely request for extension of payment of all material federal, state, and local taxes or assessments (other than taxes and assessments which Borrower is contesting in good faith, with adequate reserves maintained in accordance with GAAP or for which an extension of deadline has been properly requested) and will deliver to Bank, on demand, appropriate certificates attesting to such payments.

6.5 Insurance. Borrower shall keep its business and the Collateral insured for risks and in amounts, and as are reasonable and customary for similarly situated companies. Insurance policies shall be in a form, with companies, and in amounts that are satisfactory to Bank in its reasonable discretion. All property policies shall have a lender's loss payable endorsement showing Bank as an additional loss payee and all liability policies shall show Bank as an additional insured and all policies shall provide that the insurer must give Bank at least twenty (20) days notice before canceling its policy. At Bank's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Bank's option, be payable to Bank on account of the Obligations. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to One Hundred Thousand Dollars (\$100,000.00), in the aggregate, toward the replacement or repair of destroyed or damaged property; provided that (i) any such replaced or repaired property (a) shall be of equal or like value as the replaced or repaired Collateral and (b) shall be deemed Collateral in which Bank has been granted a first priority security interest and (ii) after the occurrence and during the continuation of an Event of Default all proceeds payable under such casualty policy shall, at the option of Bank, be payable to Bank on account of the Obligations. If Borrower fails to obtain insurance as required under Section 6.5 or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may make all or part of such payment or obtain such insurance policies required in Section 6.5, and take any action under the policies Bank deems prudent.

6.6 Accounts.

(a) In order to permit Bank to monitor Borrower's financial performance and condition, Borrower shall maintain an operating account with Bank as of the Closing Date, and shall maintain its primary operating accounts with Bank on or prior to sixty (60) days of the Closing Date.

(b) Borrower shall identify to Bank, in writing, any bank or securities account opened by Borrower with any institution other than Bank. In addition, for each such account that Borrower at any time opens or maintains, Borrower shall, at Bank's request and option, pursuant to an agreement in form and substance acceptable to Bank, cause the depository bank or securities intermediary to agree that such account is the collateral of Bank, and enter into a "control agreement" pursuant to the terms hereunder. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's employees.

6.7 Registration of Intellectual Property Rights. Borrower shall not register any Copyrights or Mask Works in the United States Copyright Office unless it: (i) has given at least fifteen (15) days' prior written notice to Bank of its intent to register such Copyrights or Mask Works and has provided Bank with a copy of the application it intends to file with the United States Copyright Office (excluding exhibits thereto); (ii) executes a security agreement/IP Agreement or such other documents as Bank may reasonably request in order to maintain the perfection and priority of Bank's security interest in the Copyrights proposed to be registered with the United States Copyright Office; and (iii) records such security agreement/ IP Agreement with the United States Copyright Office contemporaneously with filing the Copyright application(s) with the United States Copyright Office. Borrower shall promptly provide to Bank a copy of the Copyright application(s) filed with the United States Copyright Office, together with evidence of the recording of the security documents [IP Agreement] necessary for Bank to maintain the perfection and priority of its security interest in such Copyrights or Mask Works. Borrower shall provide written notice to Bank of any application filed by Borrower in the United States Patent Trademark Office for a patent or to register a trademark or service mark within 30 days of any such filing.

Borrower shall: (i) protect, defend and maintain the validity and enforceability of the Intellectual Property; (ii) promptly advise Bank in writing of material infringements of the Intellectual Property; and (iii) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Bank's written consent.

6.8 Further Assurances. Borrower shall execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank's security interest in the Collateral or to effect the purposes of this Agreement.

7 NEGATIVE COVENANTS

Borrower shall not do any of the following without Bank's prior written consent:

7.1 Dispositions. Convey, sell, lease, transfer, assign or otherwise dispose of (collectively a "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, including the Intellectual Property, except for Transfers of (a) Inventory in the ordinary course of business; (b) non-exclusive licenses and similar arrangements for the use of the property of Borrower or its Subsidiaries in the ordinary course of business; or (c) worn-out or obsolete Equipment. Borrower shall not enter into an agreement with any Person other than Bank which restricts the subsequent granting of a security interest in the Intellectual Property.

7.2 Changes in Business, Ownership, Management or Business Locations. Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower or reasonably related thereto, or have a material change in its ownership (other than by the sale of Borrower's equity securities in a public offering) or management. Borrower shall not, without at least thirty (30) days prior written notice to Bank: (a) relocate its chief executive office, or add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Five Thousand Dollars (\$5,000.00) in Borrower's assets or property), or (b) change its jurisdiction of organization, or (c) change its organizational structure or type, or (d) change its legal name, or (e) change any organizational number (if any) assigned by its jurisdiction of organization.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person. A Subsidiary may merge or consolidate into another Subsidiary or into Borrower. Notwithstanding the foregoing, Borrower may merge with or be acquired by a New York Stock Exchange ("NYSE") or Nasdaq National Market ("Nasdaq") listed company (or wholly-owned direct or indirect subsidiary of same) in a transaction in which the consideration consists of cash or securities listed on the NYSE or Nasdaq and in which the acquiring company causes all Obligations to be paid contemporaneously with the closing of such transaction.

7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 Encumbrance. Create, incur, or allow any Lien on any of its property, including the Intellectual Property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein. The Collateral may also be subject to Permitted Liens.

7.6 Distributions; Investments. (a) Directly or indirectly acquire or own any Person, or make any Investment in any Person, other than Permitted Investments, or permit any of its Subsidiaries to do so; or (b) pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock other than Permitted Distributions.

7.7 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for Permitted Affiliate Transactions.

7.8 Subordinated Debt. Make or permit any payment on any Subordinated Debt, except under the terms of the Subordinated Debt, or amend any provision in any document relating to the Subordinated Debt

7.9 Compliance. (a) Become an “investment company” or a company controlled by an “investment company”, under the Investment Company Act of 1940 or undertake as one of its important activities extending credit to purchase or carry margin stock, or use the proceeds of any Credit Extension for that purpose; (b) fail to meet the minimum funding requirements of ERISA, or permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; or (c) fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Borrower’s business or operations or would reasonably be expected to cause a Material Adverse Change, or permit any of its Subsidiaries to do so.

8 EVENTS OF DEFAULT

Any one of the following shall constitute an event of default hereunder (an “Event of Default”):

8.1 Payment Default. Borrower fails to pay any of the Obligations within three (3) days after their due date. During such three (3) day period the failure to cure the default shall not constitute an Event of Default (but no Credit Extension shall be made during such cure period).

8.2 Covenant Default. (a) Borrower fails or neglects to perform any obligation in Section 6.2, 6.6 or violates any covenant in Article 7; or (b) Borrower fails or neglects to perform, keep, or observe any other material term, provision, condition, covenant or agreement contained in this Agreement, any of the Loan Documents, and as to any default under such other material term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to have cured such default shall not be deemed an Event of Default (provided that no Credit Extensions shall be made during such cure period). Grace periods provided under this Section shall not apply, among other things, to financial covenants or any other covenants that are required to be satisfied, completed or tested by a date certain.

8.3 Material Adverse Change. A Material Adverse Change occurs.

8.4 Attachment. (a) Any material portion of Borrower’s assets is attached, seized, levied on, or comes into possession of a trustee or receiver and the attachment, seizure or levy is not removed in ten (10) days; (b) the service of process upon Borrower seeking to attach, by trustee or similar process, any funds of Borrower on deposit with Bank, or any entity under control of Bank (including a subsidiary); (c) Borrower is enjoined, restrained, or prevented by court order from conducting a material part of its business; (d) a judgment or other claim becomes a Lien on a material portion of Borrower’s assets; or (e) a notice of lien, levy, or assessment is filed against any of Borrower’s assets by any government agency and not paid or released within ten (10) days after Borrower receives notice. These are not Events of Default if stayed or if a bond is posted pending contest by Borrower (but no Credit Extensions shall be made during the cure period).

8.5 Insolvency. (a) Borrower is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower and not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made before any Insolvency Proceeding is dismissed).

8.6 Other Agreements. If there is a default in any agreement for borrowed money to which Borrower is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) or that could result in a Material Adverse Change.

8.7 Judgments. If a judgment or judgments not covered by insurance for the payment of money in an amount, individually or in the aggregate, of at least One Hundred Thousand Dollars (\$100,000.00) shall be rendered against Borrower and shall remain unsatisfied and unstayed for a period of ten (10) days (provided that no Credit Extensions will be made prior to the satisfaction or stay of such judgment).

8.8 Misrepresentations. If Borrower or any Person acting for Borrower makes any material misrepresentation or material misstatement now or later in any warranty or representation in this Agreement or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document.

8.9 Subordinated Debt. A default or breach occurs under any agreement between Borrower and any creditor of Borrower that signed a subordination agreement with Bank, or any creditor that has signed a subordination agreement with Bank breaches any terms of the subordination agreement.

9 BANK'S RIGHTS AND REMEDIES

9.1 Rights and Remedies. When an Event of Default occurs and continues, Bank may, without notice or demand, do any or all of the following:

(a) Declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations are immediately due and payable without any action by Bank);

(b) Stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) Settle or adjust disputes and claims directly with account debtors for amounts, on terms and in any order that Bank considers advisable and notify any Person owing Borrower money of Bank's security interest in such funds and verify and/or collect the amounts owed by such account debtors. After the occurrence of an Event of Default, any amounts received by Borrower shall be held in trust by Borrower for Bank, and, if requested by Bank, Borrower shall immediately deliver such receipts to Bank in the form received from the account debtor, with proper endorsements for deposit;

(d) Make any payments and do any acts it considers necessary or reasonable to protect its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank's rights or remedies;

(e) Apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) any amount held by Bank owing to or for the credit or the account of Borrower;

(f) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Bank is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, Mask Works, rights of use of any name, trade secrets, trade names, Trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section, Borrower's rights under all licenses and all franchise agreements inure to Bank's benefit;

(g) Place a "hold" on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any control agreement or similar agreements providing control of any Collateral; and

(h) Exercise all rights and remedies and dispose of the Collateral according to the Code.

9.2 Power of Attorney. Borrower hereby irrevocably appoints Bank as its lawful attorney-in-fact, to be effective upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against account debtors; (c) settle and adjust disputes and claims about the Accounts directly with account debtors, for amounts and on terms Bank determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; and (e) transfer the Collateral into the name of Bank or a third party as

the Code permits. Borrower hereby appoints Bank as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of any security interest regardless of whether an Event of Default has occurred until all Obligations have

been satisfied in full and Bank is under no further obligation to make Credit Extensions hereunder. Bank's foregoing appointment as Borrower's attorney in fact, and all of Bank's rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and Bank's obligation to provide Credit Extensions terminates.

9.3 Bank Expenses. Any amounts paid by Bank as provided herein shall constitute Bank Expenses and are immediately due and payable, and shall bear interest at the then applicable rate hereunder and be secured by the Collateral. No payments by Bank shall be deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

9.4 Bank's Liability for Collateral. So long as Bank complies with reasonable banking practices regarding the safekeeping of Collateral and Section 9-207 of the Code, Bank shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.5 Remedies Cumulative. Bank's rights and remedies under this Agreement, the Loan Documents, and all other agreements are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank's exercise of one right or remedy is not an election, and Bank's waiver of any Event of Default is not a continuing waiver. Bank's delay is not a waiver, election, or acquiescence. No waiver hereunder shall be effective unless signed by Bank and then is only effective for the specific instance and purpose for which it was given.

9.6 Demand Waiver. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

10 NOTICES

All notices or demands by any party to this Agreement or any related agreement must be in writing and be personally delivered or sent by an overnight delivery service, by certified mail, postage prepaid, return receipt requested, or by facsimile at the addresses listed below. Either Bank or Borrower may change its notice address by giving the other party written notice.

If to Borrower: Physiometrix, Inc.
5 Billerica Park, 101 Billerica Avenue
North Billerica, Massachusetts 01862
Attn: Mr. Daniel Muehl, Chief Financial Officer
FAX: (978)

If to Bank: Silicon Valley Bank
One Newton Executive Park, Suite 200
2221 Washington Street
Newton, Massachusetts 02462
Attn: Mr. Michael Hanewich
Fax: (617) 969-4395

with a copy to: Riemer & Braunstein LLP
Three Center Plaza
Boston, Massachusetts 02108
Attn: David A. Ephraim, Esquire
FAX: (617) 880-3456

11 CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

Massachusetts law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Bank each submit to the exclusive jurisdiction of the State and Federal courts in Massachusetts; provided, however, that if for any reason Bank cannot avail itself of such courts in the Commonwealth of Massachusetts, Borrower accepts jurisdiction of the courts and venue in Santa Clara County, California. NOTWITHSTANDING THE FOREGOING, BANK SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION WHICH BANK REASONABLY DEEMS NECESSARY OR APPROPRIATE IN ORDER TO REALIZE ON THE COLLATERAL OR TO OTHERWISE ENFORCE BANK' S RIGHTS AGAINST BORROWER OR ITS PROPERTY.

BORROWER AND BANK EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

12 GENERAL PROVISIONS

12.1 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or Obligations under it without Bank' s prior written consent which may be granted or withheld in Bank' s discretion. Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank' s obligations, rights and benefits under this Agreement, the Loan Documents or any related agreement.

12.2 Indemnification. Borrower hereby indemnifies, defends and holds Bank and its directors, officers, employees and agents harmless against: (a) all obligations, demands, claims, and liabilities asserted by any other party or Person in connection with the transactions contemplated by the Loan Documents; and (b) all losses or Bank Expenses incurred, or paid by Bank from, following, or consequential to transactions between Bank and Borrower (including reasonable attorneys' fees and expenses), except for losses caused by Bank' s gross negligence or willful misconduct.

12.3 Right of Set Off. Borrower hereby grants to Bank, a lien, security interest and right of set off as security for all Obligations to Bank, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Bank or any entity under the control of Bank (including a Bank subsidiary) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Bank may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmaturing and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12.4 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

12.5 Severability of Provision. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.6 Amendments in Writing; Integration. All amendments to this Agreement must be in writing signed by both Bank and Borrower. This Agreement and the Loan Documents represent the entire agreement about this subject matter, and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

12.7 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, are an original, and all taken together, constitute one Agreement.

12.8 Survival. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms, and all Obligations have been satisfied. The obligation of Borrower in Section 12.2 to indemnify Bank shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

12.9 Confidentiality. In handling any confidential information, Bank shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Bank's subsidiaries or affiliates in connection with their business with Borrower; (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, Bank shall use commercially reasonable efforts in obtaining such prospective transferee's or purchaser's agreement to the terms of this provision); (c) as required by law, regulation, subpoena, or other order, (d) as required in connection with Bank's examination or audit; and (e) as Bank considers appropriate in exercising remedies under this Agreement. Confidential information does not include information that either: (i) is in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain after disclosure to Bank; or (ii) is disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.

13 DEFINITIONS

13.1 Definitions. In this Agreement:

“**Accounts**” are all existing and later arising accounts, contract rights, and other obligations owed Borrower in connection with its sale or lease of goods (including licensing software and other technology) or provision of services, all credit insurance, guaranties, other security and all merchandise returned or reclaimed by Borrower and Borrower's Books relating to any of the foregoing, as such definition may be amended from time to time according to the Code.

“**Advance**” or “**Advances**” is a loan advance (or advances) under the Revolving Line.

“**Affiliate**” is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

“**Bank Expenses**” are all audit fees and expenses and reasonable costs or expenses (including reasonable attorneys' fees and expenses) for preparing, negotiating, administering, defending and enforcing the Loan Documents (including appeals or Insolvency Proceedings).

“**Borrower's Books**” are all Borrower's books and records including ledgers, records regarding Borrower's assets or liabilities, the Collateral, business operations or financial condition and all computer programs or storage or any equipment containing the information.

“**Business Day**” is any day that is not a Saturday, Sunday or a day on which Bank is closed.

“**Closing Date**” is the date of this Agreement.

“**Code**” is the Uniform Commercial Code as adopted in Massachusetts, as amended and as may be amended and in effect from time to time.

“**Collateral**” is any and all properties, rights and assets of Borrower granted by Borrower to Bank or arising under the Code, now, or in the future, in which Borrower obtains an interest, or the power to transfer rights, in the property described on **Exhibit A**.

“Contingent Obligation” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“Copyrights” are all copyright rights, applications or registrations and like protections in each work or authorship or derivative work, whether published or not (whether or not it is a trade secret) now or later existing, created, acquired or held.

“Credit Extension” is each Advance or any other extension of credit by Bank for Borrower’s benefit.

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

“ERISA” is the Employment Retirement Income Security Act of 1974, and its regulations.

“Event of Default” is defined in Article 8.

“GAAP” is generally accepted accounting principles in the United States.

“Indebtedness” is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations and (d) Contingent Obligations.

“Insolvency Proceeding” is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“Intellectual Property” is:

- (a) Copyrights, Trademarks, Patents, and Mask Works including amendments, renewals, extensions and all licenses or other rights to use and all license fees and royalties from the use;
- (b) Any trade secrets and any Intellectual Property rights in computer software and computer software products now or later existing, created, acquired or held;
- (c) All design rights which may be available to Borrower now or later created, acquired or held;
- (d) Any claims for damages (past, present or future) for infringement of any of the rights above, with the right, but not the obligation, to sue and collect damages for use or infringement of the intellectual property rights above.

All proceeds and products of the foregoing, including all insurance, indemnity or warranty payments.

“Inventory” is present and future inventory in which Borrower has any interest, including merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products intended for sale or lease or to be furnished under a contract of service, of every kind and description now or later owned by or in

the custody or possession, actual or constructive, of Borrower, including inventory temporarily out of its custody or possession or in transit and including returns on any accounts or other proceeds (including insurance proceeds) from the sale or disposition of any of the foregoing and any documents of title.

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

“**IP Agreement**” is a certain Intellectual Property Security Agreement executed and delivered by Borrower to Bank dated as of the Closing Date.

“**Lien**” is a mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

“**Loan Documents**” are, collectively, this Agreement, any guaranties executed by any Guarantor, and any other present or future agreement between Borrower and/or for the benefit of Bank in connection with this Agreement, all as amended, extended or restated.

“**Mask Works**” are all mask works or similar rights available for the protection of semiconductor chips, now owned or later acquired.

“**Material Adverse Change**” is: (a) a material impairment in the perfection or priority of Bank’s security interest in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise) of Borrower; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

“**Obligations**” are all liabilities, obligations, covenants, agreements, debts, principal, interest, Bank Expenses and other amounts Borrower owes Bank now or later, including letters of credit, cash management services, and foreign exchange contracts, if any, and including interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank.

“**Patents**” are patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same

“**Payment/Advance Form**” is in the form of **Exhibit B**.

“**Perfection Certificate**” is defined in Section 5.1.

“**Permitted Affiliate Transactions**” are:

- (a) transactions that are in the ordinary course of Borrower’s business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm’s length transaction with a non-affiliated Person;
- (b) compensation and benefit arrangements (including the granting of options or other equity compensation arrangements) approved by or pursuant to any plan approved by the board of directors of Borrower, and any indemnification arrangements with employees, officers, directors or consultants; and
- (c) any Permitted Investment.

“**Permitted Distributions**” are:

(a) repurchases of stock from employees, consultants or directors of Borrower in an aggregate amount not to exceed One Hundred Thousand Dollars (\$100,000.00) in any fiscal year, provided that no Event of Default has occurred and is continuing or would exist after giving effect to the repurchases;

(b) distributions payable solely in capital stock of the Borrower;

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(c) the distribution of non-cash rights in connection with any stockholders' rights plan; and

(d) the conversion by Borrower of any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange therefor, and payments in cash for any fractional shares of such convertible securities.

“Permitted Indebtedness” is:

(a) Borrower's indebtedness to Bank under this Agreement or the Loan Documents;

(b) Indebtedness existing on the Closing Date and shown on the Perfection Certificate;

(c) Subordinated Debt;

(d) Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness secured by Permitted Liens;

(f) Other Indebtedness in an aggregate principal amount not to exceed One Hundred Thousand Dollars (\$100,000.00); and

(e) Extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (f) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

“Permitted Investments” are:

(a) Investments shown on the Perfection Certificate and existing on the Closing Date;

(b) (i) marketable direct obligations issued or unconditionally guaranteed by the United States or its agency or any state maturing within 1 year from its acquisition, (ii) commercial paper maturing no more than 1 year after its creation and having the highest rating from either Standard & Poor's Corporation or Moody's Investors Service, Inc., (iii) Bank's certificates of deposit issued maturing no more than 1 year after issue, (iv) any other investments administered through Bank;

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

(d) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower' s Board of Directors;

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

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

(g) Joint ventures or strategic alliances in the ordinary course of Borrower' s business consisting of the non-exclusive licensing of technology, the development of technology

or the providing of technical support, provided that any cash investments by Borrower do not exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate in any fiscal year; and

(h) Other Investments not otherwise permitted by Section 7.6 not exceeding Fifty Thousand Dollars (\$50,000.00) in the aggregate outstanding at any time.

“Permitted Liens” are:

(a) Liens existing on the Closing Date and shown on the Perfection Certificate or arising under this Agreement or other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either not delinquent or being contested in good faith and for which Borrower maintains adequate reserves on its Books, if they have no priority over any of Bank' s security interests;

(c) Purchase money Liens (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than One Hundred Thousand Dollars (\$100,000.00) in the aggregate amount outstanding, or (ii) existing on equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the equipment;

(d) Leases or subleases and non-exclusive licenses or sublicenses granted in the ordinary course of Borrower' s business, if the leases, subleases, licenses and sublicenses permit granting Bank a security interest;

(e) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default;

(f) Liens in favor of other financial institutions arising in connection with Borrower' s deposit accounts or securities accounts held at such institutions, provided that Bank has a perfected security interest in the amounts held in such deposit accounts or securities accounts;

(g) Bankers' liens, rights of setoff and similar Liens incurred on deposits made in the ordinary course of business;

(h) Carriers' , warehousemen' s, materialmen' s, mechanics' , repairmen' s, employees' or other like Liens arising in the ordinary course of business and which are not delinquent for more than 30 days or are being contested in good faith by appropriate proceedings;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of customs duties in connection with the importation of goods;

(j) Liens on insurance proceeds in favor of insurance companies granted solely as security for financed premiums;

(k) Easements, reservations, restrictions, rights-of-way, minor defects or irregularities in title and other similar charges or encumbrances affecting real property;

(l) Deposits or pledges to secure the performance of bids, tenders, contracts, public or statutory obligations, surety, stay, appeal, indemnity, performance or other similar bonds or similar obligations arising in the ordinary course of business;

(m) Liens to secure payment of workers' compensation, employment insurance, old age pensions, social security or other like obligations incurred in the ordinary course of business;

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(n) Purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property; and

(o) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (n), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase.

“**Person**” is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

“**Prime Rate**” is Bank’ s most recently announced “prime rate,” even if it is not Bank’ s lowest rate.

“**Responsible Officer**” is each of the Chief Executive Officer, President, Chief Financial Officer and Controller of Borrower.

“**Revolving Line**” is an Advance or Advances of up to One Million Dollars (\$1,000,000.00).

“**Revolving Line Availability**” is defined in Section 2.1.1(a).

“**Revolving Line Maturity Date**” is the earlier to occur of (i) April ___, 2006, and (ii) the consummation of (x) the sale of all or substantially all of the assets of Borrower or (y) an acquisition, whether by merger or otherwise, of all or substantially all of the capital stock of Borrower, pursuant to the terms and conditions of Section 7.3.

“**Sale Agreement Event**” shall mean receipt by the Borrower of a signed purchase agreement for the sale of all or substantially all of the assets of, or controlling interest in, Borrower.

“**Subordinated Debt**” is debt incurred by Borrower subordinated to Borrower’ s debt to Bank (pursuant to a subordination agreement entered into between Bank, Borrower and the subordinated creditor), on terms acceptable to Bank.

“**Subsidiary**” is any Person, or any other business entity of which more than 50% of the voting stock or other equity interests is owned or controlled, directly or indirectly, by the Person or one or more Affiliates of the Person.

“**Trademarks**” are trademark and service mark rights, registered or not, applications to register and registrations and like protections, and the entire goodwill of the business of Borrower connected with the trademarks.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as a sealed instrument under the laws of the Commonwealth of Massachusetts as of the date first above written.

BORROWER:

PHYSIOMETRICS, INC.

By _____
Name: _____
Title: _____

BANK:

SILICON VALLEY BANK

By _____
Name: _____
Title: _____

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EXHIBIT A

The Collateral consists of all of Borrower' s right, title and interest in and to the following:

All goods, equipment, inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, general intangibles (including payment intangibles), accounts (including health-care receivables), documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

Any Copyright rights, Copyright applications, Copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, now owned or later acquired; any Patents, Trademarks, service marks and applications therefor; trade styles, trade names, any trade secret rights, including any rights to unpatented inventions, know-how, operating manuals, license rights and agreements and confidential information, now owned or hereafter acquired; or any claims for damages by way of any past, present and future infringement of any of the foregoing; and

All Borrower' s Books relating to the foregoing and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

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EXHIBIT B

Loan Payment/Advance Request Form
Deadline for same day processing is 3:00 E.S.T.

Fax To: (617) 969-5965

Date: _____

LOAN PAYMENT:

From Account # _____
(Deposit Account #)

Physiometrix, Inc.
To Account # _____
(Loan Account #)

Principal \$ _____
and/or Interest \$ _____

Authorized Signature: _____
Phone Number: _____

LOAN ADVANCE:

Complete *Outgoing Wire Request* section below if all or a portion of the funds from this loan advance are for an outgoing wire.

From Account # _____
(Loan Account #)

To Account # _____
(Deposit Account #)

Amount of Advance \$ _____

All Borrower's representation and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the telephone transfer request for an advance, but those representations and warranties expressly referring to another date shall be true, correct and complete in all material respects as of such date:

Authorized Signature: _____
Phone Number: _____

OUTGOING WIRE REQUEST

Complete only if all or a portion of funds from the *loan advance* above are to be wired.

Deadline for same day processing is 3:00 pm, E.S.T.

Beneficiary Name: _____
Amount of Wire: \$ _____

Beneficiary Bank: _____
Account Number: _____

City and State: _____

Beneficiary Bank Transit (ABA) #: _____
Beneficiary Bank Code (Swift, Sort, Chip, etc.): _____
(For International Wire Only)

Intermediary Bank: _____
Transit (ABA) #: _____

For Further Credit to: _____

Special Instruction: _____

By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me (us).

Authorized Signature: _____

2nd Signature (If Required): _____

Print Name/Title: _____

Print Name/Title: _____

Telephone # _____

Telephone # _____

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EXECUTION COPY

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY NOT BE SOLD, PLEDGED, OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT AND LAWS OR, SUBJECT TO SECTION 5.3 HEREOF, AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE CORPORATION AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED.

WARRANT TO PURCHASE STOCK

Issuer: Physiometrix, Inc., a Delaware corporation
 Number of Shares: 72,464
 Class of Stock: Common Stock, \$0.001 par value per share
 Exercise Price: \$0.69 per share
 Issue Date: April 20, 2005
 Expiration Date: April 20, 2015

FOR THE AGREED UPON VALUE of \$1.00, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, this Warrant is issued to SILICON VALLEY BANK (together with its successors and permitted assigns, "Holder") by Physiometrix, Inc., a Delaware corporation (the "Company").

Subject to the terms and conditions hereinafter set forth, the Holder is entitled upon surrender of this Warrant and the duly executed Notice of Exercise form annexed hereto as Appendix 1 ("Notice of Exercise"), at the principal office of the Company, 5 Billerica Park, 101 Billerica Avenue, N. Billerica, Massachusetts 01862, or such other office as the Company shall notify the Holder of in writing, to purchase from the Company up to Seventy Two Thousand Four Hundred Sixty Four (72,464) fully paid and non-assessable shares (the "Shares") of the Company's common stock, \$0.001 par value per share ("Common Stock") at a purchase price per Share of Sixty Nine Cents (\$0.69) (the "Exercise Price"). This Warrant may be exercised in whole or in part at any time and from time to time until 5:00 PM, Eastern time, on the Expiration Date, and shall be void thereafter. Until such time as this Warrant is exercised in full or expires, the Exercise Price and the Shares are subject to adjustment from time to time as hereinafter provided.

ARTICLE 1. EXERCISE.

1.1 Method of Exercise. Holder may exercise this Warrant by delivering a duly executed Notice of Exercise to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Section 1.2, Holder shall also deliver to the Company a check for the aggregate Exercise Price for the Shares being purchased.

1.2 Conversion Right. In lieu of exercising this Warrant as specified in Section 1.1, Holder may from time to time convert this Warrant, in whole or in part, into a number of Shares determined as follows:

$$X = Y (A-B)/A$$

where:

X = the number of Shares to be issued to the Holder.

Y = the number of Shares with respect to which this Warrant is being exercised.

A = the Fair Market Value (as determined pursuant to Section 1.3 below) of one Share.

B = the Exercise Price.

1.3 Fair Market Value.

1.3.1 If shares of Common Stock are traded on a nationally recognized securities exchange or over the counter market, the fair market value of one Share shall be the closing price of a share of Common Stock reported for the business day immediately preceding the date of Holder's Notice of Exercise to the Company.

1.3.2 If shares of Common Stock are not traded on a nationally recognized securities exchange or over the counter market, the Board of Directors of the Company shall determine the fair market value of a share of Common Stock in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this Warrant, the Company shall deliver to Holder certificates for the Shares acquired and, if this Warrant has not been fully exercised or converted and has not expired, a new Warrant representing the right to purchase the Shares not so acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company at its expense shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

1.6 Assumption on Sale, Merger, or Consolidation of the Company.

1.6.1 "Acquisition". For the purpose of this Warrant, "Acquisition" means any sale, transfer, exclusive license, or other disposition of all or substantially all of the assets

of the Company, or any acquisition, reorganization, consolidation or merger of the Company where the holders of the Company' s outstanding voting equity securities immediately prior to the transaction beneficially own less than a majority of the outstanding voting equity securities of the surviving or successor entity immediately following the transaction.

1.6.2 Upon the closing of any Acquisition (other than an Acquisition in which the consideration received by the Company' s stockholders consists solely of cash and/or cash equivalents), and as a condition precedent thereto, the successor or surviving entity shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing. The Exercise Price shall be adjusted accordingly, and the Exercise Price and number and class of Shares shall continue to be subject to adjustment from time to time in accordance with the provisions hereof. Upon the closing of any Acquisition in which the consideration received by the Company' s stockholders consists solely of cash and/or cash equivalents, then, to the extent not exercised or converted on or before the closing of such Acquisition, this Warrant shall terminate and be of no further force or effect.

ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on the outstanding shares of Common Stock, payable in Common Stock or other securities, or subdivides the outstanding Common Stock into a greater amount of Common Stock, then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend or subdivision occurred.

2.2 Reclassification, Exchange or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this Warrant, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. The Company or its successor shall promptly issue to Holder a new Warrant for such new securities or other property. The new Warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Exercise Price and to the number of securities or property issuable upon exercise of the new Warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Adjustments for Combinations, Etc. If the outstanding shares of Common Stock are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the

Exercise Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or by-laws, or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Article 2 and in taking all such action as may be necessary or appropriate to protect Holder' s rights under this Article against impairment.

2.5 Intentionally Omitted.

2.6 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of the Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional Share interest arises upon any exercise or conversion of this Warrant, the Company shall eliminate such fractional Share interest by paying Holder an amount computed by multiplying such fractional interest by the Fair Market Value (determined in accordance with Section 1.3 above) of one Share.

2.7 Certificate as to Adjustments. Upon each adjustment of the Exercise Price, number of Shares or class of security for which this Warrant is exercisable, the Company at its expense shall promptly compute such adjustment, and furnish Holder with a certificate of its chief financial officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Exercise Price, number of Shares and class of security for which this Warrant is exercisable in effect upon the date thereof and the series of adjustments leading to such Exercise Price, number of Shares and class of security.

ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company hereby represents and warrants to the Holder as follows:

3.1.1 All Shares which may be issued upon the due exercise of this Warrant shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

3.1.2 The Company covenants that it shall at all times cause to be reserved and kept available out of its authorized and unissued shares such number of shares of its Common Stock and other securities as will be sufficient to permit the exercise in full of this Warrant and the conversion or exchange of such Common Stock into or for such other securities.

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3.1.3 The execution and delivery by the Company of this Warrant and the performance of all obligations of the Company hereunder, including the issuance to Holder of the Shares upon exercise or conversion hereof, (i) have been duly authorized by all necessary corporate action on the part of the Company, its Board of Directors and stockholders, (ii) do not conflict with or violate the Certificate and/or the Company' s by-laws, (iii) do not contravene any law or governmental rule, regulation or order applicable to it, and (iv) do not contravene any provision of, or constitute a default under, any material indenture, mortgage, contract or other instrument to which it is a party or by which it is bound. This Warrant constitutes the legal, valid and binding agreement of the Company, enforceable in accordance with its terms.

3.2 Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon any of its Common Stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for subscription pro rata to the holders of Common Stock any additional shares of stock of any class or series or other rights; (c) to effect any reclassification or recapitalization of any of its Common Stock; or (d) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up, then, in connection with each such event, the Company shall give Holder (1) at least 20 days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of securities of the Company shall be entitled to receive such dividend, distribution or rights) or for determining rights to vote, if any, in respect of the matters referred to in (c) and (d) above; and (2) in the case of the matters referred to in (c) and (d) above at least 20 days prior written notice of the date when the same will take place (and specifying the date on

which the holders of securities of the Company will be entitled to exchange their securities of the Company for securities or other property deliverable upon the occurrence of such event).

3.3 Intentionally Omitted.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF THE HOLDER.

4.1 Purchase for Own Account. This Warrant and the Shares to be acquired upon exercise hereof will be acquired for investment for Holder's account, not as nominee or agent, and not with a view to sale or distribution in violation of applicable federal and state securities laws; provided that, for regulatory reasons, Silicon Valley Bank will transfer this Warrant to its parent corporation, Silicon Valley Bancshares, promptly following issuance hereof.

4.2 Investment Experience. Holder understands that the purchase of this Warrant and the Shares covered hereby involves substantial risk. Holder (a) has experience as an investor in unregistered securities, (b) has sufficient knowledge and experience in financial and business affairs that it evaluate the risks and merits of its investment in this Warrant and the Shares, and (c) can bear the economic risk of such Holder's investment in this Warrant and the Shares.

4.3 Accredited Investor. Holder is an "accredited investor" as such term is defined in Regulation D under the Securities Act of 1933, as amended.

ARTICLE 5. MISCELLANEOUS.

5.1 Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the Fair Market Value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Exercise Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised or converted, and the Company shall promptly deliver a certificate representing the Shares (or such other securities) issued upon such conversion to the Holder.

5.2 Legends. This Warrant and the Shares shall be imprinted with a legend in substantially the following form:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT AND LAWS OR, SUBJECT TO SECTION 5.3 OF THAT CERTAIN WARRANT TO PURCHASE STOCK ISSUED BY THE CORPORATION TO SILICON VALLEY BANK DATED AS OF APRIL 20, 2005, AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE CORPORATION AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

5.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to Silicon Valley Bancshares or other affiliate of Holder.

5.4 Transfer Procedure. Following its receipt of this executed Warrant, Silicon Valley Bank will transfer same in whole or in part to its parent corporation Silicon Valley Bancshares, by execution of an Assignment substantially in the form of Appendix 2, and thereafter Holder and/or Silicon Valley Bancshares may, subject to Section 5.3 above, transfer all or part of this Warrant and/or the Shares at any time and from time to time by giving the Company notice of the portion of the Warrant and/or Shares being transferred setting forth the name,

address and taxpayer identification number of the transferee and surrendering this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable).

5.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally, or mailed by

first-class registered or certified mail, postage prepaid, or sent via reputable overnight courier service, fee prepaid, at such address as may have been furnished to the Company or the Holder, as the case may be, in writing by the Company or such holder from time to time, but in all cases, unless instructed in writing otherwise, the Company shall deliver a copy of all notices to Holder to Silicon Valley Bank, Treasury Department, 3003 Tasman Drive, HA-200, Santa Clara, California 95054.

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorneys Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.8 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of The Commonwealth of Massachusetts, without giving effect to its principles regarding conflicts of law.

5.9 No Rights as a Shareholder. Except as specifically provided in this Warrant, Holder shall have no rights as a shareholder of the Company in respect of the Shares issuable hereunder unless and until Holder exercises this Warrant as to all or any of such Shares.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the Company has caused this Warrant to Purchase Stock to be executed as an instrument under seal by its duly authorized representative as of the date first above written.

“COMPANY”

PHYSIOMETRIX, INC.

By: _____

Name:

Title:

NOTICE OF EXERCISE

1. The undersigned hereby elects to purchase _____ shares of the _____ stock of _____ pursuant to Section 1.1 of the attached Warrant, and tenders herewith payment of the Exercise Price of such shares in full.

1. The undersigned hereby elects to convert the attached Warrant into Shares in the manner specified in Section 1.2 of the attached Warrant. This conversion is exercised with respect to _____ of shares of the Common Stock of the Company.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing said shares in the name of the undersigned or in such other name as is specified below:

(Name)

(Address)

3. The undersigned represents it is acquiring the shares solely for its own account and not as a nominee for any other party and not with a view toward the resale or distribution thereof except in compliance with applicable securities laws.

(Signature)

(Date)

APPENDIX 2

ASSIGNMENT

For value received, Silicon Valley Bank hereby sells, assigns and transfers unto

Name: Silicon Valley Bancshares

Address: 3003 Tasman Drive (HA-200)

Santa Clara, CA 95054

Tax ID: 91-1962278

that certain Warrant to Purchase Stock issued by Physiometrix, Inc. (the "Company"), on April 20, 2005 (the "Warrant") together with all rights, title and interest therein.

SILICON VALLEY BANK

By: _____

Name: _____

Title: _____

Date: [insert Issue Date] _____

By its execution below, and for the benefit of the Company, Silicon Valley Bancshares makes each of the representations and warranties set forth in Article 4 of the Warrant as of the date hereof.

SILICON VALLEY BANCSHARES

By: _____

Name: _____

Title: _____

EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** dated as of April 29, 2005 is made by and between Physiometrix, Inc., a Delaware corporation having its principal place of business at 5 Billerica Park, 101 Billerica Avenue, North Billerica, MA 01862 (the "Company"), and John A. Williams (the "Executive").

Section 1. Freedom to Contract; Binding Effect. The Executive represents that he is free to enter into this Agreement and to be employed by the Company or any of its Affiliates (as defined below) (collectively, the "Organization"), and that he has not made and will not make any agreements in conflict with this Agreement. For purposes of this Agreement, "Affiliate" shall mean any person or entity which, directly or indirectly, controls or is controlled by or is under common control with the Company and, for the purposes of this definition, "control" (including the terms "controlled by" and "under common control with"), shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another, whether through the ownership of voting securities or holding of office in another, by contract or otherwise. This Agreement shall be binding upon and inure to the benefit of Executive, on the one hand, and the Company and its Affiliates on the other.

Section 2. Employment. The Company shall employ the Executive, and the Executive hereby accepts such employment by the Company, or such other entity within the Organization, which may employ Executive from time to time, upon the terms, and conditions set forth herein.

Section 3. Effective Date and Term. This Agreement shall take effect on the date of its execution by the Company and the Executive (the "Effective Date"), and shall continue in full force and effect until terminated in accordance with Section 7 hereof (such period being referred to hereinafter as the "Employment Period"). To the extent Executive has not previously done so, Executive will provide, within three (3) business days after the date hereof, a completed I-9 form and acceptable original documents that will establish the Executive's identity and authorization to work in the U.S. in compliance with the Immigration Reform and Control Act of 1986. The Company and the Executive acknowledge that Executive's employment is and shall continue to be at-will, as defined under applicable law. If the Executive's employment terminates for any reason, the Executive shall not be entitled to any payments, benefits, damages, awards or compensation other than as provided by this Agreement, or as may otherwise be established under the Company's then existing employee benefit plans or policies at the time of termination.

Section 4. Title and Duties; Extent of Services. The Executive shall be employed as President and Chief Executive Officer of the Company. Except as otherwise provided in this Agreement, Executive shall devote his full working time and efforts to the business and affairs of the Company. The Executive shall report to the Board of Directors of the Company.

Section 5. Compensation and Fringe Benefits.

5.1. **Base Salary.** In consideration of the services rendered by the Executive under this Agreement, the Company shall cause the Executive to be paid an initial base salary (the "Base Salary") in the amount of \$265,225 per annum, payable in bimonthly installments of \$11,051.04 each in accordance with the Company's other standard payroll practices and procedures in effect from time to time. Executive shall be eligible for annual salary reviews as and when determined by the Compensation Committee of the Company's Board of Directors. The determination of the Compensation Committee regarding salary adjustments shall be final and binding upon Executive.

5.2. **Bonuses and Incentive Compensation; Special Change of Control or Financing Bonus.** During the Employment Period, the Executive shall be eligible to participate in bonus and incentive compensation plans, and to receive awards of stock options and other forms of equity compensation, to the extent established and approved by the Compensation Committee of the Company's Board of Directors. The determination of the Compensation Committee regarding bonus plans and other forms of incentive compensation shall be final and binding upon Executive. In addition to the foregoing, in the event that during calendar year 2005 the Company completes either (i) a transaction resulting in a Change of Control (as defined below) or (ii) an equity financing resulting in net proceeds to the Company from the sale of equity securities of at least \$10.0 million in gross proceeds, the Executive will be paid a special bonus of \$ 82,500 within 10 days after the closing of such event. This bonus will be paid only once with respect to the first such event to be completed.

For purposes hereof, a "Change of Control" shall mean the sale of all or substantially all of the Company's assets or any merger, consolidation or tender offer in respect of which the stockholders holding all of the Company's outstanding voting securities immediately

prior to the consummation of such transaction own immediately after the consummation of such transaction less than 50% of the outstanding voting or equity securities of the Company.

5.3. Acceleration of Vesting of Options upon a Change of Control. Upon the closing of a Change of Control, all outstanding unvested stock options held by Executive shall, to the extent they have not become vested and exercisable pursuant to the Company' s stock option plans and agreements, become fully vested and exercisable

5.4. Fringe Benefits. During the Employment Period, the Executive shall be entitled to such life insurance, health insurance and other employee fringe benefits as may be offered or generally made available by the Company to similarly situated employees of the Company.

Section 6. Protection of Company' s Interest.

6.1 Confidential Information. As a condition to the employment contemplated hereby, Executive shall execute and deliver Company' s standard employee confidentiality, inventions assignment and non-disclosure agreement. To the extent any material terms of this

Agreement conflict with Company' s standard employee confidentiality, inventions assignment and non-disclosure agreement, this Agreement shall control.

6.2. Disclosure of Previously Acquired Information. Executive hereby agrees not to disclose to the Organization, and not to induce the Organization to utilize, any proprietary information or trade secrets of any other party that are in his possession, unless and to the extent that he has authority to do so.

6.3. Interference with the Organization

6.3.1. Executives/Consultants. Both during the Employment Period and for a period of one year after the termination of Executive' s employment, Executive shall not in any way, directly or indirectly, (a) induce or attempt to induce any employee, agent, or consultant of, to quit employment or engagement with, the Organization; or (b) otherwise intentionally interfere with or disrupt the Organization' s relationship with its employees, agents, or consultants; provided, however, that this Section 6.3.1 shall not apply to any general solicitations to a broad range of potential applicants, including by Internet or newspaper advertisements.

6.3.2. Customers/Business. Both during the Employment Period and for a period of one year after termination of Executive' s employment, Executive shall not directly or indirectly: (a) solicit or contact any customer of the Organization by making use of any intellectual property of the Company, or (b) take away or interfere or attempt to interfere with any custom, trade, business or patronage of the Organization, or induce, or attempt to induce, any employee, agent or consultant of or to the Organization to do anything from which Executive is restricted by reason of this Agreement.

6.4. Scope and Duration of Restrictions. The parties hereto expressly agree that the scope and duration of the restrictions set forth in Section 6 are reasonable. In the event that any court of competent jurisdiction shall hold that the duration or scope of the restrictions set forth in Section 6 are unreasonable under circumstances now or hereafter existing, the maximum duration or scope or restriction reasonable under such circumstances shall be substituted, and each party hereto shall petition any such court to cause the maximum duration or scope or restriction reasonable under such circumstances to be so substituted for the duration or scope of restriction set forth herein.

Section 7. Termination.

7.1. Termination by Executive. The Executive shall be permitted to terminate his employment hereunder, for any reason or no reason at all, at any time, including (but not limited to) as a result of an Involuntary Termination; provided, that prior to terminating his employment as a result of an Involuntary Termination the Executive shall provide the Company with written notice setting forth the basis for

the Involuntary Termination and give the Employer thirty (30) days from the date of such notice to cure such basis where curable; provided further, that during the Transition Period (as defined below) the Executive may only terminate his employment as a result of an Involuntary Termination. For purposes of this Agreement, "Involuntary

Termination" shall mean (i) without the Executive's express written consent, a significant reduction of the Executive's duties, position or responsibilities relative to the Executive's duties, position or responsibilities in effect immediately prior to such reduction, or the removal of the Executive from such position, duties and responsibilities, unless the Executive is provided with substantially similar duties, position and responsibilities; (ii) a reduction by the Company of the Executive's base salary as in effect immediately prior to such reduction; (iii) a material reduction by the Company in the kind or level of employee benefits to which the Executive is entitled immediately prior to such reduction with the result that the Executive's overall benefits package is significantly reduced; (iv) without the Executive's express written consent, the relocation of the Executive to a facility or a location more than 25 miles from his then current employment location, if such relocation would require a substantially longer commute from the Executive's then current residence; (v) any purported termination of the Executive by the Company which is not effected for Cause or for which the grounds relied upon are not valid; and (vi) Employer or the Organization employing Executive's material breach of this Agreement which, if curable, is not cured within thirty (30) days of notice thereof to Employer.

For purposes hereof, the term "Transition Period" shall mean a period of time, not to exceed 60 days, following the consummation of a Change of Control of the Company, during which Executive will assist management of the acquiring Company in planning for the continuation of the management of the Company's business and operations and in integrating the Company's operations with those of the acquiror. The duration of the Transition Period will be agreed upon by the Company and the acquiror.

7.2. Termination by Company. The Company shall be permitted to terminate the employment of the Executive hereunder, for any reason or no reason at all, at any time, including (but not limited to) for "Cause," provided, that prior to terminating his employment for "Cause," the Employer shall provide the Executive with written notice setting forth the basis for the termination for "Cause". For purposes of this Agreement, termination for "Cause" shall mean termination of employment due to (i) any act of personal dishonesty taken by the Executive in connection with his responsibilities as an employee which is intended to result in substantial personal enrichment of the Executive at the expense of the Employer, (ii) Executive's conviction of a felony which the Board reasonably believes has had or will have a material detrimental effect on the Company's reputation or business or (iii) a willful act by the Executive which constitutes misconduct and is materially injurious to the Company.

7.3. Consequences of Termination.

7.3.1 If the Executive's employment with the Company (i) terminates as a result of an Involuntary Termination, (ii) is terminated by the Executive within thirty (30) days after the conclusion of the Transition Period for any reason or (iii) is terminated by the Organization for any reason other than Cause, then the Executive shall be entitled to receive (x) in a lump sum on the date of termination an amount equal to the Accrued Obligations (as defined below) and (y) continuing payments of severance pay during the 12 months following the date of Executive's termination (the "Severance Period") at a rate equal to one hundred percent (100%) of the Base Salary and the bonus paid by the Company to Executive for the Company's 2004 fiscal year (such amount equals

\$340,000 in the aggregate resulting in 24 bi-monthly installments of \$14,166.66 each). Such severance payments shall be paid in accordance with the Company's normal payroll practices and at such times, as the Executive would otherwise be entitled to receive such compensation if Executive were still employed by the Company. In addition, during the Severance Period, the Company shall continue to provide to the Executive and the Executive's spouse and dependents covered under any group health plans or life insurance plans of the Company on the date of such termination of employment, all group health, life and other similar insurance plans in which Executive or such covered dependents participate on the date of Executive's termination, at the same cost to the executive during the severance period as before termination. To the extent permitted by such insurance plans, such health, life and other insurance coverage shall be provided during the Severance Period on the same basis as provided to the Executive and his spouse and dependents prior to the date of Executive's termination. Notwithstanding the foregoing, the Executive will not be entitled to receive any severance payments pursuant to this Section 7.3.1 unless the Executive executes, contemporaneous with termination of his employment, an express written release (in customary form) of liability in favor of the Company in relation to any and all claims related to the Executive's employment with the Company, other than claims arising under

this Agreement. Such severance payments shall be net of applicable withholding, and no other benefits or other compensation shall be due from Employer to Executive with respect to Executive's employment with the Organization. In the event that Executive dies during the Severance Period, the foregoing severance payments shall be made to his estate. The term "Accrued Obligations" shall mean the sum of (i) the sum of the Executive's then current Base Salary through the date of termination and (ii) all of the Executive's accrued but unused vacation and PTO for the then current year through the date of termination, in a lump sum, net of applicable withholding. Notwithstanding the foregoing, if in the event of a Change of Control, the acquiror offers the Executive employment on terms that are equal to or superior to those set forth herein, including without limitation the terms set forth herein relating to compensation and severance upon involuntary termination or termination without Cause, the Executive shall not be entitled to voluntarily terminate his employment following the Transition Period and receive severance compensation as provided herein.

7.3.2 In the event of the termination of the Executive's employment for Cause, the Executive shall be entitled to payment of the Accrued Obligations, and no other benefits or other compensation shall be due from Employer to Executive with respect to Executive's employment with the Organization.

7.3.3 except as otherwise set forth in this Section 7.3; the Executive shall not be entitled to any severance or other compensation after termination. The provisions of Section 6 shall survive any termination of employment by the Employer.

Section 8. Provisions of General Application.

8.1. Disputes. In the event of any dispute touching or concerning this Agreement, the parties will submit to the exclusive jurisdiction and venue of any court of

competent jurisdiction sitting in the Commonwealth of Massachusetts, and the parties agree to comply with all requirements necessary to give such court jurisdiction over the parties and the controversy.

8.2. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted and determined in accordance with the internal substantive laws of the Commonwealth of Massachusetts without reference to conflict of law principles.

8.3. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which, taken together, shall constitute one and the same document. In making proof of this Agreement it shall not be necessary to produce or account for more than one such counterpart.

8.4. Other Agreements. This Agreement represents the entire understanding and agreement between the parties as to the subject matter hereof and supersedes, effective as of the Effective Date, all prior or concurrent oral or written agreements relating to the Executive's employment with the Company or any successor.

8.5. Amendment. This Agreement may be amended only by a written document executed in one or more counterparts by each of the parties hereto.

8.6. Waiver. No consent to or waiver of any breach or default in the performance of any obligation hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of any of the same or any other obligation hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of the duration of such failure, shall not constitute a waiver of rights hereunder and no waiver hereunder shall be effective unless it is in writing, executed by the party waiving the breach or default hereunder.

8.7. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. This Agreement may be assigned to any Affiliate of the Company and shall be deemed to be automatically assigned by the Company to a successor to all or substantially all of its business by means of a merger, consolidation, purchase of stock or purchase of assets. The Executive may not assign or transfer any of his rights or obligations under this Agreement.

8.8. Headings. The headings of sections and subsections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement or to affect the meaning of any of its provisions.

8.9. Severability. If any provision of this Agreement shall, in whole or in part, prove to be invalid for any reason, such invalidity shall affect only the portion of such provision, which shall be invalid, and in all other respects this Agreement shall stand as if such invalid provisions, or the invalid portion thereof, had not been a part hereof.

8.10. Remedies. The Employer and Executive agree and acknowledge that the rights and obligations set forth under this Agreement are of a unique and special nature and that each party is, therefore, without an adequate legal remedy in the event of the other party' s violation of the covenants set forth in this Agreement. The Employer and Executive agree, therefore, that the covenants made under this Agreement shall be specifically enforceable in equity, in addition to all other rights and remedies, at law or in equity or otherwise (including termination of employment) that may be available to the parties.

[Signature page follows.]

IN WITNESS WHEREOF, this Agreement has been executed by the Employer, by its duly authorized officer, and by the Executive, as of the date first above written.

PHYSIOMETRIX, INC.

By: _____

Name: _____

Title: _____

John A. Williams

EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** dated as of April 29, 2005 is made by and between Physiometrix, Inc., a Delaware corporation having its principal place of business at 5 Billerica Park, 101 Billerica Avenue, North Billerica, MA 01862 (the "Company"), and Daniel W. Muehl (the "Executive").

Section 1. Freedom to Contract; Binding Effect. The Executive represents that he is free to enter into this Agreement and to be employed by the Company or any of its Affiliates (as defined below) (collectively, the "Organization"), and that he has not made and will not make any agreements in conflict with this Agreement. For purposes of this Agreement, "Affiliate" shall mean any person or entity which, directly or indirectly, controls or is controlled by or is under common control with the Company and, for the purposes of this definition, "control" (including the terms "controlled by" and "under common control with"), shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another, whether through the ownership of voting securities or holding of office in another, by contract or otherwise. This Agreement shall be binding upon and inure to the benefit of Executive, on the one hand, and the Company and its Affiliates on the other.

Section 2. Employment. The Company shall employ the Executive, and the Executive hereby accepts such employment by the Company, or such other entity within the Organization, which may employ Executive from time to time, upon the terms, and conditions set forth herein.

Section 3. Effective Date and Term. This Agreement shall take effect on the date of its execution by the Company and the Executive (the "Effective Date"), and shall continue in full force and effect until terminated in accordance with Section 7 hereof (such period being referred to hereinafter as the "Employment Period"). To the extent Executive has not previously done so, Executive will provide, within three (3) business days after the date hereof, a completed I-9 form and acceptable original documents that will establish the Executive's identity and authorization to work in the U.S. in compliance with the Immigration Reform and Control Act of 1986. The Company and the Executive acknowledge that Executive's employment is and shall continue to be at-will, as defined under applicable law. If the Executive's employment terminates for any reason, the Executive shall not be entitled to any payments, benefits, damages, awards or compensation other than as provided by this Agreement, or as may otherwise be established under the Company's then existing employee benefit plans or policies at the time of termination.

Section 4. Title and Duties; Extent of Services. The Executive shall be employed as President and Chief Financial Officer of the Company. Except as otherwise provided in this Agreement, Executive shall devote his full working time and efforts to the business and affairs of the Company. The Executive shall report to the Chief Executive Officer of the Company.

Section 5. Compensation and Fringe Benefits.

5.1. **Base Salary.** In consideration of the services rendered by the Executive under this Agreement, the Company shall cause the Executive to be paid an initial base salary (the "Base Salary") in the amount of \$191,209.20 per annum, payable in bimonthly installments of \$7,967.05 each in accordance with the Company's other standard payroll practices and procedures in effect from time to time. Executive shall be eligible for annual salary reviews as and when determined by the Compensation Committee of the Company's Board of Directors. The determination of the Compensation Committee regarding salary adjustments shall be final and binding upon Executive.

5.2. **Bonuses and Incentive Compensation; Special Change of Control or Financing Bonus.** During the Employment Period, the Executive shall be eligible to participate in bonus and incentive compensation plans, and to receive awards of stock options and other forms of equity compensation, to the extent established and approved by the Compensation Committee of the Company's Board of Directors. The determination of the Compensation Committee regarding bonus plans and other forms of incentive compensation shall be final and binding upon Executive. In addition to the foregoing, in the event that during calendar year 2005 the Company completes either (i) a transaction resulting in a Change of Control (as defined below) or (ii) an equity financing resulting in net proceeds to the Company from the sale of equity securities of at least \$10.0 million in gross proceeds, the Executive will be paid a special bonus of \$ 35,000 within 10 days after the closing of such event. This bonus will be paid only once with respect to the first such event to be completed.

For purposes hereof, a “Change of Control” shall mean the sale of all or substantially all of the Company’ s assets or any merger, consolidation or tender offer in respect of which the stockholders holding all of the Company’ s outstanding voting securities immediately prior to the consummation of such transaction own immediately after the consummation of such transaction less than 50% of the outstanding voting or equity securities of the Company.

5.3. Acceleration of Vesting of Options upon a Change of Control. Upon the closing of a Change of Control, all outstanding unvested stock options held by Executive shall, to the extent they have not become vested and exercisable pursuant to the Company’ s stock option plans and agreements, become fully vested and exercisable

5.4. Fringe Benefits. During the Employment Period, the Executive shall be entitled to such life insurance, health insurance and other employee fringe benefits as may be offered or generally made available by the Company to similarly situated employees of the Company.

Section 6. Protection of Company’ s Interest.

6.1 Confidential Information. As a condition to the employment contemplated hereby, Executive shall execute and deliver Company’ s standard employee confidentiality, inventions assignment and non-disclosure agreement. To the extent any material terms of this

Agreement conflict with Company’ s standard employee confidentiality, inventions assignment and non-disclosure agreement, this Agreement shall control.

6.2. Disclosure of Previously Acquired Information. Executive hereby agrees not to disclose to the Organization, and not to induce the Organization to utilize, any proprietary information or trade secrets of any other party that are in his possession, unless and to the extent that he has authority to do so.

6.3. Interference with the Organization

6.3.1. Executives/Consultants. Both during the Employment Period and for a period of one year after the termination of Executive’ s employment, Executive shall not in any way, directly or indirectly, (a) induce or attempt to induce any employee, agent, or consultant of, to quit employment or engagement with, the Organization; or (b) otherwise intentionally interfere with or disrupt the Organization’ s relationship with its employees, agents, or consultants; provided, however, that this Section 6.3.1 shall not apply to any general solicitations to a broad range of potential applicants, including by Internet or newspaper advertisements.

6.3.2. Customers/Business. Both during the Employment Period and for a period of one year after termination of Executive’ s employment, Executive shall not directly or indirectly: (a) solicit or contact any customer of the Organization by making use of any intellectual property of the Company, or (b) take away or interfere or attempt to interfere with any custom, trade, business or patronage of the Organization, or induce, or attempt to induce, any employee, agent or consultant of or to the Organization to do anything from which Executive is restricted by reason of this Agreement.

6.4. Scope and Duration of Restrictions. The parties hereto expressly agree that the scope and duration of the restrictions set forth in Section 6 are reasonable. In the event that any court of competent jurisdiction shall hold that the duration or scope of the restrictions set forth in Section 6 are unreasonable under circumstances now or hereafter existing, the maximum duration or scope or restriction reasonable under such circumstances shall be substituted, and each party hereto shall petition any such court to cause the maximum duration or scope or restriction reasonable under such circumstances to be so substituted for the duration or scope of restriction set forth herein.

Section 7. Termination.

7.1. Termination by Executive. The Executive shall be permitted to terminate his employment hereunder, for any reason or no reason at all, at any time, including (but not limited to) as a result of an Involuntary Termination; provided, that prior to terminating his employment as a result of an Involuntary Termination the Executive shall provide the Company with written notice setting forth the basis for the Involuntary Termination and give the Employer thirty (30) days from the date of such notice to cure such basis where curable; provided further, that during the Transition Period (as defined below) the Executive may only terminate his employment as a result of an Involuntary Termination. For purposes of this Agreement, "Involuntary

Termination" shall mean (i) without the Executive's express written consent, a significant reduction of the Executive's duties, position or responsibilities relative to the Executive's duties, position or responsibilities in effect immediately prior to such reduction, or the removal of the Executive from such position, duties and responsibilities, unless the Executive is provided with substantially similar duties, position and responsibilities; (ii) a reduction by the Company of the Executive's base salary as in effect immediately prior to such reduction; (iii) a material reduction by the Company in the kind or level of employee benefits to which the Executive is entitled immediately prior to such reduction with the result that the Executive's overall benefits package is significantly reduced; (iv) without the Executive's express written consent, the relocation of the Executive to a facility or a location more than 25 miles from his then current employment location, if such relocation would require a substantially longer commute from the Executive's then current residence; (v) any purported termination of the Executive by the Company which is not effected for Cause or for which the grounds relied upon are not valid; and (vi) Employer or the Organization employing Executive's material breach of this Agreement which, if curable, is not cured within thirty (30) days of notice thereof to Employer.

For purposes hereof, the term "Transition Period" shall mean a period of time, not to exceed 60 days, following the consummation of a Change of Control of the Company, during which Executive will assist management of the acquiring Company in planning for the continuation of the management of the Company's business and operations and in integrating the Company's operations with those of the acquiror. The duration of the Transition Period will be agreed upon by the Company and the acquiror.

7.2. Termination by Company. The Company shall be permitted to terminate the employment of the Executive hereunder, for any reason or no reason at all, at any time, including (but not limited to) for "Cause," provided, that prior to terminating his employment for "Cause," the Employer shall provide the Executive with written notice setting forth the basis for the termination for "Cause". For purposes of this Agreement, termination for "Cause" shall mean termination of employment due to (i) any act of personal dishonesty taken by the Executive in connection with his responsibilities as an employee which is intended to result in substantial personal enrichment of the Executive at the expense of the Employer, (ii) Executive's conviction of a felony which the Board reasonably believes has had or will have a material detrimental effect on the Company's reputation or business or (iii) a willful act by the Executive which constitutes misconduct and is materially injurious to the Company.

7.3. Consequences of Termination.

7.3.1 If the Executive's employment with the Company (i) terminates as a result of an Involuntary Termination, (ii) is terminated by the Executive within thirty (30) days after the conclusion of the Transition Period for any reason or (iii) is terminated by the Organization for any reason other than Cause, then the Executive shall be entitled to receive (x) in a lump sum on the date of termination an amount equal to the Accrued Obligations (as defined below) and (y) continuing payments of severance pay during the 12 months following the date of Executive's termination (the "Severance Period") at a rate equal to one hundred percent (100%) of the Base Salary and the bonus paid by the Company to Executive for the Company's 2004 fiscal year (such amount equals

\$235,640 in the aggregate resulting in 24 bi-monthly installments of \$9,818.33 each). Such severance payments shall be paid in accordance with the Company's normal payroll practices and at such times, as the Executive would otherwise be entitled to receive such compensation if Executive were still employed by the Company. In addition, during the Severance Period, the Company shall continue to provide to the Executive and the Executive's spouse and dependents covered under any group health plans or life insurance plans of the Company on the date of such termination of employment, all group health, life and other similar insurance plans in which Executive or such covered dependents participate on the date of Executive's termination, at the same cost to the executive during the severance period as before termination. To the extent permitted by such insurance plans, such health, life and other insurance coverage shall be provided during the Severance Period on the same basis as provided to the Executive and his spouse and dependents prior to the date of Executive's termination. Notwithstanding the foregoing, the Executive will not be entitled to receive any severance payments pursuant to this Section 7.3.1 unless the

Executive executes, contemporaneous with termination of his employment, an express written release (in customary form) of liability in favor of the Company in relation to any and all claims related to the Executive's employment with the Company, other than claims arising under this Agreement. Such severance payments shall be net of applicable withholding, and no other benefits or other compensation shall be due from Employer to Executive with respect to Executive's employment with the Organization. In the event that Executive dies during the Severance Period, the foregoing severance payments shall be made to his estate. The term "Accrued Obligations" shall mean the sum of (i) the sum of the Executive's then current Base Salary through the date of termination and (ii) all of the Executive's accrued but unused vacation and PTO for the then current year through the date of termination, in a lump sum, net of applicable withholding. Notwithstanding the foregoing, if in the event of a Change of Control, the acquiror offers the Executive employment on terms that are equal to or superior to those set forth herein, including without limitation the terms set forth herein relating to compensation and severance upon involuntary termination or termination without Cause, the Executive shall not be entitled to voluntarily terminate his employment following the Transition Period and receive severance compensation as provided herein.

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7.3.3 except as otherwise set forth in this Section 7.3; the Executive shall not be entitled to any severance or other compensation after termination. The provisions of Section 6 shall survive any termination of employment by the Employer.

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8.1. Disputes. In the event of any dispute touching or concerning this Agreement, the parties will submit to the exclusive jurisdiction and venue of any court of

competent jurisdiction sitting in the Commonwealth of Massachusetts, and the parties agree to comply with all requirements necessary to give such court jurisdiction over the parties and the controversy.

8.2. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted and determined in accordance with the internal substantive laws of the Commonwealth of Massachusetts without reference to conflict of law principles.

8.3. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which, taken together, shall constitute one and the same document. In making proof of this Agreement it shall not be necessary to produce or account for more than one such counterpart.

8.4. Other Agreements. This Agreement represents the entire understanding and agreement between the parties as to the subject matter hereof and supersedes, effective as of the Effective Date, all prior or concurrent oral or written agreements relating to the Executive's employment with the Company or any successor.

8.5. Amendment. This Agreement may be amended only by a written document executed in one or more counterparts by each of the parties hereto.

8.6. Waiver. No consent to or waiver of any breach or default in the performance of any obligation hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of any of the same or any other obligation hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of the duration of such failure, shall not constitute a waiver of rights hereunder and no waiver hereunder shall be effective unless it is in writing, executed by the party waiving the breach or default hereunder.

8.7. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. This Agreement may be assigned to any Affiliate of the Company and shall be deemed to be automatically assigned by the Company to a successor to all or substantially all of its business by means of a merger, consolidation, purchase of stock or purchase of assets. The Executive may not assign or transfer any of his rights or obligations under this Agreement.

8.8. Headings. The headings of sections and subsections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement or to affect the meaning of any of its provisions.

8.9. Severability. If any provision of this Agreement shall, in whole or in part, prove to be invalid for any reason, such invalidity shall affect only the portion of such provision, which shall be invalid, and in all other respects this Agreement shall stand as if such invalid provisions, or the invalid portion thereof, had not been a part hereof.

8.10. Remedies. The Employer and Executive agree and acknowledge that the rights and obligations set forth under this Agreement are of a unique and special nature and that each party is, therefore, without an adequate legal remedy in the event of the other party' s violation of the covenants set forth in this Agreement. The Employer and Executive agree, therefore, that the covenants made under this Agreement shall be specifically enforceable in equity, in addition to all other rights and remedies, at law or in equity or otherwise (including termination of employment) that may be available to the parties.

[Signature page follows.]

IN WITNESS WHEREOF, this Agreement has been executed by the Employer, by its duly authorized officer, and by the Executive, as of the date first above written.

PHYSIOMETRIX, INC.

By: _____

Name: _____

Title: _____

Daniel W. Muehl
