ALPHATEC HOLDINGS, INC.

FORM 10-K
(Annual Report)

Filed 03/15/16 for the Period Ending 12/31/15

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Telephone	760-431-9286
CIK	0001350653
Symbol	ATEC
SIC Code	3841 - Surgical and Medical Instruments and Apparatus
Industry	Medical Equipment & Supplies
Sector	Healthcare
Fiscal Year	12/31

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

Form 10-K

(Mark One)

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

For the fiscal year ended December 31, 2015

or

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

For the transition period from to

Commission file number: 000-52024

ALPHATEC HOLDINGS, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware	**20-2463898**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**
5818 El Camino Real, Carlsbad, California	**92008**
(Address of Principal Executive Offices)	**(Zip Code)**

(760) 431-9286
(Registrant's Telephone Number, Including Area Code)

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

Title of Each Class	**Name of Each Exchange on Which Registered**
Common Stock, par value $0.0001 per share	**The NASDAQ Global Select Market**

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

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

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

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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

Large accelerated filer ☐		Accelerated filer ☒
Non-accelerated filer ☐	(Do not check if a smaller reporting company)	Smaller reporting company ☐

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

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant (without admitting that any person whose shares are not included in such calculation is an affiliate) computed by reference to the price at which the common stock was last sold as of the last business day of the registrant's most recently completed second fiscal quarter (June 30, 2015), was approximately $88.1 million.

The number of outstanding shares of the registrant's common stock, par value $0.0001 per share, as of March 14, 2016 was 102,150,232 .

DOCUMENTS INCORPORATED BY REFERENCE

The following documents (or parts thereof) are incorporated by reference into the following parts of this Form 10-K: Certain information required in Part III of this Annual Report on Form 10-K is incorporated from the Registrant's Proxy Statement for the 2016 Annual Meeting of Stockholders.

ALPHATEC HOLDINGS, INC.

FORM 10-K—ANNUAL REPORT
For the Fiscal Year Ended December 31, 2015

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In this Annual Report on Form 10-K, the terms "we," "us," "our," "Alphatec Holdings" and "Alphatec" mean Alphatec Holdings, Inc. and our subsidiaries and their subsidiaries. "Alphatec Spine" refers to our wholly-owned operating subsidiary Alphatec Spine, Inc. "Scient'x" refers to our operating affiliate, Scient'x S.A.S., which is wholly-owned by several of our subsidiaries, and Scient'x's subsidiaries.

PART I

Item 1. Business

Overview

We are a medical technology company focused on the design, development and promotion of products for the surgical treatment of spine disorders. We have a comprehensive product portfolio and pipeline that addresses the cervical, thoracolumbar and intervertebral regions of the spine and covers a variety of spinal disorders and surgical procedures. Our principal product offerings are focused on the global market for fusion-based spinal disorder solutions. We believe that our products and systems are attractive to surgeons and patients due to enhanced product features and benefits that are designed to simplify surgical procedures and improve patient outcomes.

Strategy

Our strategy is focused on improving lives by delivering advancements in spinal fusion technologies. Our broad line of spinal products is used to treat many spinal disorders and facilitate the spinal procedures necessary to correct them. Spinal fusion surgery is designed to stabilize the spine after the correction of a defect until fusion occurs. Additionally, we offer a broad line of biologic products that help promote or accelerate the spinal fusion process. To further differentiate our solutions, we have incorporated minimally invasive surgical, or MIS, devices and techniques into our portfolio to improve patient outcomes by reducing blood loss and the length of hospital stays. We believe that we have developed a strong platform of spinal fusion products to drive consistent growth.

The three strategic pillars of our strategy are as follows:

- ***Strategic Pillar #1: Deliver Advancements in our "Go-to-Market" Product Portfolio and our R&D Pipeline Strategy to Compete More Effectively.***

We are dedicated to the development, launch and promotion of spinal fusion products that simplify procedures and improve patient outcomes. We support these products through comprehensive surgeon training and technical support. Our short-term and long-term pipeline is designed to offer us increased revenue opportunities by addressing the core market segments of spinal fusion, including both open and MIS pedicle screw systems, interbody devices, cervical plates and a comprehensive biologics offering.

We estimate that the core stabilization and fixation business, including pedicle screw platforms and interbody systems, represents approximately $5.5 billion, or two-thirds, of the worldwide spinal fusion market. To capture a greater portion of this opportunity, we are focused on innovating and launching differentiated products in these large market segments. Our focus on a spinal fusion platform allows us to reduce the time of the product development cycle and accelerate our speed to market. We plan to expand our core product offerings and techniques in the major product segments within the spinal fusion market in order to increase our market penetration and revenue globally. We also plan to ensure that we have a complementary biologics platform to aid in the fusion process. We intend to continue to enhance our product offerings by developing, licensing and acquiring technologies that we can market broadly through our global sales organization. While investing in these opportunities, we remain focused on those technologies that we believe can enhance spinal fusion and are aligned with our strategy of having a competitive product offering in the major spinal fusion market segments.

- ***Strategic Pillar #2: Transform our Manufacturing Operations and Physical Distribution***

We are well-underway with the transformation of our manufacturing and distribution capabilities with the goal of reducing ongoing costs and improving return on invested capital. Our key transformation initiatives underway include: outsourcing implant manufacturing, outsourcing product and instrument set distribution, and reducing the overall cost of instrument sets. Over time, we believe that achieving these goals will reduce the amount of fixed assets on our balance sheet, while improving our margins and free cash flow.

We have made significant progress to move to an outsourced manufacturing model for our implants with the goal of reducing costs and capital expenditures. In July 2015, we announced a restructuring of our manufacturing operations in an effort to improve our business operations and manufacturing cost structure. The restructuring included a reduction in workforce and closing our manufacturing facility. In early 2016 we successfully discontinued implant manufacturing in accordance with our plan. We are also rolling out our instrument set distribution model with the goal of increasing our set usage per month and reducing our overall capital investment in instrument sets. We have partnered with UPS to leverage their large distribution network and includes set cleaning, implant replenishment and distribution to customers. We are actively engaged in implementing processes aimed at significantly reducing the costs of our instrument sets over the next few years. We have successfully achieved savings on our Arsenal instrument sets and are looking to expand that across other products as appropriate. We believe that the implementation of these initiatives will strengthen our ability to compete globally in an increasingly price-sensitive healthcare industry.

- ***Strategic Pillar #3: Transform our Commercial Execution and Global Participation.***

Our products are sold in the U.S. through a network of independent distributors and direct sales representatives. We actively seek opportunities to increase the size and quality of this sales and distribution network in order to reach a broader base of surgeons, hospitals, and national accounts across the U.S. and also deepen penetration in existing accounts and territories.

With recent product approvals in key global markets, we are poised for international growth. We believe that our well-established international platform provides a strong foundation for us to grow our business globally. In addition to our established subsidiaries and/or affiliates in Japan, Germany, Brazil, Italy and the U.K., we also have independent distributors in over 50 countries throughout the world. We plan to continue to increase our international presence by expanding our distribution network in several key markets and to increase our sales penetration in certain other markets.

We believe that our global expansion combined with our planned product launches in target geographies will allow us to compete more effectively and gain greater market share.

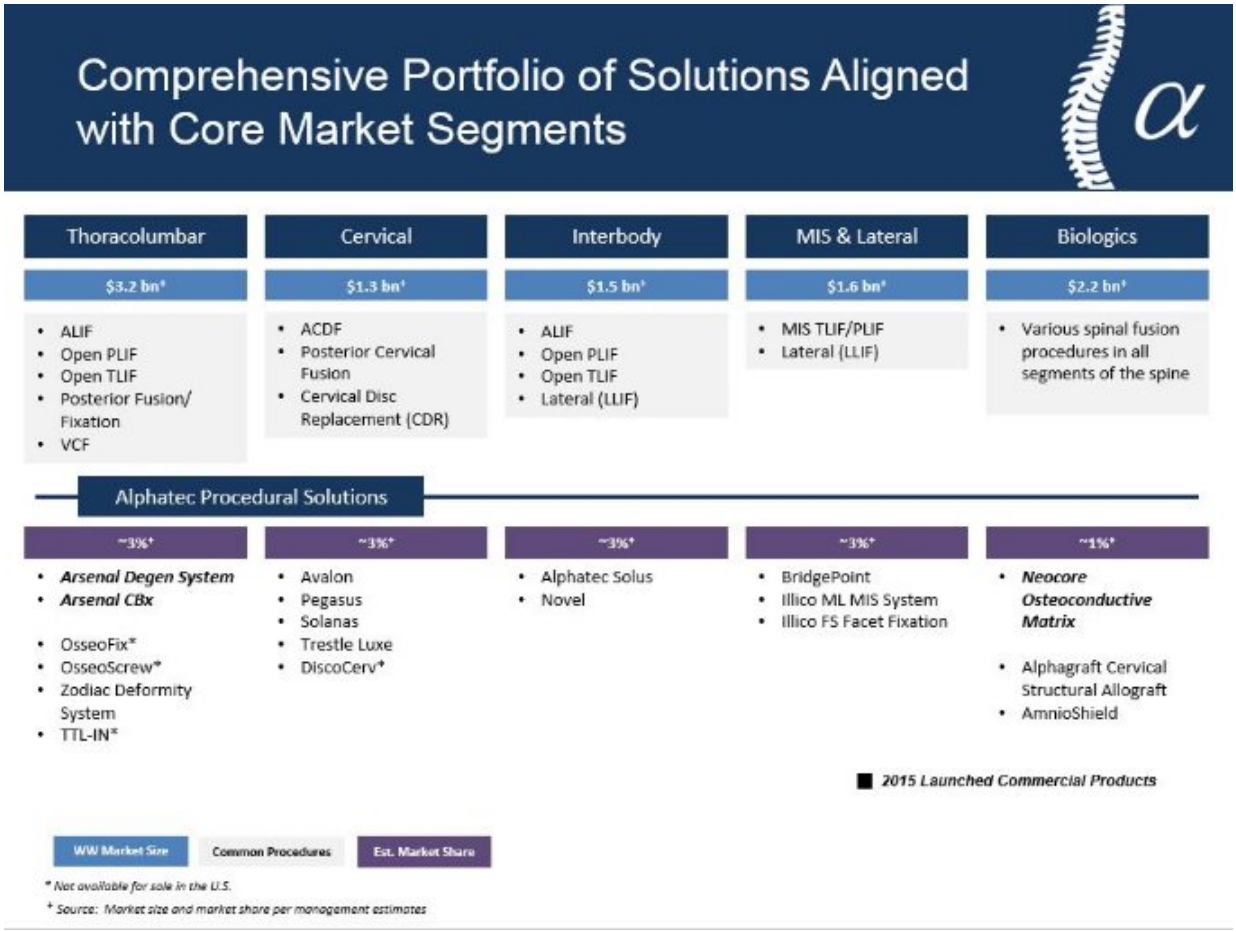
Spine Anatomy

The human spine is the core of the human skeleton and provides important structural support while remaining flexible to allow movement. The human spine is a column of 33 bones that protects the spinal cord and enables people to stand upright. Each bony segment of the spine is referred to as a vertebra (two or more are called vertebrae). The spine has five regions containing groups of similar bones, listed from top to bottom: seven cervical vertebrae in the neck, twelve thoracic vertebrae in the mid-back (each attached to a rib), five lumbar vertebrae in the lower back, five sacral vertebrae fused together to form one bone in the hip region, and four coccygeal bones fused together that form the tailbone. At the front of each vertebra is a block of bone called the vertebral body. The vertebral body consists of an inner core of soft cancellous bone, surrounded by a thin outer layer of hard cortical bone. Vertebrae are stacked on top of each other and enable people to sit and stand upright. Vertebrae in the cervical, thoracic and lumbar regions are separated from each other and cushioned by a rubbery soft tissue called the intervertebral disc. Segments of bone that extend outward at the back of each cervical, thoracic and lumbar vertebral body surround and protect the spinal cord and its nerve roots. These bones, known as the posterior spinous processes, can be felt along the middle of a person’s back.

The Alphatec Solution

Our principal product offering includes a wide variety of systems comprised of components such as spine screws and rods, spinal spacers, plates, and various biologics offerings all designed to enhance and promote spinal fusion. Our business is focused on treating degenerative and deformity conditions.

The chart below illustrates the principal products in our broad portfolio of spine systems currently available for sale by market segment. Certain systems and products are described in greater detail below the chart. Items marked with an asterisk are not available for sale in the U.S.



Cervical and Cervico-Thoracic Products

Trestle Luxe Anterior Cervical Plate System

Our Trestle Luxe Anterior Cervical Plate System has a large window that enables the surgeon to have improved graft site and end plate visualization, which is designed to allow for better placement of the plate. The Trestle Luxe Anterior Cervical Plate System also has a low-profile design, which we believe is among the lowest in the spine market. Low-profile cervical plates are intended to reduce the irritation of the tissue adjacent to the plate following surgery. Other key features of the Trestle Luxe Anterior Cervical Plate system include a self-retaining screw-locking mechanism that is designed to ensure quick and easy locking of the plate and a flush profile after the screws are inserted.

Solanas Posterior Cervico/Thoracic Fixation System and Avalon Occipital Plate

Our Solanas Posterior Cervico/Thoracic Fixation System consists of rods, polyaxial screws, hooks, and connectors that provide a solution for posterior cervico/thoracic fusion procedures. We also designed the Solanas Posterior Cervico/Thoracic System to be used in combination with our existing Zodiac Degenerative Spinal Fixation System and our Avalon Occipital Plate, thereby providing surgeons with a solution for occipito-cervico-thoracic fixation. The Avalon Occipital Plate has a unique buttress design for optimal bone graft placement and superior fusion, including three points of plate rotation and translation, which is designed to ease the placement of the plate.

Pegasus Anchored Cervical Interbody

The Pegasus Anchored Cervical Interbody, or ACI, System provides surgeons a simplified approach to traditional anterior cervical disectomy and fusion, or ACDF. It features a single-step delivery of a spacer with an integrated anchoring mechanism. The single-step, non-impaction and locking mechanism reduces operative time and simplifies a standard technique.

Thoracolumbar Fixation Products

Arsenal Degenerative System

Arsenal Degenerative Spinal Fixation System is a comprehensive system for both simple and complex degenerative spinal fusion procedures. The Arsenal Degenerative Spinal Fixation System was designed to provide operational efficiency, biomechanical strength, and surgical simplicity while providing a complete solution to combat most complex degenerative pathologies. We believe the combination of low-profile implants, intuitive instrumentation and proven strength of this system are significant advantages. The Arsenal Degenerative System was designed to be the platform for future development in other spinal fusion segments of the market including the deformity, MIS and cervico-thoracic segments of the market.

Arsenal CBx Cortical Bone Fixation System

Arsenal CBx is the first extension to the Arsenal platform. An alternative to traditional pedicle screw placement, Arsenal CBx Cortical Bone Fixation System utilizes a midline approach and cortical bone trajectory to achieve maximum fixation through a less-invasive procedure. This system leverages the strengths of the Arsenal product platform with the benefits of a minimally disruptive procedure to enhance patient outcomes.

Due to the midline approach and inward-outward screw trajectory, soft tissue and muscle exposure requirements are greatly reduced compared to the traditional approach while still retaining direct visualization and access to the disc space. Arsenal CBx is a compatible fixation option for both posterior lateral interbody fusion or transforaminal lumbar interbody fusion, or PLIF and TLIF, respectively, applications in addition to being a unique muscle sparing approach to revision surgery.

Zodiac Degenerative Spinal Fixation System

Our Zodiac Degenerative Spinal Fixation System is a comprehensive spinal system that offers polyaxial pedicle screws, accompanying implants and advanced instruments for the stabilization of the thoracolumbar spine.

Zodiac Deformity Spinal Fixation System

Our Zodiac Deformity Spinal Fixation System is a comprehensive system of instrumentation and implants designed to enable the surgeon to address patient-specific spinal deformity correction procedures. The Zodiac Deformity Spinal Fixation System contains polyaxial screws that are similar in design to those in the Zodiac Degenerative Spinal Fixation System, along with components that are frequently used in deformity correction procedures and deformity specific instrumentation.

OsseoScrew Spinal Fixation System

The OsseoScrew Spinal Fixation System is an innovative pedicle screw system that is designed to provide a solution for patients who have poor bone density. The OsseoScrew System is designed to be implanted into the pedicle and then expanded after implementation to achieve increased screw fixation in bone with poor density. The OsseoScrew Spinal Fixation System is not available for sale in the U.S.

Spinal Spacers

Battalion Universal Spacer System

The Battalion Universal Spacer System offers comfort, control and innovative design for surgeons performing PLIF/TLIF procedures. The Battalion implants introduce a new alternative to interbody fusion by combining the elasticity and radiolucency of PEEK with a titanium coating for potential osseointegration.

The implants, which come in both a straight and curved footprint, feature a bulleted nose for easy insertion. The Battalion System also features an intuitive and innovative 180-degree locking inserter that assists with protection of neural elements during insertion of the implant. To further market potential, the Battalion System features state-of-the-art instrumentation for disc prep, access and implantation.

Novel PEEK and Titanium Spinal Spacers

Our family of Novel spinal spacers addresses the surgical need to accommodate varying patient anatomies, surgical approaches and composite material options. We offer multiple unique implant designs, each of which is available in numerous shapes and heights. Certain of our Novel spinal spacers are made of titanium and others are made of polyetheretherketone, or PEEK. Our Novel PEEK spinal spacers have been approved for use in both the lumbar and cervical regions of the spine.

Alphatec Solus Locking ALIF Spinal Spacer

Our Alphatec Solus locking ALIF spinal spacer, or Alphatec Solus, is a zero-profile PEEK and titanium device offering four points of fixation for improved stability. Alphatec Solus features a one-step insertion and deployment feature and is used in ALIF procedures. We believe that Alphatec Solus' locking mechanism is a substantial improvement over similar products currently on the market.

MIS Products

Illico Minimally Invasive Surgery System

The Illico Minimally Invasive Surgery System is a cannulated pedicle screw system that is designed to be inserted via a minimally invasive surgical procedure. Access to the spine is gained through a small incision. The surgeon is then able to see the surgical site by using a small canal through which implants are inserted into the patient with a minimum amount of disruption to the surrounding tissue. We believe that the Illico Minimally Invasive System limits trauma to the tissue surrounding the location of the surgery, which is designed to enable patients to recover faster.

BridgePoint Spinous Process Fixation System

The BridgePoint system is a spinous process fixation system that was developed to address the disadvantages of traditional stabilization devices. The system allows surgeons to fixate the spine using a less invasive approach by attaching a plate to the spinous process of the vertebral body during spinal fusion surgery.

Biologics

Neocore Osteoconductive Matrix

In 2015, we launched our Neocore Osteoconductive Matrix, a synthetic scaffold for the regeneration of bone. With the Neocore platform, we will have the ability to expand our biologics opportunity in the U.S. and internationally, bringing a compelling synthetic bone regeneration solution and competitive pricing to our surgeon and hospital customers worldwide.

Neocore Osteoconductive Matrix is designed to provide an effective core environment for bone growth through a synthetic scaffold. When hydrated with patient bone marrow aspirate, or BMA, Neocore becomes a complete bone graft, which possesses all the necessary components of bone growth. Engineered to perform like natural bone, Neocore's composition and porosity provide the benefits of rapid revascularization throughout graft and supports replacement of three-dimensional matrix with healthy new bone growth. Offering excellent handling characteristics, these pre-formed strips are flexible to conform to adjacent structures, compressible, and moldable. They can also be cut to fit.

We believe that this new synthetic biologics product will provide surgeons with the handling characteristics and osteoconductive composition they've been looking for in bone grafting products.

Sales and Marketing

In the U.S., we sell our products through a sales force consisting of employee direct sales representatives and independent sales agents. Although surgeons in the U.S. typically make the ultimate decision to use our products, we generally bill the

hospital for the products that are used and pay commissions to sales representative or sales agent based on payment received from the hospital. We compensate our direct sales employees through salaries and incentive bonuses based on performance measures. In 2015, we expanded our U.S. sales coverage by adding additional distributors and direct sales representatives and we focused this expansion on geographical areas where we previously had little or no sales coverage. We believe this expansion, coupled with robust new products, will support the continued adoption of our products by surgeons who do not currently use our products and the increased use of our products by surgeons who currently use our products. We plan on continuing to expand our sales coverage through existing distributors, direct sales representatives and adding new distributors with an established customer base in order to promote further uptake of our products by new and existing surgeon customers.

Internationally, we sell our products both through independent distributors who resell the products to the hospital and also through employees that sell directly to the hospital on behalf of the Company. We plan to continue expanding our direct sales and distribution network and product offerings throughout the world. Internationally, we are focusing our expansion into large markets. We market our products at various international industry conferences, organized surgical training courses, and in industry trade journals and periodicals. In addition, we host several international educational conferences throughout the world.

We select our sales force based on their expertise in selling spinal devices, reputation within the surgeon community, geographical coverage and established sales network. We market our products at various industry conferences, organized surgical training courses, and in industry trade journals and periodicals.

Surgeon Training and Education

We focus our surgeon training efforts on the entire spinal fusion procedure and utilize a peer-to-peer training approach with surgeons. We devote significant resources to train and educate surgeons in the proper use of our products. We believe that one of the most effective ways to introduce and build market demand for our products is by training and educating spine surgeons, independent distributors, and direct sales representatives worldwide in the benefits and use of our products. Separate from ongoing product training and education programs, we also conduct product roadshows at a surgeon's office with the objective of introducing new products to existing and new surgeon customers in order to drive adoption of our products by these surgeons. In 2015, to support the launch of the Arsenal Degenerative System, we completed over 100 Arsenal-specific roadshows across various locations in the U.S. and internationally. We believe this is an effective way to increase overall surgeon adoption of our new products.

Given our global focus, we host several training events throughout the year in the U.S. and internationally. We believe that surgeons, independent distributors, and direct sales representatives will become exposed to the merits and distinguishing features of our products through our training and education programs, and in doing so, will increase the use and promotion of our products. With a focus on the entire procedure, we expect to build awareness of the breadth of our product offering.

Research and Development

Our research and development department seeks to continually improve our core product offering and introduce new products to increase our penetration in the global spine market. We are focused on developing technology platforms that span the largest market segments: spinal fusion fixation and biologic products. We have transformed our development process by focusing our resources on two major development programs per year and leveraging integrated teams focused on the key platforms to reduce the time frame from product concept to market commercialization. We also collaborate with our surgeon partners to design products to enhance the surgeon experience, simplify surgical techniques, and reduce overall costs, while improving patient outcomes.

Manufacture and Supply

In 2015, we began implementing our implant manufacturing outsourcing initiative, which we successfully executed in early 2016. This included organizational restructuring, machine disposition, and building closure. Outsourcing implant manufacturing reduces our need for capital investment and reduces operational expense. Additionally, the transformation will also provide expertise and capacity necessary to scale up or down based on demand for our products.

As a result of this transformation, we rely on third-party suppliers for the manufacture of our implants and instruments, including biologics. We select our suppliers to ensure that all of our products are safe, effective, adhere to all applicable regulations, are of the highest quality, and meet our supply needs. We employ a rigorous supplier assessment, qualification, and selection process targeted to suppliers that meet the requirements of the U.S. Food and Drug Administration, or FDA, and International Organization for Standardization, or ISO, and quality standards supported by internal policies and procedures. Our quality assurance process monitors and maintains supplier performance through qualification and periodic supplier reviews and audits.

The raw materials used in the manufacture of our non-biologic products are principally titanium, titanium alloys, stainless steel, cobalt chrome, ceramic, allograft, and PEEK. With the exception of PEEK, none of our raw material requirements is limited to any significant extent by critical supply. We are subject to the risk that Invibio, one of a limited number of PEEK suppliers, will fail to supply PEEK in adequate amounts and in a timely manner. We believe our supplier relationships and quality processes will support our potential capacity needs for the foreseeable future.

With respect to biologics products, we are FDA-registered and licensed in the states of California, New York, and Florida, the only states that currently require licenses. Our facility and the facilities of the third-party suppliers we use are subject to periodic unannounced inspections by regulatory authorities and may undergo compliance inspections conducted by the FDA and corresponding state and foreign agencies. Because our biologics products are processed from human tissue, maintaining a steady supply can sometimes be challenging. We have not experienced significant difficulty in locating and obtaining the materials necessary to fulfill our production requirements, and we have not experienced a meaningful disruption to sales orders.

In 2015, we also began implementing our distribution transformation initiative. After an extensive due diligence review, we partnered with UPS to outsource the physical distribution of implant and instrument sets to enhance customer service and drive set utilization improvements with our continued commitment to on-time delivery. We opened two forward stocking locations in 2015 in Lyndhurst, New Jersey and Tampa, Florida to service our customers. These forward stocking locations are intended to provide on-time delivery to our customers in the nearby regions and improve set turns. We are in the process of opening a full-service set cleaning, replenishment, and distribution hub at the UPS multi-client facility in Swedesboro, New Jersey. The hub facility will perform similar inventory administration and processing activities as to what is currently done in our Carlsbad headquarters, while expanding shipment cut-off times due to the east coast location. The improvement in set turns should reduce future capital investment in set purchases. International shipments and west coast regions will continue to be serviced from our Carlsbad facility.

Competition

Although we believe that our current broad product portfolio and development pipeline is differentiated and has numerous competitive advantages, the spinal implant industry is highly competitive, subject to rapid technological change, and significantly affected by new product introductions. We believe that the principal competitive factors in our market include:

- improved outcomes for spine pathology procedures;
- ease of use, quality and reliability;
- effective and efficient sales, marketing and distribution;
- quality service and an educated and knowledgeable sales network;
- technical leadership and superiority;
- surgeon services, such as training and education;
- responsiveness to the needs of surgeons;
- acceptance by spine surgeons;
- product price and qualification for reimbursement; and
- speed to market.

Both our currently marketed products and any future products we commercialize are subject to intense competition. We believe that our most significant competitors are Medtronic Sofamor Danek, Johnson & Johnson (DePuy/Synthes), Stryker, NuVasive, Zimmer, Biomet, Orthofix, Globus Medical, Sea Spine, LDR Spine, K2 Medical and others, many of which have substantially greater financial resources than we do. In addition, these companies may have more established distribution networks, entrenched relationships with physicians, and greater experience in developing, launching, marketing, distributing and selling spinal implant products.

Our competitors also include providers of non-operative therapies for spine disorder conditions. While these non-operative treatments are considered to be an alternative to surgery, surgery is typically performed in the event that non-operative treatments are unsuccessful. We believe that, to date, these non-operative treatments have not caused a material reduction in the demand for surgical treatment of spinal disorders.

Intellectual Property

We rely on a combination of patent, trademark, copyright, trade secret and other intellectual property laws, nondisclosure agreements, proprietary information ownership agreements and other measures to protect our intellectual property rights. We believe that in order to have a competitive advantage, we must develop, maintain and enforce the proprietary aspects of our technologies. We require our employees, consultants, co-developers, distributors and advisors to execute agreements governing the ownership of proprietary information and use and disclosure of confidential information in connection with their relationship with us. In general, these agreements require these individuals and entities to agree to disclose and assign to us all inventions that were conceived on our behalf or which relate to our property or business and to keep our confidential information confidential and only use such confidential information in connection with our business.

Despite any measures taken to protect our intellectual property, unauthorized parties may attempt to copy aspects of our products or to obtain and use information that we regard as proprietary. In addition, our competitors may independently develop similar technologies. Further, as described in "Item 3 Legal Proceedings," others may attempt to obtain royalties based on the net sales of our products or other payments from us, which may impact our revenues. We may lose market share to our competitors if we fail to protect our intellectual property rights.

Patents

As of March 14, 2016 , we and our affiliates owned, or exclusively owned 100 issued U.S. patents, 104 pending U.S. patent applications and 183 issued or pending foreign patents. We own multiple patents relating to unique aspects and improvements for several of our products. We do not believe that the expiration of any single patent is likely to significantly affect our intellectual property position.

The medical device industry is characterized by the existence of a large number of patents and frequent litigation based on allegations of patent infringement. Patent litigation can involve complex factual and legal questions and its outcome is uncertain. Any claim relating to infringement of patents that is successfully asserted against us may require us to pay substantial damages (including treble damages if our infringement is found to be willful) or may require us to remove our infringing product from the market. Even if we were to prevail, any litigation could be costly and time-consuming and would divert the attention of our management and key personnel from our business operations. Our success will also depend in part on our not infringing patents issued to others, including our competitors and potential competitors. If our products are found to infringe the patents of others, our development, manufacture and sale of such potential products could be severely restricted or prohibited. In addition, our competitors may independently develop similar technologies. We may lose market share to our competitors if we fail to protect our intellectual property rights.

As the number of entrants into our market increases, the possibility of a patent infringement claim against us grows. While we make an effort to ensure that our products do not infringe other parties' patents and proprietary rights, our products and methods may be covered by U.S. or foreign patents held by our competitors. In addition, our competitors may assert that future products we may manufacture or market infringe their patents.

If we are accused of patent infringement, we may be required to obtain licenses to patents or proprietary rights of others in order to continue to commercialize our products. However, we may not be able to obtain any licenses required under any patents or proprietary rights of third parties on acceptable terms, or at all. Even if we are able to obtain rights to the third party's intellectual property, these rights may be non-exclusive, thereby giving our competitors access to the same intellectual property. Ultimately, we may be unable to commercialize some of our potential products or may have to cease some of our business operations as a result of patent infringement claims, which could severely harm our business financial condition and results of operations.

Trademarks

As of March 14, 2016 , we and our affiliates owned 71 registered U.S. trademarks, including "Alphatec Spine," "Zodiac," "Illico" and "Trestle Luxe" and 41 registered trademarks outside of the U.S.

Government Regulation

Our products are subject to extensive regulation by the FDA and other U.S. federal and state regulatory bodies and comparable authorities in other countries. To ensure that medical products distributed domestically and internationally are safe and effective for their intended use, FDA and comparable authorities in other countries have imposed regulations that govern, among other things, the following activities that we or our partners perform and will continue to perform:

- product design and development;
- product testing;
- product manufacturing;

- product labeling;
- product storage;
- premarket clearance or approval;
- advertising and promotion;
- product marketing, sales and distribution; and
- post-market surveillance, including reporting deaths or serious injuries related to products and certain product malfunctions.

FDA's Premarket Clearance and Approval Requirements

Unless an exemption applies, each medical device we wish to commercially distribute in the U.S. will require either prior 510(k) clearance or approval of a premarket approval application, or PMA. The information that must be submitted to the FDA in order to obtain clearance or approval to market a new medical device varies depending on how the medical device is classified by the FDA. Medical devices are classified into one of three classes on the basis of the intended use of the device, the risk associated with the use of the device for that indication, as determined by the FDA, and on the controls deemed by the FDA to be necessary to reasonably ensure their safety and effectiveness. Class I devices, which have the lowest level of risk associated with them, are subject to general controls. Class II devices are subject to general controls and special controls, including performance standards. Class III devices, which have the highest level of risk associated with them, are subject to general controls and premarket approval. Most Class I devices and some Class II devices are exempt from the 510(k) requirement, although the manufacturers will still be subject to establishment registration, medical device listing, labeling requirements, QSRs and medical device reporting. Class III devices are subject to those requirements and additional requirements including PMA approval.

A new medical device for which there is no substantially equivalent device is automatically designated a Class III device. Depending on the nature of the new device, the manufacturer may ask the FDA to make a risk-based determination of the new device and reclassify it in Class I or Class II. This process is referred to as the *de novo* process. If the FDA agrees, the new device will be reassigned to the appropriate other class. If the FDA does not agree, the manufacturer will have to submit a PMA. Our current commercial products are Class II devices marketed under FDA 510(k) premarket clearance. Both 510(k)s and PMAs are subject to the payment of user fees at the time of submission for FDA review.

510(k) Clearance Pathway

To obtain 510(k) clearance, we must submit a premarket notification demonstrating that the proposed device is substantially equivalent to a device legally marketed in the U.S. for which a PMA was not required. The FDA's goal is to review and act on each 510(k) within 90 days of submission, but it may take longer if the FDA requests additional information. Most 510(k)s do not require supporting data from clinical trials, but the FDA may request such data.

After a device receives 510(k) clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a new or major change in its intended use, will require a new 510(k) clearance or, depending on the modification, require premarket approval. Each manufacturer initially determines whether the proposed change requires submission of a 510(k), or a premarket approval, but the FDA can review any such decision and can disagree with a manufacturer's determination. If the FDA disagrees with a manufacturer's determination, the FDA can require the manufacturer to cease marketing and/or recall the modified device until 510(k) clearance or premarket approval is obtained. If the FDA requires us to seek a new 510(k) clearance or premarket approval for any modifications to a previously cleared product, we may be required to cease marketing or recall the modified device until we obtain this clearance or approval. Also, in these circumstances, we may be subject to significant fines or penalties. We have made and plan to continue to make enhancements to our products, and we will consider on a case-by-case basis whether a new 510(k) or PMA is necessary.

Premarket Approval Pathway

A PMA must be submitted if the device cannot be cleared through the 510(k) process. The PMA process is generally more complex, costly and time consuming than the 510(k) process. A PMA must be supported by extensive data including, but not limited to, technical, preclinical, clinical trials, manufacturing and labeling to demonstrate to the FDA's satisfaction the safety and effectiveness of the device for its intended use. After a PMA is sufficiently complete, the FDA will accept the application for filing and begin an in-depth review of the submitted information. By statute, the FDA has 180 days to review the accepted application, although, review of the application generally can take between one and three years. During this review period, the FDA may request additional information or clarification of information already provided. Also during the review period, an advisory panel of experts from outside the FDA may be convened to review and evaluate the application and

provide recommendations to the FDA as to the approvability of the device. In addition, the FDA will conduct a preapproval inspection of the manufacturing facility to ensure compliance with quality system regulations, or QSRs. New premarket approval applications or premarket approval application supplements are also required for product modifications that affect the safety and efficacy of the device. Premarket approval supplements often require submission of the same type of information as a PMA, except that the supplement is limited to information needed to support any changes from the device covered by the original PMA approval, and may not require clinical data or the convening of an advisory panel. We were not required to submit a PMA for any of our currently marketed products, but devices in development may require a PMA.

Clinical Trials

Clinical trials are required to support a PMA and are sometimes required for a 510(k). In the U.S., if the device is determined to present a "significant risk," the manufacturer may not begin a clinical trial until it submits an investigational device exemption application, or IDE, and obtains approval of the IDE from the FDA. The IDE must be supported by appropriate data, such as animal and laboratory testing results, showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. These clinical trials are also subject to the review, approval and oversight of an institutional review board, or IRB, at each clinical trial site. The clinical trials must be conducted in accordance with the FDA's IDE regulations and good clinical practices. A clinical trial may be suspended by FDA, the sponsor or an IRB at any time for various reasons, including a belief that the risks to the study participants outweigh the benefits of participation in the trial. Even if a clinical trial is completed, the results may not demonstrate the safety and efficacy of a device to the satisfaction of the FDA, or may be equivocal or otherwise not be sufficient to obtain approval of a device.

Pervasive and Continuing FDA Regulation

After a device is placed on the market, numerous FDA and other regulatory requirements continue to apply. These include:

- quality system regulations, which require manufacturers, including third-party contract manufacturers, to follow stringent design, testing, control, documentation, record maintenance and other quality assurance controls, during all aspects of the manufacturing process and to maintain and investigate complaints;
- labeling regulations, and FDA prohibitions against the promotion of products for uncleared or unapproved "off-label" uses;
- medical device reporting obligations, which require that manufacturers submit reports to the FDA of adverse events; and
- other post-market surveillance requirements, which apply when necessary to protect the public health or to provide additional safety and effectiveness data for the device.

Failure to comply with applicable regulatory requirements can result in enforcement action by the FDA, which may include any of the following:

- warning letters;
- fines, injunctions, and civil penalties;
- recall or seizure of products;
- operating restrictions, partial suspension or total shutdown of production;
- refusal to grant 510(k) clearance or PMA approvals of new products; and
- criminal prosecution.

To ensure compliance with regulatory requirements, medical device manufacturers are subject to market surveillance and manufacturers and their third-party manufacturers are subject to periodic announced and unannounced inspections by the FDA.

On July 17, 2015, we received a Warning Letter, dated July 16, 2015, from the FDA in connection with the FDA's inspection of our manufacturing facilities located in Carlsbad, CA that occurred from February 4, 2015 until March 13, 2015, or the Inspection.

In the Warning Letter, the FDA cited eight deficiencies in our response to the FDA Form 483, Inspectional Observation, which was issued to us at the end of the Inspection. The deficiencies relate to our internal procedures for quality planning, design control, document control and corrective and preventive actions.

The Warning Letter does not restrict production or shipment of our products from its facilities, or the sale or marketing of our products. We are currently addressing the deficiencies cited by the FDA in the Warning Letter and intend to work closely with the FDA to resolve any outstanding issues. Until the procedures noted in the Warning Letter are corrected, we may be

subject to additional regulatory action by the FDA, and any such actions could significantly disrupt our ongoing business and operations and have a material adverse impact on our financial position and operating results. There can be no assurance that the FDA will be satisfied with our response.

Regulation of Human Cells, Tissues, and Cellular and Tissue-based Products

Human cells, tissues, and cellular and tissue-based products, or HCT/Ps, are defined as articles containing or consisting of human cells or tissue that are intended for implantation, transplantation, infusion, or transfer into a human recipient. They are regulated by the FDA under Section 361 of the Public Health Service Act, or PHS Act, and related regulations promulgated by the FDA in 21 CFR Part 1271. If the HCT/P is minimally manipulated, is intended for homologous use only and meets other requirements, the establishment that manufactures the HCT/P will not be regulated as a drug, device and/or biologic under the Federal Food, Drug and Cosmetic Act, and/or section 351 of the PHS Act and applicable regulations, and premarket review will not be required.

International Device Regulations

International sales of medical devices are subject to foreign government regulations, which vary substantially from country to country. The time required to obtain approval by a foreign country may be longer or shorter than that required for FDA approval, and the requirements may differ.

Japan

In Japan, certain medical devices classified as "highly controlled" must be approved prior to importation and commercial sale by the Ministry of Health, Labour and Welfare, or MHLW, pursuant to the Japanese Pharmaceutical Affairs Law. Manufacturers of medical devices outside of Japan that do not operate through a Japanese entity are required to appoint a contractually bound authorized representative to directly submit an application for device approval to the MHLW. The MHLW evaluates each device for safety and efficacy and may require that the product be tested in Japanese laboratories. After a device is approved for importation and commercial sale in Japan, the MHLW continues to monitor sales of approved products for compliance. Failure to comply with applicable regulatory requirements can result in enforcement action by the MHLW, including administrative inspections and recommendations; recall or seizure of products; operating restrictions, including partial suspension or total shut down of marketing activity in Japan; withdrawal of product approvals; and criminal prosecution by a public prosecutor, including criminal fines and/or imprisonment.

Our devices fall into the "highly controlled" medical device category. Currently, MHLW review times for our device applications range from one year if clinical data is not required, to up to two years if clinical data is required. The review times for our products are expected to be reduced to six months and one year, respectively, and we expect application fees to be reduced as new approval screening standards are established by the MHLW, which has delegated responsibility for these review functions to the Japanese Pharmaceuticals and Medical Devices Agency, for various medical device categories. Currently, the MHLW is working with trade organizations such as AdvaMed, and MHLW may adopt similar standards.

European Union

The European Union, which consists of 28 of the countries in Europe, has adopted numerous directives and standards regulating the design, manufacture, clinical trials, labeling, and adverse event reporting for medical devices. Other countries, such as Switzerland, have voluntarily adopted laws and regulations that mirror those of the European Union with respect to medical devices. Devices that comply with the requirements of a relevant directive will be entitled to bear CE conformity marking and, accordingly, can be commercially distributed throughout the member states of the European Union, as well as other countries that comply with or mirror these directives. The method of assessing conformity varies depending on the type and class of the product, but normally involves a combination of self-assessment by the manufacturer or a third-party assessment by a "Notified Body," an independent and neutral institution appointed to conduct conformity assessment. This third-party assessment consists of an audit of the manufacturer's quality system and technical review and testing of the manufacturer's product. An assessment by a Notified Body in one country within the European Union is required in order for a manufacturer to commercially distribute the product throughout the European Union. In addition, compliance with voluntary harmonized standards including ISO 13845 issued by the International Organization for Standards establishes the presumption of conformity with the essential requirements for a CE mark. In October 2007, we were certified by Intertek Semko, a Notified Body, under the European Union Medical Device Directive allowing the CE conformity marking to be applied. In September 2012, the European Commission adopted a proposed European Medical Device Regulations, or EMDR, which when implemented will change the way that most medical devices are regulated in the European Union. In particular, the EMDR will reclassify CE-marked spine implants from Class IIb to Class III, which will impose additional requirements for technical and

clinical information, subject the companies and their suppliers to additional scrutiny and require the use of Special Notified Bodies.

Environmental Matters

Our facilities and operations are subject to extensive federal, state, and local environmental and occupational health and safety laws and regulations. These laws and regulations govern, among other things, air emissions; wastewater discharges; the generation, storage, handling, use and transportation of hazardous materials; the handling and disposal of hazardous wastes; the cleanup of contamination; and the health and safety of our employees. Under such laws and regulations, we are required to obtain permits from governmental authorities for some of our operations. If we violate or fail to comply with these laws, regulations or permits, we could be fined or otherwise sanctioned by regulators. We could also be held responsible for costs and damages arising from any contamination at our past or present facilities or at third-party waste disposal sites. We cannot completely eliminate the risk of contamination or injury resulting from hazardous materials, and we may incur material liability as a result of any contamination or injury.

Compliance with Certain Applicable Statutes

We are subject to various federal and state laws pertaining to healthcare fraud and abuse, including anti-kickback laws, physician self-referral laws, false claims laws, criminal health care fraud laws, and foreign corrupt practice laws. Violations of these laws are punishable by criminal and/or civil sanctions, including, in some instances, fines, imprisonment and, within the United States, exclusion from participation in government healthcare programs, including Medicare, Medicaid and Veterans Administration health programs. These laws are administered by, among others, the U.S. Department of Justice, the Office of Inspector General of the Department of Health and Human Services and state attorneys general. Many of these agencies have increased their enforcement activities with respect to medical device manufacturers in recent years.

The federal Anti-Kickback Statute, prohibits persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing, arranging for or recommending a good or service, for which payment may be made in whole or part under federal healthcare programs, such as the Medicare and Medicaid programs. The Anti-Kickback Statute is broad and prohibits many arrangements and practices that are lawful in businesses outside of the healthcare industry. For example, the definition of "remuneration" has been broadly interpreted to include anything of value, including, gifts, discounts, the furnishing of supplies or equipment, credit arrangements, payments of cash, waivers of payments, ownership interests and providing anything at less than its fair market value. In addition, in March 2010, the U.S. Congress adopted and President Obama signed into law the Patient Protection and Affordable Health Care Act, which, as amended by the Health Care and Education Reconciliation Act, is referred to as ACA. ACA, among other things, amends the intent requirement of the federal Anti-Kickback Statute. A person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it. In addition, ACA provides that the government may assert that a claim including items or services resulting from a violation of the Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal False Claims Act.

In implementing the Anti-Kickback Statute, the Department of Health and Human Services Office of Inspector General, or OIG, has issued a series of regulations, known as the safe harbors, which began in July 1991. These safe harbors set forth provisions that, in circumstances where all the applicable requirements are met, will assure healthcare providers and other parties that they will not be prosecuted under the Anti-Kickback Statute. The failure of a transaction or arrangement to fit precisely within one or more safe harbors does not necessarily mean that it is illegal or that prosecution will be pursued. However, conduct and business arrangements that do not fully satisfy all requirements of an applicable safe harbor may result in increased scrutiny by government enforcement authorities such as the OIG. Penalties for violations of the Anti-Kickback Statute include criminal penalties and civil sanctions such as fines, imprisonment and possible exclusion from Medicare, Medicaid and other federal healthcare programs. Many states have anti-kickback laws that are similar to the federal law, including penalties, fines, sanctions for violations, and exclusions from state or commercial programs.

The federal ban on physician self-referrals, commonly known as the Stark Law, subject to certain exceptions, prohibits physician referrals of Medicare and Medicaid patients to an entity providing certain "designated health services" if the physician or an immediate family member of the physician has any financial relationship with the entity. Penalties for violating the Stark Law include fines, civil monetary penalties and possible exclusion from federal healthcare programs. In addition to the Stark Law, many states have their own self-referral laws. Often, these laws closely follow the language of the federal law, although they do not always have the same scope, exceptions or safe harbors.

We have entered into various agreements with certain surgeons that perform services for us, including some who make clinical decisions to use our products. Some of our referring surgeons own our stock, which they either purchased in an arms' length transaction on terms identical to those offered to non-surgeons or received from us as fair market value consideration for services performed. All such arrangements have been structured with the intention of complying with all applicable fraud and

abuse laws, including the Anti-Kickback Statute. Stark Law and similar state self-referral laws. In addition, physician-owned distribution companies, or PODs, have increasingly become involved in the sale and distribution of medical devices, including products for the surgical treatment of spine disorders. In many cases, these distribution companies enter into arrangements with hospitals that bill Medicare or Medicaid for the furnishing of medical services, and the physician-owners are among the physicians who refer patients to the hospitals for surgery. On March 26, 2013 the OIG issued a Special Fraud Alert entitled "Physician-Owned Entities", or the Fraud Alert, in which the OIG concluded, among other things, that PODs are "inherently suspect under the anti-kickback statute" and that PODs present "substantial fraud and abuse risk and pose dangers of patient safety." We believe that all of our arrangements with PODs comply with applicable fraud and abuse laws and do not believe that we are subject to any arrangements that violate any such laws.

The federal False Claims Act prohibits persons from knowingly filing or causing to be filed a false or fraudulent claim to, or the knowing use of false statements to obtain payment from, the federal government. Private suits filed under the False Claims Act, known as qui tam actions, can be brought by individuals on behalf of the government. These individuals, sometimes known as “relators” or, more commonly, as “whistleblowers,” may share in any amounts paid by the entity to the government in fines or settlement. The number of filings of qui tam actions has increased significantly in recent years, causing more healthcare companies to have to defend a False Claim Act action. If an entity is determined to have violated the federal False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties of between $5,500 to $11,000 for each separate false claim and may be subject to exclusion from Medicare, Medicaid and other federal healthcare programs. Various states have also enacted similar laws modeled after the federal False Claims Act which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor.

The Health Insurance Portability and Accountability Act, or HIPAA, created two new federal crimes: healthcare fraud and false statements relating to healthcare matters. The healthcare fraud statute prohibits knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private payors. Under recent changes in ACA, the intent requirement of the healthcare fraud statute is lowered such that a person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it. A violation of this statute is a felony and may result in fines, imprisonment or possible exclusion from Medicare, Medicaid and other federal healthcare programs. The false statements statute prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. A violation of this statute is a felony and may result in similar sanctions.

ACA also includes various provisions designed to strengthen significantly fraud and abuse enforcement in addition to those changes discussed above. Among these additional provisions include increased funding for enforcement efforts and new “sunshine” provisions to require us to report and disclose to the Centers for Medicare and Medicaid Services, or CMS, any payment or “transfer of value” made or distributed to physicians or teaching hospitals. These sunshine provisions also require certain group purchasing organizations, including physician-owned distributors, to disclose physician ownership information to CMS. On February 8, 2013, CMS published a detailed regulation implementing these sunshine provisions. Under this final rule, starting August 1, 2013, we and other device manufacturers collected specific data on payments and other transfers of value to physicians and teaching hospitals for the remaining calendar year 2013, with such data assembled into a report made to CMS in March 2014. Since the fall of 2014, CMS has been publishing on its website annual data of all manufacturer reports of such payments and transfers of value, including those of us. CMS has delayed putting our 2014 data on its website with expected publication sometime in 2016. Similar disclosures and CMS reports are to be made annually thereafter. There are various state laws and initiatives that require device manufacturers to disclose to the appropriate regulatory agency certain payments or other transfers of value made to physicians, and in certain cases prohibit some forms of these payments, with the risk of fines for any violation of such requirements. Massachusetts has one of the most stringent of these laws, and the District of Columbia and Vermont passed such laws in 2008 and 2009, respectively.

HIPAA also includes privacy and security provisions designed to regulate the use and disclosure of “protected health information”, or PHI, which is health information that identifies a patient and that is held by a health care provider, a health plan or health care clearinghouse. We are not directly regulated by HIPAA, but our ability to access PHI for purposes such as marketing, product development, clinical research or other uses is controlled by HIPAA and restrictions placed on health care providers and other covered entities. HIPAA was amended in 2009 by the Health Information Technology for Economic and Clinical Health Act, or HITECH, which strengthened the rule, increased penalties for violations and added a requirement for the disclosure of breaches to affected individuals, the government and in some cases the media. We must carefully structure any transaction involving PHI to avoid violation of HIPAA and HITECH requirements.

Almost all states have adopted data security laws protecting personal information including social security numbers, state issued identification numbers, credit card or financial account information coupled with individuals’ names or initials. We must comply with all applicable state data security laws, even though they vary extensively, and must ensure that any breaches or accidental disclosures of personal information are promptly reported to affected individuals and responsible government

entities. We must also ensure that we maintain compliant, written information security programs or run the risk of civil or even criminal sanctions for non-compliance as well as reputational harm for publicly reported breaches or violations.

We may also be exposed to liabilities under the U.S. Foreign Corrupt Practices Act, or FCPA, which generally prohibits companies and their intermediaries from making corrupt payments to foreign officials for the purpose of obtaining or maintaining business or otherwise obtaining favorable treatment, and requires companies to maintain adequate record-keeping and internal accounting practices to accurately reflect the transactions of the company. We are also subject to a number of other laws and regulations relating to money laundering, international money transfers and electronic fund transfers. These laws apply to companies, individual directors, officers, employees and agents.

If any of our operations are found to have violated or be in violation of any of the laws described above and other applicable state and federal fraud and abuse laws, we may be subject to penalties, among them being civil and criminal penalties, damages, fines, exclusion from government healthcare programs, and the curtailment or restructuring of our operations.

Third-Party Reimbursement

In the U.S., healthcare providers generally rely on third-party payors, principally private insurers and governmental payors such as Medicare and Medicaid, to cover and pay for all or part of the cost of a spine surgery in which our medical devices are used. We expect that sales volumes and prices of our products will depend in large part on the continued availability of reimbursement from such third-party payors. These third-party payors may deny reimbursement if they determine that a device used in a procedure was not medically necessary in accordance with cost-effective treatment methods, as determined by the third-party payor, or was used for an unapproved indication. Particularly in the U.S., third-party payors continue to carefully review, and increasingly challenge, the prices charged for procedures and medical products. Medicare coverage and reimbursement policies are developed by CMS, the federal agency responsible for administering the Medicare program, and its contractors. CMS establishes these Medicare policies for medical products and procedures and such policies are periodically reviewed and updated. While private payors vary in their coverage and payment policies, the Medicare program is viewed as a benchmark. Medicare payment rates for the same or similar procedures vary due to geographic location, nature of the facility in which the procedure is performed (i.e., teaching or community hospital) and other factors. We cannot assure you that government or private third-party payors will cover and provide adequate payment for the procedures in which our products are used. ACA and other reform proposals contain significant changes regarding Medicare, Medicaid and other third party payors.

Among these changes was the imposition of a 2.3% excise tax on domestic sales of medical devices that went into effect on January 1, 2013. This tax has resulted in a significant increase in the tax burden on our industry. In December 2015, the U.S. Congress adopted and President Obama signed into law the Consolidated Appropriations Act of 2016. Among other things, this legislation put in place a two-year moratorium on the device tax through the end of 2017.

Other elements of ACA include numerous provisions to limit Medicare spending through reductions in various fee schedule payments and by instituting more sweeping payment reforms, such as bundled payments for episodes of care, the establishment of "accountable care organizations" under which hospitals and physicians will be able to share savings that result from cost control efforts, comparative effectiveness research, value-based purchasing, and the establishment of an independent payment advisory board. Many of these provisions have been implemented through the regulatory process. In addition, in June 2012 the United States Supreme Court upheld the constitutionality of the minimum essential health insurance coverage rule, or so-called personal mandate, while holding that the federal government must give states the option to accept ACA's Medical expansion provisions without risk of losing all federal Medicaid funds. Pursuant to that ruling, several states have declined to expand Medicaid coverage. For those states, the failure to expand its Medicaid program as prescribed in ACA will restrict the ability of populations potentially served by such expansion to use our products. Other proposals have been introduced in Congress to repeal the device tax and various healthcare reform proposals have also emerged at the state level. An expansion in government's role in the U.S. healthcare industry may lower reimbursements for our products, reduce medical procedure volumes, and adversely affect our business and results of operations, possibly materially.

Internationally, healthcare payment systems vary substantially from country to country and include single-payor, government-managed systems as well as systems in which private payors and government-managed systems exist side-by-side. Our ability to achieve market acceptance or significant sales volume in international markets we enter will be dependent in large part on the availability of reimbursement for procedures performed using our products under the healthcare payment systems in such markets. A small number of countries may require us to gather additional clinical data before covering our products. It is our intent to complete the requisite clinical studies and obtain coverage in countries where it makes economic sense to do so.

We believe that the overall escalating cost of medical products and services has led to, and will continue to lead to, increased pressures on the healthcare industry to reduce the costs of products and services. We cannot assure you that government or private third-party payors will cover and provide adequate payment for the procedures using our products. In

addition, it is possible that future legislation, regulation, or reimbursement policies of third-party payors will adversely affect the demand for procedures using our products or our ability to sell our products on a profitable basis. The unavailability or inadequacy of third-party payor coverage or reimbursement could have a significant adverse effect on our business, operating results and financial condition.

Employees

As of December 31, 2015 , we had approximately 430 employees worldwide in the following areas: sales, customer service, marketing, clinical education, manufacturing, advanced manufacturing, quality assurance, regulatory affairs, research and development, human resources, finance, legal, information technology and administration. We have never experienced a work stoppage due to labor difficulties and believe that our relations with our employees are good. Certain employees in Europe have labor committees and collective bargaining agreements in place.

Corporate and Available Information

We are a Delaware corporation. We were incorporated in March 2005. Our principal executive office is located at 5818 El Camino Real, Carlsbad, California 92008. Our Internet address is www.alphatecspine.com. By referring to our website, we do not incorporate the website or any portion of the website by reference into this Annual Report on Form 10-K. We are not including the information contained on our website as a part of, or incorporating it by reference into, this Annual Report on Form 10-K. Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and all amendments to those reports, are available to you free of charge through the Investor Relations section of our website as soon as reasonably practicable after such materials have been electronically filed with, or furnished to, the Securities and Exchange Commission, or SEC.

Item 1A. Risk Factors

Investing in our common stock involves a high degree of risk. You should carefully consider the following risk factors and all other information contained or incorporated by reference in this Annual Report on Form 10-K. The risks and uncertainties described below are not the only ones facing us. Additional risks and uncertainties that we are unaware of, or that we currently deem immaterial, also may become important factors that affect us. If any of such risks or the risks described below, either alone or taken together, occur, our business, financial condition or results of operations could be materially and adversely affected. In that case, the trading price of our common stock could decline, and you may lose some or all of your investment.

Risks Related to Our Business and Industry

Our business plan relies on certain assumptions pertaining to the market for our products that, if incorrect, may adversely affect our growth and profitability.

We allocate our design, development, marketing, management and financial resources based on our business plan, which includes assumptions about various demographic trends and trends in the treatment of spine disorders and the resulting demand for our products. However, these trends are uncertain. There can be no assurance that our assumptions with respect to an aging population with broad medical coverage and longer life expectancy, which we expect to lead to increased spinal injuries and degeneration, are accurate. In addition, an increasing awareness and use of non-invasive means for the prevention and treatment of back pain and rehabilitation purposes may reduce demand for, or slow the growth of sales of, spine fusion products. A significant shift in technologies or methods used in the treatment of back pain or damaged or diseased bone and tissue could adversely affect demand for some or all of our products. For example, pharmaceutical advances could result in non-surgical treatments gaining more widespread acceptance as a viable alternative to spine fusion. The emergence of new biological or synthetic materials to facilitate regeneration of damaged or diseased bone and to repair damaged tissue could increasingly minimize or delay the need for spine fusion surgery and provide other biological alternatives to spine fusion. New surgical procedures could diminish demand for some of our products. The increased acceptance of emerging technologies that do not require spine fusion, such as artificial discs and nucleus replacement, for the surgical treatment of spine disorders would reduce demand for, or slow the growth of sales of, spine fusion products. If our assumptions regarding these factors prove to be incorrect or if alternative treatments to those offered by our products gain further acceptance, then demand for our products could be significantly less than we anticipate and we may not be able to achieve or sustain growth or profitability.

We are in a highly competitive market segment, face competition from large, well-established medical device companies with significant resources, and may not be able to compete effectively.

The market for spine fusion products and procedures is intensely competitive, subject to rapid technological change and significantly affected by new product introductions and other market activities of industry participants. In 2015 , a significant

percentage of global spine implant product revenues was generated by Medtronic Sofamor Danek, a subsidiary of Medtronic, Inc.; Depuy Spine, a subsidiary of Johnson & Johnson; and Stryker Spine. Our competitors also include numerous other publicly-traded and privately-held companies.

Several of our competitors enjoy competitive advantages over us, including:

- more established relationships with spine surgeons;
- more established distribution networks;
- broader spine surgery product offerings;
- stronger intellectual property portfolios;
- greater financial and other resources for product research and development, sales and marketing, and patent litigation;
- greater experience in, and resources for, launching, marketing, distributing and selling products;
- significantly greater name recognition as well as more recognizable trademarks for products similar to the products that we sell;
- more established relationships with healthcare providers and payors;
- products supported by more extensive clinical data; and
- greater experience in obtaining and maintaining FDA and other regulatory clearances or approvals for products and product enhancements.

In addition, at any time our current competitors or other companies may develop alternative treatments, products or procedures for the treatment of spine disorders that compete directly or indirectly with our products, including ones that prove to be superior to our spine surgery products. For these reasons, we may not be able to compete successfully against our existing or potential competitors. Any such failure could lead us to modify our strategy, lower our prices, increase the commissions we pay on sales of our products and have a significant adverse effect on our business, financial condition and results of operations.

A significant percentage of our revenues are derived from the sale of our systems that include polyaxial pedicle screws.

Net sales of our systems that include polyaxial pedicle screws represented approximately 55% and 49% of our net sales for 2015 and 2014 , respectively. A decline in sales of these systems, due to lower market demand, the introduction by a third party of a competitive product, an intellectual property dispute involving these systems, or otherwise, would have a significant adverse impact on our business, financial condition and results of operations. Some of the technology related to our polyaxial pedicle screw systems is licensed to us. Any action that would prevent us from manufacturing, marketing and selling our polyaxial pedicle screw systems would have a significant adverse effect on our business, financial condition and results of operations.

Compliance with changing regulations and standards for accounting, corporate governance and public disclosure may result in additional expenses.

Changing laws, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act of 2002, new SEC regulations, including accelerated SEC filing timelines and new proxy rules, new NASDAQ Stock Market rules, and new accounting pronouncements create uncertainty and additional complexities for companies such as ours. In particular, the Section 404 internal control evaluation requirements under the Sarbanes-Oxley Act have added and will continue to add complexity and costs to our business and require a significant investment of our time and resources to complete each year. We take these requirements seriously and will make every effort to ensure that we receive clean attestations on our internal controls each year from our outside auditors, but there is no guarantee that our efforts to do so will be successful. As discussed in Item 9A of this report, we determined that we had a material weakness in our internal control over financial reporting for the quarters ended June 30, 2015 and September 30, 2015, which we believe was remediated, and for the quarter ended December 31, 2015, which we are seeking to remediate. To maintain high standards of corporate governance and public disclosure, we intend to invest all reasonably necessary resources to comply with all other evolving standards. These investments may result in increased general and administrative expenses and a diversion of management time and attention from strategic revenue generating and cost management activities.

If we fail to regain and maintain effective internal controls and procedures for financial reporting, we could be unable to provide timely and accurate financial information and therefore be subject to delisting from The NASDAQ Global Select Market, an investigation by the SEC, and civil or criminal sanctions. Additionally, ineffective internal control over financial reporting would place us at increased risk of fraud or misuse of corporate assets and could cause our stockholders, lenders, suppliers and others to lose confidence in the accuracy or completeness of our financial reports.

Our sales and marketing efforts in the U.S. are largely dependent upon third parties, some of which are free to market products that compete with our products.

Certain of our independent distributors in the U.S. also market and sell the products of our competitors, and those competitors may have the ability to influence the products that our independent distributors choose to market and sell. Our competitors may be able, by offering higher commission payments or otherwise, to convince our independent distributors to terminate their relationships with us, carry fewer of our products or reduce their sales and marketing efforts for our products.

We may be unable to accurately predict future sales through distributors that purchase products directly from us, which could harm our ability to forecast sales performance.

A portion of our sales are made through domestic and international third-party distributors that purchase our products directly from us and then resell such products to hospitals. As a result, our financial results, quarterly product sales, trends and comparisons are affected by fluctuations in the buying patterns and inventory levels of these distributors. While we attempt to assist such distributors in forecasting their future sales and maintaining adequate inventory levels, we may not be consistently accurate or successful. In addition, our distributors' decision-making process regarding orders is complex and involves several factors, including surgeon demand levels, which can make it difficult to accurately predict our sales until late in a quarter. Our failure to accurately forecast sales through distributors that purchase products directly from us and the failure of such distributors to maintain adequate inventory levels could lead to a decline in sales and adversely affect our results of operations.

If pricing pressures cause us to decrease prices for our goods and services and we are unable to compensate for such reductions through changes in our product mix or reductions to our expenses, our results of operations will suffer.

We may experience decreasing prices for our goods and services we offer due to pricing pressure exerted by our customers in response to increased cost containment efforts from managed care organizations and other third-party payors and increased market power of our customers as the medical device industry consolidates. If we are unable to offset such price reductions through changes in our product mix or reductions in our expenses, our business, financial condition, results of operations and cash flows will be adversely affected.

We conduct a significant amount of our sales activity outside of the U.S., which subjects us to additional business risks and may adversely affect our results of operations and financial condition.

During the year ended December 31, 2015 , we derived $ 70.7 million , or 38% of our net sales from sales of products outside of the U.S. We intend to continue to pursue growth opportunities in sales internationally, which could expose us to additional risks associated with international sales and operations. Our international operations are, and will continue to be, subject to a number of risks and potential costs, including:

- changes in foreign medical reimbursement policies and programs;
- changes in foreign regulatory requirements;
- differing local product preferences and product requirements;
- diminished protection of intellectual property in some countries outside of the U.S.;
- differing payment cycles;
- trade protection measures and import or export licensing requirements;
- difficulty in staffing, training and managing foreign operations;
- differing legal requirements and labor relations;
- potentially negative consequences from changes in tax laws (including potentially taxes payable on earnings of foreign subsidiaries upon repatriation); and
- political and economic instability.

In addition, we are subject to risks arising from currency exchange rate fluctuations, which could decrease our revenues, increase our costs and may adversely affect our results of operations. Significant increases in the value of the U.S. dollar relative to foreign currencies could have a material adverse effect on our international results of operations.

To be commercially successful, we must convince the spine surgeon community that our products are an attractive alternative to our competitors' products. If the spine surgeon community does not use our products, our sales will decline and we will be unable to increase our sales and profits.

In order for us to sell our products, surgeons must be convinced that our products are superior to competing products. Acceptance of our products depends on educating the spine surgeon community as to the distinctive characteristics, perceived benefits, safety and cost-effectiveness of our products compared to our competitors' products and on training surgeons in the proper application of our products. If we are not successful in convincing the spine surgeon community of the merit of our products, our sales will decline and we will be unable to increase or achieve and sustain growth or profitability.

There is a learning process involved for spine surgeons to become proficient in the use of our products. Although most spine surgeons may have adequate knowledge on how to use most of our products based on their clinical training and experience, we believe that the most effective way to introduce and build market demand for our products is by directly training spine surgeons in the use of our products. If surgeons are not properly trained, they may misuse or ineffectively use our products. This may also result in unsatisfactory patient outcomes, patient injury, negative publicity or lawsuits against us, any of which could have a significant adverse effect on our business, financial condition and results of operations.

We must retain the current distributors of our products and attract new distributors of our products.

As we launch new products and increase our marketing efforts with respect to existing products, we will need to expand our sales and marketing organization. We plan to accomplish this by increasing our network of independent distributors and hiring additional direct sales representatives. The establishment and development of a broader sales network and dedicated sales force may be expensive and time consuming. Because of the intense competition for their services, we may be unable to recruit or retain additional qualified independent distributors and to hire additional direct sales representatives to work with us. Often, our competitors enter into distribution agreements with independent distributors that require such distributors to exclusively sell the products of our competitors. Further, we may not be able to enter into agreements with independent distributors on commercially reasonable terms, if at all. Even if we do enter into agreements with additional independent distributors, it often takes 90 to 120 days for new distributors to reach full operational effectiveness and such distributors may not generate revenue as quickly as we expect them to, commit the necessary resources to effectively market and sell our products or ultimately be successful in selling our products. Our business, financial condition and results of operations will be materially adversely affected if we do not retain our existing independent distributors and attract new, additional independent distributors or if the marketing and sales efforts of our independent distributors and our own direct sales representatives are unsuccessful.

We rely on a limited number of third parties to manufacture and supply our products. Any problems experienced by any of these manufacturers could result in a delay or interruption in the supply of our products to us until such manufacturer cures the problem or until we locate and qualify an alternative source of supply.

In 2015, we began implementing our implant manufacturing outsourcing initiative and in early 2016 we stopped implant manufacturing on-site in Carlsbad, CA. As a result of this transformation, we rely on third party suppliers for the manufacture of our implants and instruments. We currently rely on a limited number of third party suppliers and any prolonged disruption in the operations of our third party suppliers could have a significant negative impact on our ability to supply our products to customers and would cause us to seek additional third-party manufacturing contracts, which may not be available on acceptable terms, if at all. We may suffer losses as a result of business interruptions that exceed coverage under our manufacturer's insurance policies. Events beyond our control, such as natural disasters, fire, sabotage or business accidents could have a significant negative impact on our operations by disrupting our product development and commercialization efforts until such third-party supplier can repair its facility or put in place third-party contract manufacturers to assume this manufacturing role, which we may not be able to do on reasonable terms, if at all. In addition, if we are required to change manufacturers for any reason, we will be required to verify that the new manufacturer maintains facilities and procedures that comply with quality standards and with all applicable regulations and guidelines. The delays associated with the verification of a new manufacturer or the re-verification of an existing manufacturer could negatively affect our ability to develop products or supply products to customers in a timely manner. Any disruption in the manufacture of our products by our third party suppliers could have a material adverse impact on our business, financial condition and results of operations.

We depend on various third-party suppliers, and in one case a single third-party supplier, for key raw materials used in the manufacturing processes for our products and the loss of any of these third-party suppliers, or their inability to supply us with adequate raw materials, could harm our business.

We use a number of raw materials, including titanium, titanium alloys, stainless steel, PEEK, and human tissue. We rely from time to time on a number of suppliers and in one case on a single source vendor, Invibio. We have a supply agreement

with Invibio, pursuant to which it supplies us with PEEK, a biocompatible plastic that we use in some of our spacers. Invibio is one of a limited number of companies approved to distribute PEEK in the U.S. for use in implantable devices. During 2015 and 2014 , approximately 18% and 16%, respectively, of our revenues were derived from products manufactured using PEEK.

We depend on a limited number of sources of human tissue for use in our biologics products, and any failure to obtain tissue from these sources or to have the tissue processed by these entities for us in a timely manner will interfere with our ability to meet demand for our biologics products effectively. The processing of human tissue into biologics products is labor intensive and it is therefore difficult to maintain a steady supply stream. In addition, due to seasonal changes in mortality rates, some scarce tissues used for our biologics products are at times in particularly short supply. We cannot be certain that our supply of human tissue from our current suppliers and our current inventory of biologics products will be available at current levels or will be sufficient to meet our needs.

Our dependence on a single third-party PEEK supplier and the challenges we may face in obtaining adequate supplies of biologics products involve several risks, including limited control over pricing, availability, quality and delivery schedules. In addition, any supply interruption in a limited or sole sourced component or raw material, such as PEEK or human tissue, could materially harm the ability of our third party manufacturers to manufacture our products until a new source of supply, if any, could be found. We may be unable to find a sufficient alternative supply channel in a reasonable time period or on commercially reasonable terms, if at all, which would have a significant adverse effect on our business, financial condition and results of operations.

Our tissue-based products and related technologies could become subject to significantly greater regulation by the FDA, which could disrupt our business.

The FDA regulates human cells, tissues, and cellular and tissue-based products or HCT/Ps, but the extent to which they are regulated depends on how they are manufactured and used and whether they meet other criteria for minimal regulation. These criteria include but are not limited to the use of the HCT/Ps for homologous use only and minimal manipulation of the HCT/Ps. HCT/Ps that do not meet these criteria are regulated as medical devices, drugs or biologics. If the FDA determines that any of our current or future products contain HCT/Ps that do not meet these criteria, it could subject some of our products to additional review. If this were to happen, further distribution of the affected products could be interrupted for a substantial period of time, which would reduce our revenues and hurt our profitability.

If we or our suppliers fail to comply with the FDA's quality system and good tissue practice regulations, the manufacture of our products could be delayed.

We and our suppliers are required to comply with the FDA's QSRs, which cover, among other things, the methods and documentation of the design, testing, production, control, quality assurance, labeling, packaging, sterilization, record keeping, storage and shipping of our products. In addition, suppliers and processors of products derived from HCT must comply with the FDA's current good tissue practice requirements, or CGTPs, which govern the methods used in and the facilities and controls used for the manufacture of HCT/Ps, record keeping and the establishment of a quality program. The FDA audits compliance with the QSRs and CGTPs through inspections of manufacturing and other facilities. If we or our suppliers have significant non-compliance issues or if any corrective action plan is not sufficient, we or our suppliers could be forced to halt the manufacture of our products until such problems are corrected to the FDA's satisfaction, which could have a material adverse effect on our business, financial condition and results of operations. Further, our products could be subject to recall if the FDA determines, for any reason, that our products are not safe or effective. Any recall or FDA requirement demanding that we seek additional approvals or clearances could result in delays, costs associated with modification of a product, loss of revenue and potential operating restrictions imposed by the FDA, all of which could have a material adverse effect on our business, financial condition and results of operations.

On July 17, 2015, Alphatec Spine, Inc., our wholly owned subsidiary, received a Warning Letter from the FDA in connection with the FDA's inspection of our manufacturing facilities located in Carlsbad, California that occurred from February 4, 2015 until March 13, 2015, or the Inspection. In the Warning Letter, the FDA cited eight deficiencies in our responses to investigator's observations on the FDA Form 483, which was issued to us at the end of the Inspection. The deficiencies relate to our internal procedures for quality planning, design control, document control and corrective and preventive actions. The Warning Letter does not restrict production or shipment of our products from our facilities, or the sale or marketing of our products. We are currently addressing the deficiencies cited by the FDA in the Warning Letter and intend to work closely with the FDA to resolve any outstanding issues. Until the procedures noted in the Warning Letter are corrected, we may be subject to additional regulatory action by the FDA, and any such actions could significantly disrupt our ongoing business and operations and have a material adverse impact on our financial position and operating results. There can be no assurance that the FDA will be satisfied with our response.

Healthcare policy changes, including recent federal legislation to reform the U.S. healthcare system, may have a material adverse effect on us.

In response to perceived increases in health care costs in recent years, there have been and continue to be proposals by the federal government, state governments, regulators and third-party payors to control these costs and, more generally, to reform the U.S. healthcare system. Certain of these proposals could limit the prices we are able to charge for our products or the amounts of reimbursement available for our products, limit the acceptance and availability of our products, and have a material adverse effect on our financial position and results of operations.

In March 2010, the U.S. Congress adopted and President Obama signed into law the ACA. The legislation imposes a 2.3% excise tax on domestic sales of medical devices which went into effect on January 1, 2013. This tax resulted in a significant increase in the tax burden on our industry. In December 2015, the U.S. Congress adopted and President Obama signed into law the Consolidated Appropriations Act of 2016. Among other things, this legislation put in place a two-year moratorium on the device tax through the end of 2017.

Other elements of ACA include numerous provisions to limit Medicare spending through reductions in various fee schedule payments and by instituting more sweeping payment reforms, such as bundled payments for episodes of care, the establishment of "accountable care organizations" under which hospitals and physicians will be able to share savings that result from cost control efforts, comparative effectiveness research, value-based purchasing, and the establishment of an independent payment advisory board. Many of these provisions have been implemented through the regulatory process with most of the legislation implemented as of January 1, 2014. Other proposals have been introduced in Congress to repeal the device tax, and various healthcare reform proposals have also emerged at the state level. An expansion in government's role in the U.S. healthcare industry may lower reimbursements for our products, reduce medical procedure volumes and adversely affect our business and results of operations, possibly materially.

The demand for our products and the prices at which customers and patients are willing to pay for our products depend upon the ability of our customers to obtain adequate third-party coverage and reimbursement for their purchases of our products.

Sales of our products depend in part on the availability of adequate coverage and reimbursement from governmental and private payors. In the U.S., healthcare providers that purchase our products generally rely on third-party payors, principally Medicare, Medicaid and private health insurance plans, to pay for all or a portion of the costs and fees associated with the use of our products. In addition, several million individuals were able to purchase health insurance in 2014 for the first time through health insurance "exchanges" established under the ACA. While our currently marketed products are eligible for reimbursement in the U.S., if surgical procedures utilizing our products are performed on an outpatient basis, it is possible that private payors may no longer provide reimbursement for our products without further supporting data on our procedure. Any delays in obtaining, or an inability to obtain, adequate coverage or reimbursement for procedures using our products could significantly affect the acceptance of our products and have a significant adverse effect on our business. Additionally, third-party payors continue to review their coverage policies carefully for existing and new therapies and can, without notice, deny coverage for treatments that include the use of our products. Our business would be negatively impacted if there are any changes that reduce reimbursement for our products.

With respect to coverage and reimbursement outside of the U.S., reimbursement systems in international markets vary significantly by country, and by region within some countries, and reimbursement approvals must be obtained on a country-by-country basis and can take up to 18 months, or longer. Many international markets have government-managed healthcare systems that govern reimbursement for new devices and procedures. In most markets, there are private insurance systems as well as government-managed systems. Additionally, some foreign reimbursement systems provide for limited payments in a given period and therefore result in extended payment periods. Reimbursement in international markets may require us to undertake country-specific reimbursement activities, including additional clinical studies, which could be time consuming, expensive and may not yield acceptable reimbursement rates.

Furthermore, healthcare costs have risen significantly over the past decade. There have been and may continue to be proposals by legislators, regulators and third-party payors to contain these costs. Several such proposals were enacted as part of ACA, and include numerous provisions to limit Medicare spending through reductions in various fee schedule payments and sweeping payment reforms. Other federal and state cost-control measures include prospective payment systems, capitated rates, group purchasing, redesign of benefits, requiring pre-authorizations or second opinions prior to major surgery, encouragement of healthier lifestyles and exploration of more cost-effective methods of delivering healthcare. Some healthcare providers in the U.S. have adopted or are considering a managed care system in which the providers contract to provide comprehensive healthcare for a fixed cost per person. Healthcare providers may also attempt to control costs by authorizing fewer elective surgical procedures or by requiring the use of the least expensive devices possible. These cost-control methods also potentially limit the amount which healthcare providers may be willing to pay for medical devices. In addition, in the U.S., no uniform

policy of coverage and reimbursement for medical technology exists among all these payors. Therefore, coverage of and reimbursement for medical technology can differ significantly from payor to payor. The continuing efforts of third-party payors, whether governmental or commercial, whether inside or outside the U.S., to contain or reduce these costs, combined with closer scrutiny of such costs, could restrict our customers' ability to obtain adequate coverage and reimbursement from these third-party payors. The cost containment measures contained in ACA and other measures being considered at the federal and state level, as well as internationally, could harm our business by adversely affecting the demand for our products or the price at which we can sell our products.

Consolidation in the healthcare industry could lead to demands for price concessions or to the exclusion of some suppliers from certain of our markets, which could have an adverse effect on our business, financial condition or results of operations.

Because healthcare costs have risen significantly over the past decade, numerous initiatives and reforms initiated by legislators, regulators and third-party payors to curb these costs have resulted in a consolidation trend in the healthcare industry to create new companies with greater market power, including hospitals. As the healthcare industry consolidates, competition to provide products and services to industry participants has become and will continue to become more intense. This in turn has resulted and will likely continue to result in greater pricing pressures and the exclusion of certain suppliers from important market segments as group purchasing organizations, independent delivery networks and large single accounts continue to use their market power to consolidate purchasing decisions for some of our customers. We expect that market demand, government regulation, third-party reimbursement policies and societal pressures will continue to change the worldwide healthcare industry, resulting in further business consolidations and alliances among our customers, which may reduce competition, exert further downward pressure on the prices of our products and may adversely impact our business, financial condition or results of operations.

We may be subject to or otherwise affected by federal and state healthcare laws, including fraud and abuse, health information privacy and security, and disclosure laws, and could face substantial penalties if we are unable to fully comply with such laws.

Although we do not provide healthcare services, submit claims for third-party reimbursement, or receive payments directly from Medicare, Medicaid, or other third-party payors for our products or the procedures in which our products are used, healthcare regulation by federal and state governments significantly impacts our business. Healthcare fraud and abuse, health information privacy and security, and disclosure laws potentially applicable to our operations include:

- the federal Anti-Kickback Statute, as well as state analogs, which constrains our marketing practices and those of our independent sales agents and distributors, educational programs, pricing policies, and relationships with healthcare providers by prohibiting, among other things, knowingly and willfully soliciting, receiving, offering or providing remuneration, intended to induce the purchase or recommendation of an item or service reimbursable under a federal (or state or commercial) healthcare program (such as the Medicare or Medicaid programs);
- the federal ban, as well as state analogs, on physician self-referrals, which prohibits, subject to certain exceptions, physician referrals of Medicare and Medicaid patients to an entity providing certain "designated health services" if the physician or an immediate family member of the physician has any financial relationship with the entity;
- federal false claims laws which prohibit, among other things, knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payors that are false or fraudulent;
- HIPAA, and its implementing regulations, which created federal criminal laws that prohibit executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters;
- the state and federal laws "sunshine" provisions that require detailed reporting and disclosures to CMS and made available on CMS's website starting in the fall of 2014, and applicable states of any payments or "transfer of value" made or distributed to prescribers and other health care providers, and for certain states prohibit some forms of these payments, require the adoption of marketing codes of conduct, and constrain their relationships with physicians and other referral sources;
- state laws analogous to each of the above federal laws, such as anti-kickback and false claims laws that may apply to items or services reimbursed by any third-party payor, including commercial insurers, and state laws governing the privacy of certain health information, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts;

- the Administrative Simplification provisions of HIPAA, specifically, privacy and security provisions including recent amendments under HITECH which impose stringent restrictions on uses and disclosures of protected health information such as for marketing or clinical research purposes and impose significant civil and criminal penalties for non-compliance and require the reporting of breaches to affected individuals, the government and in some cases the media in the event of a violation; and
- a variety of state-imposed privacy and data security laws which require the protection of information beyond health information, such as employee information or any class of information combining name with state issued identification numbers, social security numbers, credit card, bank or other financial information and which require reporting to state officials in the event of breach or violation and which impose both civil and criminal penalties.

ACA includes various provisions designed to strengthen significantly fraud and abuse enforcement, such as increased funding for enforcement efforts and the lowering of the intent requirement of the federal Anti-Kickback Statute and criminal healthcare fraud statute such that a person or entity no longer needs to have actual knowledge of these statutes or specific intent to violate them.

If our past or present operations, or those of our independent sales agents and distributors are found to be in violation of any of such laws or any other governmental regulations that may apply to us, we may be subject to penalties, including civil and criminal penalties, damages, fines, exclusion from federal healthcare programs and/or the curtailment or restructuring of our operations. Similarly, if the healthcare providers, sales agents, distributors or other entities with which we do business are found to be non-compliant with applicable laws, they may be subject to sanctions, which could also have a negative impact on us. Any penalties, damages, fines, curtailment or restructuring of our operations could adversely affect our ability to operate our business and our financial results. The risk of our being found in violation of these laws is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the Courts, and their provisions are open to a variety of interpretations. Any action against us for violation of these laws, even if we successfully defend against them, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business.

In January 2004, the Advanced Medical Technology Association, or AdvaMed, the principal U.S. trade association for the medical device industry, put in place a model "code of conduct", or the AdvaMed Code, since updated in July 2009, that sets forth standards by which its members should abide in the promotion of their products. Although we are not a member of AdvaMed, we have in place policies and procedures for compliance that we believe are at least as stringent as those set forth in the AdvaMed Code, and we provide routine training to our sales and marketing personnel on our policies regarding sales and marketing practices.

The sales and marketing practices of our industry have been the subject of increased scrutiny from federal and state government agencies, and we believe that this trend will continue. For example, on March 26, 2013 the OIG issued a Special Fraud Alert entitled "Physician-Owned Entities" related to physician-owned distributors, or PODS. We believe that all of our arrangements with PODs comply with applicable fraud and abuse laws and do not believe that we are subject to any arrangements that violate any such laws. Prosecutorial scrutiny and governmental oversight over some major device companies regarding the retention of healthcare professionals as consultants has affected and may continue to affect the manner in which medical device companies may retain healthcare professionals as consultants. We have in place policies to govern how we may retain healthcare professionals as consultants that reflect the current climate on this issue and are providing training on these policies. Any action against us for violation of these laws, even if we successfully defend against them, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business.

Our international operations may expose us to liabilities under the Foreign Corrupt Practices Act and Money Laundering Laws.

We may be exposed to liabilities under the U.S. Foreign Corrupt Practices Act, or FCPA, which generally prohibits companies and their intermediaries from making corrupt payments to foreign officials for the purpose of obtaining or keeping business or otherwise obtaining favorable treatment, and requires companies to maintain adequate record keeping and internal accounting practices to accurately reflect the transactions of the company. We are also subject to a number of other laws and regulations relating to money laundering, international money transfers and electronic fund transfers, which we collectively refer to as Money Laundering Laws. These laws apply to companies, individual directors, officers, employees and agents.

We operate in a number of jurisdictions with developing economies that pose a high risk of potential violations of the FCPA and Money Laundering Laws, and we utilize third-party distributorships that have government customers. If our employees, third-party distributors or other agents are found to have engaged in practices that violate the FCRA or Money Laundering Laws, we could suffer severe penalties, including criminal and civil penalties, disgorgement and other remedial measures, any of which could have a material adverse effect on our business, financial condition and results of operations.

If we fail to obtain, or experience significant delays in obtaining, FDA clearances or approvals for our future products or modifications to our products, our ability to commercially distribute and market our products could suffer.

Our medical devices are subject to extensive regulation by the FDA and numerous other federal, state and foreign governmental authorities. The process of obtaining regulatory clearances or approvals to market a medical device, particularly from the FDA, can be costly and time consuming, and there can be no assurance that such clearances or approvals will be granted on a timely basis, if at all. In particular, the FDA permits commercial distribution of most new medical devices only after the devices have received clearance under Section 510(k) of the Federal Food, Drug and Cosmetic Act, or 510(k), or are the subject of an approved premarket approval application, or a PMA. The 510(k) process generally takes three to nine months, but can take significantly longer, especially if the FDA requires a clinical trial to support the 510(k) application. Currently, we do not know whether the FDA will require clinical data in support of any 510(k)s that we intend to submit for other products in our pipeline. In addition, the FDA continues to re-examine its 510(k) clearance process for medical devices and published several draft guidance documents that could change that process. Any changes that make the process more restrictive could increase the time it takes for us to obtain clearances or could make the 510(k) process unavailable for certain of our products. A PMA must be submitted to the FDA if the device cannot be cleared through the 510(k) process or is not exempt from premarket review by the FDA. A PMA must be supported by extensive data, including results of preclinical studies and clinical trials, manufacturing and control data and proposed labeling, to demonstrate to the FDA's satisfaction the safety and effectiveness of the device for its intended use. The PMA process is more costly and uncertain than the 510(k) clearance process, and generally takes between one and three years, if not longer. In addition, any modification to a 510(k)-cleared device that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, design or manufacture, requires a new 510(k) clearance or, possibly, a PMA.

Our commercial distribution and marketing of any products or product modifications that we develop will be delayed until regulatory clearance or approval is obtained. In addition, because we cannot assure you that any new products or any product modifications we develop will be subject to the shorter 510(k) clearance process, the regulatory approval process for our new products or product modifications may take significantly longer than anticipated. There is no assurance that the FDA will not require a new product or product modification to go through the lengthy and expensive PMA approval process. Delays in obtaining regulatory clearances and approvals may:

- delay or prevent commercialization of products we develop;
- require us to perform costly tests or studies;
- diminish any competitive advantages that we might otherwise have obtained; and
- reduce our ability to collect revenues.

To date, all of our non-biologic medical device products that have required FDA review that are being sold in the U.S. have been cleared through the 510(k) process without any required clinical trials. However, the FDA may require clinical data in support of any future 510(k)s or PMAs that we intend to submit for products in our pipeline. We have limited experience in performing clinical trials that might be required for a 510(k) clearance or PMA approval. If any of our products require clinical trials, the commercialization of such products could be delayed which could have a material adverse effect on our business, financial condition and results of operations.

The safety of our products is not yet supported by long-term clinical data and may therefore prove to be less safe and effective than initially thought.

We obtained clearance to offer all of our current non-biologic medical device products through the 510(k) route. The ability to obtain a 510(k) clearance is generally based on the FDA's agreement that a new product is substantially equivalent to certain already marketed products. Because most 510(k)-cleared products were not the subject of pre-market clinical trials, surgeons may be slow to adopt our 510(k)-cleared products, we may not have the comparative data that our competitors have or are generating, and we may be subject to greater regulatory and product liability risks. With the passage of the American Recovery and Reinvestment Act of 2009, funds have been appropriated for the U.S. Department of Health and Human Services' Healthcare Research and Quality to conduct comparative effectiveness research to determine the effectiveness of different drugs, medical devices, and procedures in treating certain conditions and diseases. Some of our products or procedures performed with our products could become the subject of such research. It is unknown what effect, if any, this research may have on our business. Further, future research or experience may indicate that treatment with our products does not improve patient outcomes or improves patient outcomes less than we initially expect. Such results would reduce demand for our products and this could cause us to withdraw our products from the market. Moreover, if future research or experience indicate that our products cause unexpected or serious complications or other unforeseen negative effects, we could be subject to significant legal liability, significant negative publicity, damage to our reputation and a dramatic reduction in sales of our products, all of which would have a material adverse effect on our business, financial condition and results of operations.

Due to the anticipated regulatory pathway, we do not anticipate commercializing certain products in the U.S.

Several of our products are not available for sale in the U.S., due to the anticipated regulatory path that is required to sell such product in the U.S. Prior to such products being sold in the U.S., we anticipate that the FDA will require submission of either a 510(k) with clinical trial data or a PMA. As a result, to receive regulatory clearance or approval in the U.S. for OsseoScrew, we must conduct, at our own expense, a clinical trial to demonstrate efficacy and safety in humans. Clinical trials are expensive and have an uncertain outcome. In addition, clinical failure can occur at any stage of the testing. As a result, we do not anticipate ever selling such products in the U.S.

If we choose to acquire new and complementary businesses, products or technologies, we may be unable to complete these acquisitions or successfully integrate them in a cost-effective and non-disruptive manner.

Our success depends in part on our ability to continually enhance and broaden our product offering in response to changing customer demands, competitive pressures and technologies and our ability to increase our market share. Accordingly, we have pursued and intend to pursue the acquisition of complementary businesses, products or technologies instead of developing them ourselves. We do not know if we will be able to successfully complete any acquisitions, or whether we will be able to successfully integrate any acquired business, product or technology into our business or retain any key personnel, suppliers or distributors. Our ability to successfully grow through acquisitions depends upon our ability to identify, negotiate, complete and integrate suitable acquisitions and to obtain any necessary financing. These efforts could be expensive and time consuming, disrupt our ongoing business and distract management. If we are unable to integrate any future or recently acquired businesses, products or technologies effectively, our business, financial condition and results of operations will be materially adversely affected. For example, an acquisition could materially impair our operating results by causing us to incur debt or requiring us to amortize significant amounts of expenses, including non-cash acquisition costs, and acquired assets.

We may not be able to timely develop new products or product enhancements that will be accepted by the market.

We sell our products in a market that is characterized by technological change, product innovation, evolving industry standards, competing patent claims, patent litigation and intense competition. Our success will depend in part on our ability to develop and introduce new products and enhancements or modifications to our existing products, which we will need to do before our competitors do so and in a manner that does not infringe issued patents of third parties from which we do not have a license. We cannot assure you that we will be able to successfully develop or market new, improved or modified products, or that any of our future products will be accepted by even the surgeons who use our current products. Our competitors' product development capabilities could be more effective than our capabilities, and their new products may get to market before our products. In addition, the products of our competitors may be more effective or less expensive than our products. The introduction of new products by our competitors may lead us to have price reductions, reduced margins or loss of market share and may render our products obsolete or noncompetitive. The success of any of our new product offerings or enhancement or modification to our existing products will depend on several factors, including our ability to:

- properly identify and anticipate surgeon and patient needs;
- develop new products or enhancements in a timely manner;
- obtain the necessary regulatory approvals for new products or product enhancements;
- provide adequate training to potential users of new products;
- receive adequate reimbursement approval of third-party payors such as Medicaid, Medicare and private insurers; and
- develop an effective marketing and distribution network.

Developing products in a timely manner can be difficult, in particular because product designs change rapidly to adjust to third-party patent constraints and to market preferences. As a result, we may experience delays in our product launches which may significantly impede our ability to enter or compete in a given market and may reduce the sales that we are able to generate from these products. We may experience delays in any phase of a product launch, including during research and development, clinical trials, manufacturing, marketing and the surgeon training process. In addition, our suppliers of products or components can suffer similar delays, which could cause delays in our product introductions. If we do not develop new products or product enhancements in time to meet market demand or if there is insufficient demand for these new products or enhancements, it could have a significant adverse effect on our business financial condition and results of operations.

We are dependent on our senior management team, sales and marketing team, engineering team and key surgeon advisors, and the loss of any of them could harm our business.

Our continued success depends in part upon the continued availability and contributions of our senior management, sales and marketing team and engineering team and the continued participation of our key surgeon advisors. While we have entered into employment agreements with all members of our senior management team, none of these agreements guarantees the services of the individual for a specified period of time. We would be adversely affected if we fail to adequately prepare for future turnover of our senior management team. Our ability to grow or at least maintain our sales levels depends in large part on our ability to attract and retain sales and marketing personnel and for these sales people to maintain their relationships with surgeons directly and through our distributors. We rely on our engineering team to research, design and develop potential products for our product pipeline. We also rely on our surgeon advisors to advise us on our products, our product pipeline, long-term scientific planning, research and development and industry trends. We compete for personnel and advisors with other companies and other organizations, many of which are larger and have greater name recognition and financial and other resources than we do. The loss of members of our senior management team, sales and marketing team, engineering team and key surgeon advisors, or our inability to attract or retain other qualified personnel or advisors, could have a significant adverse effect on our business, financial conditions and results of operations.

Security breaches, loss of data and other disruptions could compromise sensitive information related to our business, prevent us from accessing critical information or expose us to liability, which could adversely affect our business and our reputation.

In the ordinary course of our business, we collect and store sensitive data, including legally protected patient health information, credit card information, personally identifiable information about our employees, intellectual property, and proprietary business information. We manage and maintain our applications and data utilizing on-site systems. These applications and data encompass a wide variety of business critical information including research and development information, commercial information and business and financial information.

The secure processing, storage, maintenance and transmission of this critical information is vital to our operations and business strategy, and we devote significant resources to protecting such information. Although we take measures to protect sensitive information from unauthorized access or disclosure, our information technology and infrastructure may be vulnerable to attacks by hackers, viruses, breaches or interruptions due to employee error or malfeasance, terrorist attacks, earthquakes, fire, flood, other natural disasters, power loss, computer systems failure, data network failure, Internet failure, or lapses in compliance with privacy and security mandates. Any such attack, virus, breach or interruption could compromise our networks and the information stored there could be accessed by unauthorized parties, publicly disclosed, lost or stolen. We have measures in place that are designed to detect and respond to such security incidents and breaches of privacy and security mandates. Any such access, disclosure or other loss of information could result in legal claims or proceedings, liability under laws that protect the privacy of personal information, such as HIPAA, government enforcement actions and regulatory penalties. Unauthorized access, loss or dissemination could also interrupt our operations, including our ability to bill our customers, provide customer support services, conduct research and development activities, process and prepare company financial information, manage various general and administrative aspects of our business and damage our reputation, any of which could adversely affect our business.

The majority of our operations are currently conducted in locations that may be at risk of damage from fire, earthquakes or other natural disasters.

We currently conduct the majority of our development and management activities in Carlsbad, California near known wildfire areas and earthquake fault zones. We have taken precautions to safeguard our facilities, including obtaining property and casualty insurance, and implementing health and safety protocols. We have developed an information technology disaster recovery plan. However, any future natural disaster, such as a fire or an earthquake, could cause substantial delays in our operations, damage or destroy our equipment or inventory and cause us to incur additional expenses. A disaster could seriously harm our business, financial condition and results of operations. Our facilities would be difficult to replace and would require substantial lead time to repair or replace. The insurance we maintain against earthquakes, fires, and other natural disasters would not be adequate to cover a total loss of our facilities, may not be adequate to cover our losses in any particular case and may not continue to be available to us on acceptable terms, or at all.

Alphatec Holdings is a holding company with no operations, and unless it receives dividends or other payments from its subsidiaries, it will be unable to fulfill its cash obligations.

As a holding company with no business operations, Alphatec Holdings' material assets consist only of the common stock of its subsidiaries, including Alphatec Spine and Scient'x, dividends and other payments received from time to time from its subsidiaries, and the proceeds raised from the sale of debt and equity securities. Alphatec Holdings' subsidiaries are legally distinct from Alphatec Holdings and have no obligation, contingent or otherwise, to make funds available to Alphatec Holdings. Alphatec Holdings will have to rely upon dividends and other payments from its subsidiaries to generate the funds necessary to fulfill its cash obligations. Alphatec Holdings may not be able to access cash generated by its subsidiaries in order to fulfill cash commitments. The ability of Alphatec Spine to make dividend and other payments to Alphatec Holdings is subject to the availability of funds after taking into account its subsidiaries' funding requirements, the terms of its subsidiaries' indebtedness and applicable state laws.

If we fail to properly manage our anticipated growth, our business could suffer.

We will continue to pursue growth in the number of surgeons using our products, the types of products we offer and the geographic regions where our products are sold. Such anticipated growth has placed and will continue to place significant demands on our managerial, operational and financial resources and systems. Future growth would impose significant added responsibilities on members of management, including the need to identify, recruit, maintain, motivate and integrate additional personnel. Also, our management may need to divert a disproportionate amount of its attention away from our day-to-day activities and devote a substantial amount of time to managing these anticipated growth activities. We are currently focused on increasing the size and effectiveness of our sales force and distribution network, marketing activities, research and development efforts, inventory management systems, management team and corporate infrastructure. If we do not manage our anticipated growth effectively, the quality of our products, our relationships with physicians, distributors and hospitals, and our reputation could suffer, which would have a significant adverse effect on our business, financial condition and results of operations. We must attract and retain qualified personnel and third-party distributors and manage and train them effectively. Personnel qualified in the design, development, production and marketing of our products are difficult to find and hire, and enhancements of information technology systems to support our growth are difficult to implement. We will also need to carefully monitor and manage our surgeon services, our third-party manufacturing resources, quality assurance and efficiency, and the quality assurance and efficiency of our suppliers and distributors. This managing, training and monitoring will require allocation of valuable management resources and significant expense. If our management is unable to effectively manage our expected growth, our expenses may increase more than expected, our ability to generate and/or grow revenues could be reduced and we may not be able to implement our business strategy.

Risks Related to Our Financial Results, Credit and Certain Financial Obligations and Need for Financing

We may need to raise additional funds in the future and such funds may not be available on acceptable terms, if at all.

We may seek additional funds from public and private equity or debt financings, borrowings under new debt facilities or other sources to fund our projected operating requirements. Our capital requirements will depend on many factors, including:

- the payments due in connection with the settlement of the Orthotec matter;
- the revenues generated by sales of our products;
- the costs associated with expanding our sales and marketing efforts;
- the expenses that we incur from the manufacture of our products by third parties and that we incur from selling our products;
- the costs of developing new products or technologies;
- the cost of obtaining and maintaining FDA or other regulatory approval or clearance for our products and products in development;
- the number and timing of acquisitions and other strategic transactions;
- the costs and any payments we may make related to our pending litigation matters (in addition to the Orthotec matter);
- the costs associated with increased capital expenditures; and
- the costs associated with our employee retention programs and related benefits.

As a result of these factors, we may need to raise additional funds and such funds may not be available on favorable terms, if at all. Furthermore, if we issue equity or debt securities to raise additional funds, our existing stockholders

may experience dilution and the new equity or debt securities may have rights, preferences and privileges senior to those of our existing stockholders. In addition, if we raise additional funds through collaboration, licensing or other similar arrangements, it may be necessary to relinquish valuable rights to our potential products or proprietary technologies, or to grant licenses on terms that are not favorable to us. If we cannot raise funds on acceptable terms, we may not be able to repay debt or other liabilities, develop or enhance our products, execute our business plan, take advantage of future opportunities, or respond to competitive pressures or unanticipated customer requirements. Any of these events could adversely affect our ability to achieve our development and commercialization goals and have a significant adverse effect on our business, financial condition and results of operations.

For the second, third and fourth quarter of 2015, we determined that we had material weaknesses in our internal control over financial reporting. As a result, current and potential stockholders could lose confidence in our financial reporting which would harm our business and the trading of our stock.

For the quarters ended June 30, 2015, September 30, 2015, and December 31, 2015, we determined that we had material weaknesses in our internal control over financial reporting. Our efforts to comply with Sections 302 and 404 of the Sarbanes-Oxley Act of 2002 and the related regulations regarding our required assessment of our internal control over financial reporting and our independent auditor's audit of that assessment requires the commitment of significant financial and managerial resources.

The Amended Credit Facility with MidCap includes certain financial debt covenants. Subsequent to filing the Quarterly Reports on Form 10-Q for the interim periods ended June 30, 2015 and September 30, 2015, we discovered that we were not in compliance with the fixed charge coverage ratio covenant under the Amended Credit Facility for June, August, September, November and December of 2015. We obtained a waiver from MidCap to cure the non-compliance for this period. As a result of our failure to comply with the fixed coverage ratio covenant under the Amended Credit Facility, we were also in default under the Facility Agreement with Deerfield for such periods. In 2016, MidCap and Deerfield provided waivers of our failure to comply with the covenant during such periods. As a result of our failure to comply with the fixed charge covenant ratio, we restated the condensed consolidated balance sheet as of June 30, 2015 and September 30, 2015 to classify the amounts due under the Deerfield Facility Agreement as current portion of long-term debt, rather than long-term debt, less current portion. We determined that we failed to design effective controls to assess whether we are in compliance with the debt covenants. As a result, we incorrectly concluded that payments of MidCap term loans were properly excluded from certain covenant calculations. This deficiency resulted in a material weakness, which is defined as a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of annual or interim consolidated financial statements will not be prevented or detected on a timely basis. To remediate the material weakness described above, we have designed and implemented new and enhanced controls to ensure that the calculation of the fixed charge coverage ratio reflects an accurate interpretation of the definitions in the underlying debt agreement and that the appropriate level of review is performed. In addition, in our assessment of the effectiveness of internal control over financial reporting at December 31, 2015, we identified a material weakness related to the design of controls over the release of inventory cost through cost of goods sold at a significant wholly owned subsidiary, Alphatec Pacific, Inc. This deficiency resulted in a material weakness in our internal control over financial reporting. To address this material weakness, we are in the process of developing and implementing new processes and procedures to remediate the material weakness and are providing additional training to personnel involved in the costing of inventory at our wholly owned subsidiary.

If we determine in future fiscal periods that we have other material weaknesses in our internal control over financial reporting, the reliability of our financial reports may be impacted or we could be required to restate our financial statements. In addition, our failure to successfully remediate our material weakness described above or any future material weakness could result in adverse consequences to us, including, but not limited to, a loss of investor confidence in the reliability of our financial statements, which could cause the market price of our stock to decline.

If we default on our obligations to make settlement payments to Orthotec LLC, the amounts due under the settlement agreements accelerates and becomes due and payable.

Any default of our payment obligation under the settlement agreements we entered into with Orthotec would give Orthotec the right to declare all of the future payments to be immediately payable. As of March 14, 2016 , the outstanding amount to be paid to Orthotec through January 2024 is $33.7 million. If either acceleration of payments occurs, our business, financial condition and results of operations could be materially and adversely affected.

There is substantial doubt concerning our ability to continue as a going concern.

Our financial statements have been prepared assuming that we will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. We have incurred significant net losses since

inception and have relied on our ability to fund our operations through revenues from the sale of its products, equity financings and debt financings. As we have incurred losses, successful transition to profitability is dependent upon achieving a level of revenues adequate to support our cost structure. This may not occur and, unless and until it does, we will continue to need to raise additional capital. Without modifications to our existing payment obligations or receipt of additional funding, our existing cash and other sources of liquidity may only be sufficient to fund our operations until our Amended Credit Facility with MidCap matures in December 2016, assuming that our creditors continue to waive any breaches under our credit facilities and our debt is not sooner accelerated. These circumstances raise substantial doubt about our ability to continue as a going concern. As a result of this uncertainty and the substantial doubt about our ability to continue as a going concern as of December 31, 2015, the Report of Independent Registered Public Accounting Firm included immediately prior to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K includes a going concern explanatory paragraph. We may seek additional funds from public and private equity or debt financings, borrowings under new debt facilities or other sources to fund our projected operating requirements. However, there is no guarantee that we will be able to obtain further financing, or do so on reasonable terms. If we are unable to raise additional funds on a timely basis, or at all, we would be materially adversely affected. Our financial statements do not include any adjustment relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might be necessary should we be unable to continue as a going concern.

We may be unable to comply with the covenants of our credit facilities.

We must comply with certain affirmative and negative covenants, including financial covenants, in our credit facility with MidCap and affirmative and negative covenants in our Facility Agreement with Deerfield. We failed to comply with the fixed coverage ratio covenant under our credit facility with MidCap in June, August, September, October, November and December of 2015 and January 2016, but MidCap and Deerfield have provided waivers of our failure to comply with the covenant during such periods. Even though we obtained waivers from MidCap and Deerfield for the periods above, there can be no assurance that at all times in the future we will satisfy all such financial or other covenants of the MidCap credit facility or the Deerfield Facility Agreement, or obtain any required waiver or amendment, in which event of default the lenders party to the MidCap credit facility could refuse to make further extensions of credit to us and MidCap and/or Deerfield could require all amounts borrowed under the MidCap credit facility and/or the Facility Agreement, respectively, together with accrued interest and other fees, to be immediately due and payable. In addition to allowing the lenders to accelerate the loan, several events of default under the MidCap credit facility, such as our failure to make required payments of principal and interest and the occurrence of certain bankruptcy or insolvency events, could require us to pay interest at a rate which is up to five percentage points higher than the interest rate effective immediately before the event of default.

An event of default under the MidCap credit facility or the Deerfield Facility Agreement could have a material adverse effect on us. Upon an event of default, if the lenders under the MidCap credit facility accelerate the repayment of all amounts borrowed, together with accrued interest and other fees, or if the lenders elect to charge us additional interest, we cannot assure you that we will have sufficient cash available to repay the amounts due, and we may be forced to seek to amend the terms of the MidCap credit facility or the Deerfield Facility Agreement or obtain alternative financing, which may not be available to us on acceptable terms, if at all.

In addition, if we fail to pay amounts when due under the MidCap credit facility or the Deerfield Facility Agreement or upon the occurrence of another event of default, the lenders under the MidCap credit facility or the Deerfield Facility Agreement could proceed against the collateral granted to them pursuant to the MidCap credit facility and the Deerfield Facility Agreement. We have granted to the lenders under the MidCap credit facility a first priority security interest in substantially all of our assets, including all accounts receivable and all securities evidencing our interests in our subsidiaries, as collateral under the MidCap credit facility. If the lenders proceed against the collateral, such assets would no longer be available for use in our business, which would have a significant adverse effect our business, financial condition and results of operations.

Our quarterly financial results could fluctuate significantly.

Our quarterly financial results are difficult to predict and may fluctuate significantly from period to period, particularly because our sales prospects are uncertain. The level of our revenues and results of operations at any given time will be based primarily on the following factors:

- acceptance of our products by surgeons, patients, hospitals and third-party payors;
- demand and pricing of our products;
- the mix of our products sold, because profit margins differ among our products;
- timing of new product offerings, acquisitions, licenses or other significant events by us or our competitors;

- our ability to grow and maintain a productive sales and marketing organization;
- regulatory approvals and legislative changes affecting the products we may offer or those of our competitors;
- the effect of competing technological and market developments;
- levels of third-party reimbursement for our products;
- interruption in the manufacturing or distribution of our products;
- our ability to produce or obtain products of satisfactory quality or in sufficient quantities to meet demand; and
- changes in our ability to obtain FDA, state and international approval or clearance for our products.

In addition, until we have a larger base of surgeons using our products, occasional fluctuations in the use of our products by individual surgeons or small groups of surgeons will have a proportionately larger impact on our revenues than for companies with a larger customer base.

Many of the products we may seek to develop and introduce in the future will require FDA, state and international approval or clearance. We cannot begin to commercialize any such products in the U.S. without FDA approval or clearance or outside of the U.S. without appropriate regulatory approvals and import licenses. As a result, it will be difficult for us to forecast demand for these products with any degree of certainty. We cannot assure you that our revenue will increase or be sustained in future periods or that we will be profitable in any future period. Any shortfalls in revenue or earnings from levels expected by our stockholders or by securities or industry analysts could have an immediate and significant adverse effect on the trading price of our common stock in any given period.

We have recognized significant goodwill impairment charges.

We account for goodwill in accordance with guidance that requires that goodwill be tested for impairment at least annually. We test goodwill for impairment in December of each year, or more frequently if events and circumstances warrant. These assets are impaired if we determine that their carrying values may not be recoverable based on an assessment of certain events or changes in circumstances. If the assets are considered to be impaired, we recognize the amount by which the carrying value of the assets exceeds the fair value of the assets as an impairment loss. In the third quarter of 2015, the market value of our common stock substantially declined. As a result of this decline, we determined that we had an indicator of impairment of our goodwill, and an interim test of goodwill impairment was required. As a result, we reviewed our goodwill for impairment under a two-step test in accordance with the relevant guidance. Based upon this two-step test, we determined that our goodwill was impaired, which required us to write off the entire balance of our goodwill. In the third quarter of 2015, we recorded a charge of $164.3 million representing the write-off of the balance of our goodwill. For additional information related to this charge, see the "Goodwill and Other Intangible Assets" subsection of Note 2 to the consolidated financial statements included in this report.

Risks Related to Our Intellectual Property Regulatory Penalties and Potential Litigation

If our patents and other intellectual property rights do not adequately protect our products, we may lose market share to our competitors and be unable to operate our business profitably.

Our success depends significantly on our ability to protect our proprietary rights of the technologies used in our products. We rely on patent protection, as well as a combination of copyright, trade secret and trademark laws, and nondisclosure, confidentiality and other contractual restrictions to protect our proprietary technology. However, these legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep any competitive advantage. For example, we cannot assure you that any of our pending patent applications will result in the issuance of patents to us. The U.S. Patent and Trademark Office, or PTO, may deny or require significant narrowing of claims in our pending patent applications, and patents issued as a result of the pending patent applications, if any, may not provide us with significant commercial protection or be issued in a form that is advantageous to us. We could also incur substantial costs in proceedings before the PTO. These proceedings could result in adverse decisions as to the priority of our inventions and the narrowing or invalidation of claims in issued patents. Our issued patents and those that may be issued in the future could subsequently be successfully challenged by others and invalidated or rendered unenforceable, which could limit our ability to stop competitors from marketing and selling related products. In addition, our pending patent applications include claims to aspects of our products and procedures that are not currently protected by issued patents.

Both the patent application process and the process of managing patent disputes can be time consuming and expensive. Competitors may be able to design around our patents or develop products that provide outcomes that are comparable to our products but fall outside of the scope of our patent protection. Although we have entered into confidentiality agreements and

intellectual property assignment agreements with certain of our employees, consultants and advisors as one of the ways we seek to protect our intellectual property and other proprietary technology, such agreements may not be enforceable or may not provide meaningful protection for our trade secrets or other proprietary information in the event of unauthorized use or disclosure or other breaches of the agreements. Furthermore, the laws of some foreign countries may not protect our intellectual property rights to the same extent as the laws of the U.S., if at all. Since most of our issued patents and pending patent applications are for the U.S. only, we lack a corresponding scope of patent protection in other countries, including Japan. Thus, we may not be able to stop a competitor from marketing products in other countries that are similar to some of our products.

In the event a competitor infringes upon one of our patents or other intellectual property rights, enforcing those patents and rights may be difficult and time consuming. Even if successful, litigation to defend our patents against challenges or to enforce our intellectual property rights could be expensive and time consuming and could divert management's attention from managing our business. Moreover, we may not have sufficient resources to defend our patents against challenges or to enforce our intellectual property rights.

The medical device industry is characterized by patent and other intellectual property litigation and we could become subject to litigation that could be costly, result in the diversion of management's time and efforts, require us to pay damages, and/or prevent us from marketing our existing or future products.

The medical device industry is characterized by extensive litigation and administrative proceedings over patent and other intellectual property rights. Determining whether a product infringes a patent involves complex legal and factual issues, the determination of which is often uncertain. Our competitors may assert that our products, the components of those products, the methods of using those products, or the methods we employ in manufacturing or processing those products are covered by U.S. or foreign patents held by them. In addition, they may claim that their patents have priority over ours because their patents were filed first. Because patent applications can take many years to issue, there may be applications now pending of which we are unaware, which may later result in issued patents that our products may infringe. There could also be existing patents that one or more components of our products may be inadvertently infringing, of which we are unaware. As the number of participants in the market for spine disorder devices and treatments increases, the possibility of patent infringement claims against us also increases.

Any such claim against us, even those without merit, may cause us to incur substantial costs, and could place a significant strain on our financial resources, divert the attention of management from our core business and harm our reputation. If the relevant patents are upheld as valid and enforceable and we are found to infringe, we could be required to pay substantial damages, including treble, or triple, damages if an infringement is found to be willful, and/or royalties and we could be prevented from selling our products unless we could obtain a license or were able to redesign our products to avoid infringement. Any such license may not be available on reasonable terms, if at all, and there can be no assurance that we would be able to redesign our products in a way that would not infringe those patents, and any such redesign, if possible, may be costly. If we fail to obtain any required licenses or make any necessary changes to our products or technologies, we may have to withdraw existing products from the market or may be unable to commercialize one or more of our products, either of which could have a significant adverse effect on our business, financial condition and results of operations.

In addition, in order to further our product development efforts, from time to time we enter into agreements with surgeons to develop new products. As consideration for product development activities rendered pursuant to these agreements, in certain instances we have agreed to pay such surgeons royalties on products developed by cooperative involvement between us and such surgeons. There can be no assurance that surgeons with whom we have entered into such an arrangement will not claim to be entitled to a royalty even if we do not believe that such products were developed by cooperative involvement between us and such surgeons. Any such claim against us, even those without merit, may cause us to incur substantial costs, and could place a significant strain on our financial resources, divert the attention of management from our core business and harm our reputation.

If we become subject to product liability claims, we may be required to pay damages that exceed our insurance coverage.

Our business exposes us to potential product liability claims that are inherent in the testing, design, manufacture and sale of medical devices for spine surgery procedures. Spine surgery involves significant risk of serious complications, including bleeding, nerve injury, paralysis and even death. To date, our products have not been the subject of any material product liability claims. Currently, we carry product liability insurance in the amount of $20 million per occurrence and $20 million in the aggregate. Our existing product liability insurance coverage may be inadequate to satisfy liabilities we might incur. Any product liability claim brought against us, with or without merit, could result in the increase of our product liability insurance rates or our inability to secure coverage in the future on commercially reasonable terms, if at all. In addition, if our product liability insurance proves to be inadequate to pay a damage award, we may have to pay the excess out of our cash reserves, which could harm our financial condition. If longer-term patient results and experience indicate that our products or any component of our products cause tissue damage, motor impairment or other adverse effects, we could be subject to significant

liability. Even a meritless or unsuccessful product liability claim could harm our reputation in the industry, lead to significant legal fees and result in the diversion of management's attention from managing our business. If a product liability claim or series of claims is brought against us in excess of our insurance coverage limits, our business could suffer and our financial condition, results of operations and cash flow could be materially adversely impacted.

Because biologics products entail a potential risk of communicable disease to human recipients, we may be the subject of product liability claims regarding our biologics products.

Our biologics products may expose us to additional potential product liability claims. The development of biologics products entails a risk of additional product liability claims because of the risk of transmitting disease to human recipients, and substantial product liability claims may be asserted against us. In addition, successful product liability claims made against one of our competitors could cause claims to be made against us or expose us to a perception that we are vulnerable to similar claims. Even a meritless or unsuccessful product liability claim could harm our reputation in the industry, lead to significant legal fees and result in the diversion of management's attention from managing our business.

Any claims relating to our improper handling, storage or disposal of biological, hazardous and radioactive materials could be time consuming and costly.

The manufacture of certain of our products, including our biologics products, involves the controlled use of biological, hazardous and/or radioactive materials and waste. Our business and facilities and those of our suppliers are subject to foreign, federal, state and local laws and regulations governing the use, manufacture, storage, handling and disposal of these hazardous materials and waste products. Although we believe that our safety procedures for handling and disposing of these materials comply with legally prescribed standards, we cannot completely eliminate the risk of accidental contamination or injury from these materials. In the event of an accident, we could be held liable for damages or penalized with fines. This liability could exceed our resources and any applicable insurance. In addition, under some environmental laws and regulations, we could also be held responsible for all of the costs relating to any contamination at our past or present facilities and at third-party waste disposal sites, even if such contamination was not caused by us. We may incur significant expenses in the future relating to any failure to comply with environmental laws. Any such future expenses or liability could have a significant negative impact on our business, financial condition and results of operations.

We may be subject to damages resulting from claims that we, our employees or our independent distributors have wrongfully used or disclosed alleged trade secrets of our competitors or are in breach of non-competition or non-solicitation agreements with our competitors.

Many of our employees were previously employed at other medical device companies, including our competitors or potential competitors. Many of our independent distributors sell, or in the past have sold, products of our competitors. We may be subject to claims that we, our employees or our independent distributors have inadvertently or otherwise used or disclosed the trade secrets or other proprietary information of our competitors. In addition, we have been and may in the future be subject to claims that we caused an employee or independent distributor to break the terms of his or her non-competition agreement or non-solicitation agreement. Litigation may be necessary to defend against such claims. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management. If we fail in defending such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights and/or personnel. A loss of key personnel and/or their work product could hamper or prevent our ability to commercialize products, which could have an adverse effect on our business, financial condition and results of operations.

Risks Related to Our Common Stock

If we fail to continue to meet all applicable NASDAQ Global Select Market requirements and our common stock is delisted, the delisting could adversely affect the market liquidity of our common stock, impair the value of your investment and harm our business.

Our common stock is currently listed on the NASDAQ Global Select Market. In order to maintain that listing, we must satisfy minimum financial and other requirements. On September 17, 2015, we received written notice from the Listing Qualifications Department of the NASDAQ Stock Market LLC, or NASDAQ, notifying us that for the preceding 30 consecutive business days, our common stock did not maintain a minimum closing bid price of $1.00 per share as required for continued inclusion on The NASDAQ Global Select Market under NASDAQ Listing Rule 5450(a)(1). The notification letter states that pursuant to NASDAQ Listing Rule 5810(c)(3)(A), we will be afforded 180 calendar days, or until March 15, 2016, to regain compliance with the minimum bid price requirement. In order to regain compliance, shares of our common stock must maintain a minimum closing bid price of at least $1.00 per share for a minimum of 10 consecutive business days during such

180-day period. If we do not regain compliance by March 15, 2016, NASDAQ will provide written notification to us that our common stock will be delisted. At that time, we may appeal NASDAQ's delisting determination to a NASDAQ Listing Qualifications Panel and, if successful, our common stock would remain listed on the NASDAQ Global Select Market. Alternatively, we may be eligible to transfer to The NASDAQ Capital Market in order to receive an additional 180 day grace period if we satisfy all of the requirements, other than the minimum bid price requirement, for listing on The NASDAQ Capital Market.

While we intend to engage in efforts to regain compliance, and thus maintain our listing, there can be no assurance that we will be able to regain compliance during the applicable time periods set forth above. In particular, we have not been able to maintain a minimum closing bid price of at least $1.00 per share for a minimum of 10 consecutive business days prior to the March 15, 2016 compliance deadline. If we fail to continue to meet all applicable NASDAQ Global Select Market requirements in the future and NASDAQ determines to delist our common stock, the delisting could substantially decrease trading in our common stock and adversely affect the market liquidity of our common stock; adversely affect our ability to obtain financing on acceptable terms, if at all, to continue our operations; and may result in the potential loss of confidence by investors, suppliers, customers and employees and fewer business development opportunities. Additionally, the market price of our common stock may decline further and stockholders may lose some or all of their investment. The closing bid price of our common stock on the NASDAQ Global Select Market was $0.29 per share on March 14, 2016 .

We expect that the price of our common stock will fluctuate substantially and the market price of our common stock may decline in value in the future.

The market price of our common stock is likely to be highly volatile and may fluctuate substantially due to many factors, including:

- volume and timing of orders for our products;
- quarterly variations in our or our competitors' results of operations;
- our announcement or our competitors' announcements regarding new products, product enhancements, significant contracts, number of distributors, number of hospitals and surgeons using products, acquisitions, and collaborative or strategic investments;
- announcements of technological or medical innovations for the treatment of spine pathology;
- changes in earnings estimates or recommendations by securities analysts;
- our ability to develop, obtain regulatory clearance or approval for, and market new and enhanced products on a timely basis;
- changes in healthcare policy in the U.S. and internationally;
- product liability claims or other litigation involving us;
- sales of large blocks of our common stock, including sales by our executive officers, directors and significant stockholders;
- changes in governmental regulations or in the status of our regulatory approvals, clearances or applications;
- disputes or other developments with respect to intellectual property rights;
- changes in the availability of third-party reimbursement in the U.S. or other countries;
- changes in accounting principles; and
- general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors.

We may become involved in securities class action litigation that could divert management's attention and harm our business.

The stock market in general, The NASDAQ Global Select Market and the market for medical device companies in particular, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Further, the market prices of securities of medical device companies have been particularly volatile. In the past, following periods of volatility in the market price of a particular company's securities, securities class action litigation has often been brought against that company. We may become involved in this type of litigation in the future. Litigation is often expensive and diverts management's attention and resources, which could materially harm our financial condition, results of operations and business.

Securities analysts may not continue to provide coverage of our common stock or may issue negative reports, which may have a negative impact on the market price of our common stock.

Securities analysts may not continue to provide research coverage of our common stock. If securities analysts do not cover our common stock, the lack of research coverage may cause the market price of our common stock to decline. The trading market for our common stock may be affected in part by the research and reports that industry or financial analysts publish about our business. If one or more of the analysts who elects to cover us downgrades our stock, our stock price would likely decline rapidly. If one or more of these analysts ceases coverage of us, we could lose visibility in the market, which in turn could cause our stock price to decline. In addition, rules mandated by the Sarbanes-Oxley Act and a global settlement reached in 2003 between the SEC, other regulatory agencies and a number of investment banks have led to a number of fundamental changes in how analysts are reviewed and compensated. In particular, many investment banking firms are required to contract with independent financial analysts for their stock research. It may be difficult for companies such as ours, with smaller market capitalizations, to attract independent financial analysts that will cover our common stock. This could have a negative effect on the market price of our stock.

Because of their significant stock ownership, our executive officers, directors and principal stockholders will be able to exert control over us and our significant corporate decisions.

Based on shares outstanding at March 14, 2016 , our executive officers, directors and stockholders holding more than 5% of our outstanding common stock and their affiliates, in the aggregate, beneficially own approximately 33% of our outstanding common stock. As a result, these persons will have the ability to impact significantly the outcome of all matters requiring stockholder approval, including the election and removal of directors and any merger, consolidation, or sale of all or substantially all of our assets.

This concentration of ownership may harm the market price of our common stock by, among other things:

- delaying, deferring or preventing our change in control;
- impeding a merger, consolidation, takeover or other business combination involving us;
- causing us to enter into transactions or agreements that are not in the best interests of all of our stockholders; or
- reducing our public float held by non-affiliates.

Certain members of our Board of Directors also serve as officers and directors of HealthpointCapital, its affiliates and other portfolio companies.

Three members of our Board of Directors also serve as officers and directors of our largest stockholder, HealthpointCapital, or its related entities and of other companies in which HealthpointCapital invests, including companies with which we compete or may in the future compete. As of March 14, 2016 , HealthpointCapital owned approximately 31% of our outstanding common stock. The Chairman of our Executive Committee of our Board of Directors, Mortimer Berkowitz III, is a managing member of HGP, LLC and HGP II, LLC, the general partners of HealthpointCapital Partners, LP and HealthpointCapital Partners II, LP, respectively. Our directors R. Ian Molson and Stephen E. O'Neil also serve on the board of managers of HealthpointCapital, LLC. In addition, John H. Foster, who is a managing member of HGP, LLC and HGP II, LLC and the Chairman, Co-Chief Executive Officer, a member of the Board of Managers and a Managing Director of HealthpointCapital, LLC, was a member of our Board of Directors until March 2, 2016. Each of Messrs. Berkowitz, O'Neil and Molson, also have financial interests in HealthpointCapital investment funds.

Because of these possible conflicts of interest, such directors may direct potential business and investment opportunities to other entities rather than to us or such directors may undertake or otherwise engage in activities or conduct on behalf of such other entities that is not in, or which may be adverse to, our best interests. Whether a director directs an opportunity to us or to another company, our directors may face claims of breaches of fiduciary duty and other duties relating to such opportunities. Our amended and restated certificate of incorporation requires us to indemnify our directors to the fullest extent permitted by law, which may require us to indemnify them against claims of breaches of such duties arising from their service on our Board of Directors. HealthpointCapital or its affiliates may pursue acquisition opportunities that may be complementary to our business and, as a result, those acquisition opportunities may not be available to us. Furthermore, HealthpointCapital may have an interest in us pursuing acquisitions, divestitures, financings or other transactions that, in its judgment, could enhance its equity investment, even though such transactions might involve risks to us and our stockholders generally. In addition, if we were to seek a business combination with a target business with which one or more of our existing stockholders or directors may be affiliated, conflicts of interest could arise in connection with negotiating the terms of and completing the business combination. Conflicts that may arise may not be resolved in our favor.

Anti-takeover provisions in our organizational documents and change of control provisions in some of our employment agreements and agreements with distributors, and in some of our outstanding debt agreements, as well as the terms of our redeemable preferred stock, may discourage or prevent a change of control, even if an acquisition would be beneficial to our stockholders, which could affect our stock price adversely.

Certain provisions of our amended and restated certificate of incorporation and restated by-laws could discourage, delay or prevent a merger, acquisition or other change in control that stockholders may consider favorable, including transactions in which our stockholders might otherwise receive a premium for their shares. These provisions also could limit the price that investors might be willing to pay in the future for shares of our common stock, thereby depressing the market price of our common stock. Stockholders who wish to participate in these transactions may not have the opportunity to do so. Furthermore, these provisions could prevent or frustrate attempts by our stockholders to replace or remove our management. These provisions:

- allow the authorized number of directors to be changed only by resolution of our Board of Directors;
- allow vacancies on our Board of Directors to be filled only by resolution of our Board of Directors;
- authorize our Board of Directors to issue, without stockholder approval, blank check preferred stock that, if issued, could operate as a "poison pill" to dilute the stock ownership of a potential hostile acquirer to prevent an acquisition that is not approved by our Board of Directors;
- require that stockholder actions must be effected at a duly called stockholder meeting and prohibit stockholder action by written consent;
- establish advance notice requirements for stockholder nominations to our Board of Directors and for stockholder proposals that can be acted on at stockholder meetings; and
- limit who may call stockholder meetings.

Some of our employment agreements and all of our restricted stock agreements, incentive stock option agreements, performance-based stock units and restricted common stock provide for accelerated vesting of benefits, including full vesting of restricted stock and options, upon a change of control. A limited number of our agreements with our distributors include a provision that extends the term of the distribution agreement upon a change in control and makes it more difficult for us or our successor to terminate the agreement. These provisions may discourage or prevent a change of control.

In addition, in the event of a change of control, we would be required to redeem all outstanding shares of our redeemable preferred stock for an aggregate of $29.9 million, at the price of $9.00 per share. Further, our amended and restated certificate of incorporation permits us to issue additional shares of preferred stock. The terms of our redeemable preferred stock or any new preferred stock we may issue could have the effect of delaying, deterring or preventing a change in control.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K and, in particular, the description of our "Business" set forth in Item 1, the "Risk Factors" set forth in this Item 1A and our "Management's Discussion and Analysis of Financial Condition and Results of Operations" set forth in Item 7 contain or incorporate a number of forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the exchange Act, including statements regarding:

- our estimates regarding anticipated operating losses, future revenue, expenses, capital requirements, uses and sources of cash and liquidity, including our anticipated revenue growth and cost savings;
- our ability to meet the financial covenants under our credit facilities, to obtain waivers from our lenders with respect to any noncompliance with our financial covenants, and to refinance our existing debt prior to the maturity of our credit facilities with our current or new lenders;
- our ability to regain and maintain compliance with the continued listing requirements of The NASDAQ Global Select Market
- our ability to ensure that we have effective disclosure controls and procedures and to remedy our material weakness in our internal control over financial reporting;
- our ability to meet and potential liability from not meeting the payment obligations under the Orthotec settlement agreement;

- our ability to regain and maintain compliance with the quality requirements of the FDA and similar regulatory authorities outside of the U.S., including our ability to resolve the deficiencies cited in the Warning Letter that we received from the FDA in July 2015 following the FDA's inspection of our manufacturing facilities;
- our ability to market, improve, grow, commercialize and achieve market acceptance of any of our products or any product candidates that we are developing or may develop in the future;
- our beliefs about the features, strengths and benefits of our products;
- our ability to continue to enhance our product offerings, outsource our manufacturing operations and expand the commercialization of our products, and the effect of our strategy;
- our expectations about the timing, costs and benefits of the restructuring and outsourcing of our manufacturing operations;
- our beliefs about the ability of our supplier relationships and quality processes to fulfill our production requirements;
- our ability to successfully integrate, and realize benefits from licenses and acquisitions;
- our ability to successfully achieve and maintain regulatory clearance or approval for our products in applicable jurisdictions and in a timely manner;
- the effect of any existing or future federal, state or international regulations on our ability to effectively conduct our business;
- our estimates of market sizes and anticipated uses of our products;
- our business strategy and our underlying assumptions about market data, demographic trends, reimbursement trends and pricing trends;
- our ability to achieve profitability, and the potential need to raise additional funding;
- our ability to maintain an adequate sales network for our products, including to attract and retain independent distributors;
- our ability to enhance our U.S. and international sales and distributions networks and product penetration;
- our ability to increase the use and promotion of our products by training and educating surgeons and our sales network;
- our ability to attract and retain a qualified management team, as well as other qualified personnel and advisors;
- our ability to enter into licensing and business combination agreements with third parties and to successfully integrate the acquired technology and/or businesses;
- our management team’s ability to accommodate growth and manage a larger organization;
- our ability to protect our intellectual property, and to not infringe upon the intellectual property of third parties;
- the effects of the escalating cost of medical products and services and the effects of market demand, government regulation, third-party reimbursement policies and societal pressures on the worldwide healthcare industry and our business;
- our ability to meet or exceed the industry standard in clinical and legal compliance and corporate governance programs;
- our beliefs about our competitors and the principal competitive factors in our market and the effect of non-operative treatments on demand for our products;
- potential liability resulting from litigation;
- our beliefs about our employee relations;
- potential liability resulting from a governmental review of our business practices;
- our beliefs about the usefulness of the non-GAAP financial measures included in this Annual Report on Form 10-K;
- our beliefs with respect to our critical accounting policies and the reasonableness of our estimates and assumptions; and
- other factors discussed elsewhere in this Annual Report on Form 10-K or any document incorporated by reference herein or therein.

Any or all of our forward-looking statements in this Annual Report may turn out to be wrong. They can be affected by inaccurate assumptions by known or unknown risks and uncertainties. Many factors mentioned in our discussion in this Annual Report on Form 10-K will be important in determining future results. Consequently, no forward-looking statement can be guaranteed. Actual future results may vary materially from expected results.

We also provide a cautionary discussion of risks and uncertainties under "Risk Factors" in Item 1A of this Annual Report. These are factors that we think could cause our actual results to differ materially from expected results. Other factors besides those listed there could also adversely affect us.

Without limiting the foregoing, the words "believe," "anticipate," "plan," "expect," "may," "could," "would," "seek," "intend," and similar expressions are intended to identify forward-looking statements. There are a number of factors and uncertainties that could cause actual events or results to differ materially from those indicated by such forward-looking statements, many of which are beyond our control, including the factors set forth under "Item 1A Risk Factors." In addition, the forward-looking statements contained herein represent our estimate only as of the date of this filing and should not be relied upon as representing our estimate as of any subsequent date. While we may elect to update these forward-looking statements at some point in the future, we specifically disclaim any obligation to do so to reflect actual results, changes in assumptions or changes in other factors affecting such forward-looking statements.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

Our corporate office and former manufacturing facilities are located in Carlsbad, California. The table below provides selected information regarding our current material operating leased locations.

Location	Use	Approximate Square Footage	Lease Expiration
Carlsbad, California	Corporate headquarters and product design	76,693	July 2021
Carlsbad, California	Product design and distribution	73,480	January 2017

Item 3. Legal Proceedings

The Company is and may become involved in various legal proceedings arising from its business activities. While management is not aware of any litigation matter that in and of itself would have a material adverse impact, the Company believes the ultimate disposition of the above matter that have a material adverse impact on the Company's consolidated results of operations, cash flows or financial position, litigation is inherently unpredictable, and depending on the nature and timing of a proceeding, an unfavorable resolution could materially affect the Company's future consolidated results of operations, cash flows or financial position in a particular period. The Company assesses contingencies to determine the degree of probability and range of possible loss for potential accrual or disclosure in our consolidated financial statements. An estimated loss contingency is accrued in the Company's consolidated financial statements if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. Because litigation is inherently unpredictable and unfavorable resolutions could occur, assessing contingencies is highly subjective and requires judgments about future events. When evaluating contingencies, the Company may be unable to provide a meaningful estimate due to a number of factors, including the procedural status of the matter in question, the presence of complex or novel legal theories, and/or the ongoing discovery and development of information important to the matters. In addition, damage amounts claimed in litigation against us may be unsupported, exaggerated or unrelated to reasonably possible outcomes, and as such are not meaningful indicators of the Company's potential liability.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information

Our common stock is traded on The NASDAQ Global Select Market under the symbol "ATEC." The following table sets forth the high and low sales prices for our common stock as reported on The NASDAQ Global Select Market for the periods indicated.

Year Ended December 31, 2015	High	Low
First quarter	$ 1.54	$ 1.28
Second quarter	1.48	1.28
Third quarter	1.43	0.32
Fourth quarter	0.45	0.18
Year Ended December 31, 2014	**High**	**Low**
First quarter	$ 2.53	$ 1.16
Second quarter	1.70	1.20
Third quarter	1.92	1.32
Fourth quarter	1.70	1.23

Stockholders

As of March 14, 2016 , there were approximately 360 holders of record of an aggregate 102,150,232 outstanding shares of our common stock.

Dividend Policy

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings for use in the operation and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future.

Sales of Unregistered Securities

In October 2013, we entered into a three-year collaboration agreement with a third party to provide consultation services to assist us in the development of our products and products in development. Under the terms of the collaboration agreement, we will gain exclusive rights to the use of all intellectual property developed by the collaborators. We will make three annual payments to the collaborator as sole consideration for services provided, totaling an aggregate of up to $8 million, paid in our common stock at a per share price of $1.95, which was equal to the average NASDAQ closing price of the common stock on the five days leading up to and including the date of signing the collaboration agreement. The actual number of shares issued each year will be determined by the fair market value of the services provided over the prior 12 months. On October 30, 2013, November 10, 2014, December 24, 2014, October 9, 2015 and December 31, 2015 we issued 128,571, 1,059,792, 267,672, 883,152 and 441,600, respectively, unregistered shares of our common stock under this agreement. The shares were issued in reliance upon an exemption from registration under federal securities laws provided by Section 4(2) of the Securities Act, for the issuance and exchange of securities in transactions by an issuer not involving a public offering. We do not have an obligation, nor does it anticipate, registering the issued shares for resale on a registration statement pursuant to the Securities Act.

Issuer Purchases of Equity Securities

Under the terms of our Amended and Restated 2005 Employee, Director and Consultant Stock Plan, as amended, or the Stock Plan, and prior to the expiration of the Stock Plan in April 2016, we were permitted to award shares of restricted stock to our employees, directors and consultants. These shares of restricted stock are subject to a lapsing right of repurchase by us. We may exercise this right of repurchase in the event that a restricted stock recipient's employment, directorship or consulting relationship with us terminates prior to the end of the vesting period. If we exercise this right, we are required to repay the purchase price paid by or on behalf of the recipient for the repurchased restricted shares. Repurchased shares are returned to the Stock Plan and are available for future awards under the terms of the Stock Plan. There were no shares of common stock repurchased during the quarter ended December 31, 2015 .

Item 6. Selected Financial Data

The following table sets forth consolidated financial data with respect to the Company for each of the five years in the period ended December 31, 2015 . The selected consolidated financial data set forth below have been derived from our audited consolidated financial statements, and may not be indicative of future operating results. The results of operations for the year ended December 31, 2015 include a goodwill and intangible assets impairment charge of $165.2 million . The results of operations for the year ended December 31, 2013 include litigation settlement expenses of $46.0 million and restructuring expenses of $9.7 million. The selected consolidated financial data set forth below should be read in conjunction with our audited consolidated financial statements and related notes thereto found at "Item 8 Financial Statements and Supplementary Data" and "Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this Annual Report on Form 10-K.

	Year Ended December 31,				
	2015	2014	2013	2012	2011
	(in thousands, except per share amounts)				
Consolidated Statement of Operations Data:					
Revenues	$ 185,279	$ 206,980	$ 204,724	$ 196,278	$ 197,711
Operating (loss) income	(172,439)	1,844	(73,433)	(9,837)	(24,516)
Net loss	$ (178,676)	$ (12,882)	$ (82,227)	$ (15,459)	$ (22,181)
Net loss per basic share	$ (1.79)	$ (0.13)	$ (0.85)	$ (0.17)	$ (0.25)
Net loss per diluted share	$ (1.79)	$ (0.16)	$ (0.85)	$ (0.17)	$ (0.25)
Weighted-average shares used in computing net loss per share:					
Shares used in calculating basic net loss per share	99,574	97,347	96,235	90,218	88,798
Shares used in calculating diluted net loss per share	99,574	97,735	96,235	90,218	88,798

	As of December 31,				
	2015	2014	2013	2012	2011
	(in thousands)				
Consolidated Balance Sheet Data:					
Cash	$ 11,229	$ 19,735	$ 21,345	$ 22,241	$ 20,666
Working (deficit) capital	(23,542)	49,511	34,026	65,264	59,292
Total assets	146,704	344,923	365,630	382,127	366,692
Total debt, including current portion	80,585	82,673	54,902	41,667	28,198
Redeemable preferred stock	23,603	23,603	23,603	23,603	23,603
Total stockholders' (deficit) equity	(36,576)	148,954	171,676	245,816	245,328

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion of our financial condition and results of operations should be read in conjunction with the financial statements and the notes to those statements appearing elsewhere in this Annual Report on Form 10-K. Some of the information contained in this discussion and analysis or set forth elsewhere in this report include the identification of certain trends and other statements that may predict or anticipate future business or financial results that are subject to important factors that could cause our actual results to differ materially from those indicated. See "Item 1A Risk Factors" included elsewhere in this Annual Report on Form 10-K.

Overview

We are a medical technology company focused on the design, development and promotion of products for the surgical treatment of spine disorders. We have a comprehensive product portfolio and pipeline that addresses the cervical, thoracolumbar and intervertebral regions of the spine and covers a variety of spinal disorders and surgical procedures. Our principal product offerings are focused on the global market for fusion-based spinal disorder solutions. We believe that our products and systems are attractive to surgeons and patients due to enhanced product features and benefits that are designed to simplify surgical procedures and improve patient outcomes.

Revenue and Expense Components

The following is a description of the primary components of our revenues and expenses:

Revenues. We derive our revenues primarily from the sale of spinal surgery implants used in the treatment of spine disorders. Spinal implant products include pedicle screws and complementary implants, interbody devices, plates, and tissue-based materials. Our revenues are generated by our direct sales force and independent distributors. Our products are requested directly by surgeons and shipped and billed to hospitals and surgical centers. Today we have existing subsidiaries and/or affiliates in Japan, Germany, Brazil, Italy and the U.K. through which we sell our products and independent distributors in over 50 countries throughout the world. A majority of our business is conducted with customers within markets in which we have experience and with payment terms that are customary to our business. We may defer revenues until the time of collection if circumstances related to payment terms, regional market risk or customer history indicate that collectability is not reasonably assured.

Cost of revenues. Cost of revenues consists of direct product costs, royalties, milestones, depreciation of our surgical instruments, and the amortization of purchased intangibles. Our product costs consist primarily of direct labor, manufacturing overhead, and raw materials and components. The product costs of certain of our biologics products include the cost of procuring and processing human tissue. We incur royalties related to the technologies that we license from others and the products that are developed in part by surgeons with whom we collaborate in the product development process. Amortization of purchased intangibles consists of amortization of developed product technology.

Research and development. Research and development expense consists of costs associated with the design, development, testing, and enhancement of our products. Research and development expense also includes salaries and related employee benefits, research-related overhead expenses, fees paid to external service providers in both cash and equity, and costs associated with our Scientific Advisory Board and Executive Surgeon Panels.

In-process research and development, or IPR&D. In-process research and development expense consists of acquired research and development assets that were not part of an acquisition of a business and were not technically feasible on the date we acquired such technology, provided that such technology also did not have any alternative future use at that date.

Sales and marketing. Sales and marketing expense consists primarily of salaries and related employee benefits, sales commissions and support costs, professional service fees, travel, medical education, trade show and marketing costs.

General and administrative. General and administrative expense consists primarily of salaries and related employee benefits, professional service fees, insurance and legal expenses.

Goodwill and intangible assets impairment . The impairment expense relates to impairment charges related to our goodwill balances and indefinite lived intangible assets.

Restructuring expenses. Restructuring expenses consist of severance, social plan benefits and related taxes, facility closing costs, manufacturing transfer costs and contract termination incurred in connection with the reorganization of our Scient'x operations in France and the termination of our manufacturing operations in California.

Litigation settlement expenses. Litigation settlement expenses consist of significant settlements of lawsuits.

Total other income (expense). Total other income (expense) includes interest income, interest expense, changes in the fair value of the warrant liabilities, gains and losses from foreign currency exchanges and other non-operating gains and losses.

Income tax provision. Income tax provision consists primarily of income tax provision related to state income taxes, foreign operations and uncertain tax positions in foreign jurisdictions, and the tax effect of changes in deferred tax liabilities associated with tax deductible goodwill.

Results of Operations

The first table below sets forth our statements of operations data for the periods presented. Our historical results are not necessarily indicative of the operating results that may be expected in the future.

	Year Ended December 31,		
	2015	2014	2013
	(in thousands)		
Revenues	$ 185,279	$ 206,980	$ 204,724
Cost of revenues	63,742	61,834	78,669
Amortization of acquired intangible assets	1,453	1,736	1,733
Gross profit	120,084	143,410	124,322
Operating expenses:			
Research and development	17,767	16,799	14,190
In-process research and development	274	527	—
Sales and marketing	70,856	77,179	76,960
General and administrative	34,867	43,381	47,949
Amortization of acquired intangible assets	2,400	2,974	3,009
Goodwill and intangible assets impairment	165,171	—	—
Restructuring expenses	1,188	706	9,665
Litigation settlement expenses	—	—	45,982
Total operating expenses	292,523	141,566	197,755
Operating (loss) income	(172,439)	1,844	(73,433)
Other income (expense):			
Interest income	53	10	6
Interest expense	(12,589)	(13,616)	(3,959)
Other income (expense), net	6,980	(33)	(1,662)
Total other income (expense)	(5,556)	(13,639)	(5,615)
Pretax net loss	(177,995)	(11,795)	(79,048)
Income tax provision	681	1,087	3,179
Net loss	$ (178,676)	$ (12,882)	$ (82,227)

Year Ended December 31, 2015 Compared to the Year Ended December 31, 2014

Revenues. Revenues were $185.3 million for the year ended December 31, 2015 compared to $207.0 million for the year ended December 31, 2014 , representing a decrease of $21.7 million , or 10.5% . The decrease was the result of sales decline in the U.S. region ($22.5 million) partially offset by an increase in the International region ($0.8 million).

U.S. revenues were $114.6 million for the year ended December 31, 2015 compared to $137.1 million for the year ended December 31, 2014 , representing a decrease of $22.5 million , or 16.4% . The decrease was the result of decline in sales directly to hospitals ($18.9 million), combined with a decrease in sales to stocking distributors ($3.6 million).

International revenues were $70.7 million for the year ended December 31, 2015 compared to $69.9 million for the year ended December 31, 2014 , representing an increase of $0.8 million , or 1.1% . The increase was due to growth in sales of implants and instruments ($11.8 million), offset by unfavorable exchange rate effect ($11.0 million).

Cost of revenues. Cost of revenues was $63.7 million for the year ended December 31, 2015 compared to $61.8 million for the year ended December 31, 2014 , representing an increase of $1.9 million , or 3.1% . The increase was the result of one-time charges for the impairment of certain product-related intangible assets and the disposal of manufacturing equipment ($1.9

million), non-recurring favorable royalties and milestones in 2014 ($1.2 million), an increase in manufacturing depreciation expense due to the reduction of useful lives resulting from the manufacturing outsourcing initiative ($1.5 million), offset by a reduction in reserves and adjustments ($0.9 million), reduced instrument depreciation expense ($0.9 million), a reduction in royalty and milestone expenses due to a reduction sales volume ($0.5 million), and a reduction in amortization expenses ($0.4 million).

Amortization of acquired intangible assets. Amortization of acquired intangible assets was $1.5 million for the year ended December 31, 2015 compared to $1.7 million for the year ended December 31, 2014 , representing a decrease of $0.3 million , or 16.3% . This expense represents amortization in the period for intangible assets associated with product-related assets obtained in acquisitions.

Gross profit. Gross profit was $120.1 million for the year ended December 31, 2015 compared to $143.4 million for the year ended December 31, 2014 , representing a decrease of $23.3 million , or 16.3% . The decrease was due to the decline in constant currency revenue ($10.7 million), unfavorable exchange rate effect ($11.0 million) and an increase in cost of revenues ($1.9 million), offset by a decrease in the amortization of acquired intangibles ($0.3 million).

Gross margin. Gross margin was 64.8% for the year ended December 31, 2015 compared to 69.3% for the year ended December 31, 2014 . The decrease of 4.5 percentage points was due to increased cost of revenues resulting from one-time charges (2.4 percentage points), unfavorable variation in regional mix, currency and product mix (2.4 percentage points), increased royalty costs due to a change in product mix (0.2 percentage points), offset by a decrease in amortization expense (0.3 percentage points) and decrease in inventory reserves and other adjustments (0.2 percentage points).

Gross margin in the U.S. was 67.7% for the year ended December 31, 2015 compared to 73.4% for the year ended December 31, 2014 . The decrease of 5.7 percentage points was due to increased cost of revenues resulting from one-time charges (3.9 percentage points), unfavorable variation in pricing and product mix (1.2 percentage points), increased royalty costs due to a change in product mix (0.6 percentage points) and an increase in instrument depreciation expense (0.5 percentage points), offset by a decrease in inventory reserves and adjustments (0.3 percentage points) and a decrease in amortization expense (0.2 percentage points).

Gross margin for the International region was 60.2% for the year ended December 31, 2015 compared to 61.3% for the year ended December 31, 2014 . The decrease of 1.1 percentage points was due to favorable variation in regional mix and product mix (3.7 percentage points), reduced instrument depreciation expense (0.4 percentage points), a reduction in amortization of acquired intangibles (0.4 percentage points) and a decrease in inventory reserves and adjustments (0.4 percentage points), offset by unfavorable exchange rate effect (6.0 percentage points).

Research and development. Research and development expense was $17.8 million for the year ended December 31, 2015 compared to $16.8 million for the year ended December 31, 2014 representing an increase of $1.0 million , or 5.8% . The increase was primarily due to an increase in stock-based compensation based on a mark-to-market calculation of stock previously provided to outside consultants ($2.9 million), offset by a reduction in personnel costs ($1.5 million) and a reduction related to the timing of development activities and product launch schedules ($0.4 million).

In-process research and development . IPR&D expense was $0.3 million for the year ended December 31, 2015 compared to $0.5 million for the year ended December 31, 2014 . The expense in 2015 and 2014 relates to initial purchase payments in connection with asset purchase agreements for which the underlying product was not technologically feasible at the time the asset was acquired.

Sales and marketing . Sales and marketing expense was $70.9 million for the year ended December 31, 2015 compared to $77.2 million for the year ended December 31, 2014 representing a decrease of $6.3 million , or 8.2% . The decrease was due to a decrease in selling and marketing activities due to the timing of activity ($2.5 million), and a decrease in commission expense due to the reduction in U.S. revenue ($3.8 million).

General and administrative. General and administrative expense was $34.9 million for the year ended December 31, 2015 compared to $43.4 million for the year ended December 31, 2014 , representing a decrease of $8.5 million , or 19.6% . The decrease was due to a reduction in legal expenses associated with the Orthotec litigation ($4.8 million), a reduction in expenses due to the restructuring of business operations in France ($1.9 million), a reduction in personnel expense in the U.S. region ($0.7 million), a reduction in expenses related to the international regions ($0.7 million), and a sales tax refund ($0.4 million).

Amortization of acquired intangible assets. Amortization of acquired intangible assets was $2.4 million for the year ended December 31, 2015 as compared to $3.0 million for the year ended December 31, 2014 . This expense represents amortization in the period for intangible assets associated with general business assets obtained in acquisitions and has declined as those assets have either been impaired or become fully amortized.

Goodwill and intangible assets impairment. The goodwill and intangible assets impairment of $165.2 million is a result of our impairment test performed during the third quarter of 2015 triggered by the decline in our share price. The impairment

charge represents a full write off of our existing goodwill balance ($164.3 million) and write offs related to intangible assets ($0.9 million).

Restructuring expenses. Restructuring expenses were $1.2 million for the year ended December 31, 2015 compared to $0.7 million for the year ended December 31, 2014 . In 2013, we announced that Scient'x had begun a process to significantly restructure its business operations in France in an effort to improve operating efficiencies and rationalize its cost structure and in 2015 we initiated plans to close our French operations completely. In July 2015, we announced a restructuring of our manufacturing operations in California in an effort to improve our cost structure. The restructuring includes a reduction in workforce and closing the California manufacturing facility.

Interest expense. Interest expense was $12.6 million for the year ended December 31, 2015 compared to $13.6 million for the year ended December 31, 2014 , representing a decrease of $1.0 million , or 7.5% . Interest expense for the years ended December 31, 2015 and 2014 consisted primarily of interest related to loan agreements and lines of credit and the associated amortization expenses related to debt issuance costs. The decrease was primarily due to lower debt offering cost amortization and increased interest expense related to the Deerfield facility.

Other income (expense), net. Other income (expense), net was income of $7.0 million for the year ended December 31, 2015 compared to an expense of less than $0.1 million for the year ended December 31, 2014 , representing an increase in income of $7.0 million . The increase was due primarily to a decline in the fair value of common stock warrant liability ($5.4 million) and net unfavorable foreign currency exchange results due to having non-functional currency denominated assets and liabilities on our subsidiaries' books ($1.6 million).

Income tax provision. Income tax provision was $0.7 million for the year ended December 31, 2015 compared to $1.1 million for the year ended December 31, 2014 , representing a decrease of $0.4 million , or 37.4% . The income tax provision in 2015 consists primarily of an increase in valuation allowance on foreign tax assets and state and foreign income taxes, partially offset by the reversal of deferred tax liabilities associated with tax deductible goodwill. The income tax provision in 2014 consists primarily of income tax provisions related to state income taxes, the tax effect of changes in deferred tax liabilities associated with tax deductible goodwill and operations in foreign jurisdictions where we operate.

Year Ended December 31, 2014 Compared to the Year Ended December 31, 2013

Revenues. Revenues were $207.0 million for the year ended December 31, 2014 compared to $204.7 million for the year ended December 31, 2013 , representing an increase of $2.3 million , or 1.1% . The increase was the result of growth in both the U.S. region ($2.1 million) and the International region ($0.1 million).

U.S. revenues were $137.1 million for the year ended December 31, 2014 compared to $135.0 million for the year ended December 31, 2013 , representing an increase of $2.1 million , or 1.6% . The increase was the result of increased sales directly to hospitals ($5.2 million), offset by a decrease in sales to stocking distributors ($3.1 million).

International revenues were $69.9 million for the year ended December 31, 2014 compared to $69.8 million for the year ended December 31, 2013 , representing an increase of $0.1 million , or 0.2% . The increase was due to growth in sales of implants and instruments ($5.5 million), offset by the elimination of revenue as a result of ceasing commercial operations in France as a result of the restructuring ($5.4 million). The increase in revenue is inclusive of $2.9 million in unfavorable exchange rate effect.

Cost of revenues. Cost of revenues was $61.8 million for the year ended December 31, 2014 compared to $78.7 million for the year ended December 31, 2013 , representing a decrease of $16.8 million , or 21.4% . The decrease was partially due to the one-time charges in 2013 for increased inventory and instrument reserves related to the restructuring of the Scient'x organization ($5.5 million), the obsolescence of the PureGen inventory ($3.5 million) and the obsolescence of certain inventory related to an interbody fusion product ($1.0 million). In addition, there was a reduction in amortization expense related to the Cross Medical settlement, for which expenses concluded in 2013 ($3.8 million), a reduction in depreciation expense related to instruments ($2.2 million), and a decrease in inventory adjustments ($1.7 million), offset by an increase in product costs due to the growth in sales ($0.3 million) and an increase in inventory reserves ($0.6 million).

Amortization of acquired intangible assets. Amortization of acquired intangible assets was $1.7 million for the years ended December 31, 2014 and December 31, 2013 . This expense represents amortization in the period for intangible assets associated with product related assets obtained in acquisitions.

Gross profit. Gross profit was $143.4 million for the year ended December 31, 2014 compared to $124.3 million for the year ended December 31, 2013 , representing an increase of $19.1 million , or 15.4% . The increase was due to a reduction in the cost of revenues ($17.3 million) and an increase in sales volume ($1.8 million).

Gross margin. Gross margin was 69.3% for the year ended December 31, 2014 compared to 60.7% for the year ended December 31, 2013 . The increase of 8.6 percentage points was due to a reduction in non-recurring charges and benefits (5.0

percentage points), amortization expense related to the Cross Medical settlement, for which expenses concluded in 2013 (2.0 percentage points), a reduction in depreciation expense related to instruments (1.1 percentage points) and a reduction in inventory adjustments (0.8 percentage points), offset by an increase in inventory reserves (0.3 percentage points).

Gross margin in the U.S. was 73.4% for the year ended December 31, 2014 compared to 65.9% for the year ended December 31, 2013 . The increase of 7.5 percentage points was due to a reduction in non-recurring charges and benefits (3.4 percentage points), amortization expense related to the Cross Medical settlement, for which expenses concluded in 2013 (3.1 percentage points), a reduction in depreciation expense related to instruments (1.0 percentage points), and a decrease in inventory adjustments (0.7 percentage points), offset by an increase in inventory reserves (0.4 percentage points) and an increase in royalty and milestone expenses due to a change in product mix (0.3 percentage points).

Gross margin for the International region was 61.3% for the year ended December 31, 2014 compared to 50.8% for the year ended December 31, 2013 . The increase of 10.5 percentage points was due to 2013 reserves related to the restructuring of the Scient'x organization (7.9 percentage points), a reduction in instrument depreciation (1.3 percentage points) and a reduction in inventory adjustments (1.5 percentage points), offset by an unfavorable variation in pricing and product mix (0.2 percentage points).

Research and development. Research and development expense was $16.8 million for the year ended December 31, 2014 compared to $14.2 million for the year ended December 31, 2013 representing an increase of $2.6 million , or 18.4% . The increase was primarily related to the beta launch of the Arsenal pedicle screw system and increased development activity.

In-process research and development . IPR&D expense was $0.5 million for the year ended December 31, 2014 compared to $0 for the year ended December 31, 2013 . The $0.5 million expense in 2014 relates to initial purchase payments in connection with asset purchase agreements for which the underlying product was not technologically feasible at the time the asset was acquired.

Sales and marketing . Sales and marketing expense was $77.2 million for the year ended December 31, 2014 compared to $77.0 million for the year ended December 31, 2013 representing an increase of $0.2 million , or 0.3% . The increase was due to an increase in commission expense ($2.1 million), offset by a reduction in the International region resulting from the restructuring of the Scient'x organization ($1.9 million).

General and administrative. General and administrative expense was $43.4 million for the year ended December 31, 2014 compared to $47.9 million for the year ended December 31, 2013 , representing a decrease of $4.6 million , or 9.5% . The decrease was primarily due to a lower amount of legal expenses associated with the Orthotec litigation.

Amortization of acquired intangible assets. Amortization of acquired intangible assets was $3.0 million for the year ended December 31, 2014 and compared to $3.0 million for the year ended December 31, 2013 . This expense represents amortization in the period for intangible assets associated with general business assets obtained in acquisitions.

Restructuring expenses. Restructuring expenses were $0.7 million for the year ended December 31, 2014 compared to $9.7 million for the year ended December 31, 2013 . On September 16, 2013, we announced that Scient'x began a process to significantly restructure its business operations in France in an effort to improve operating efficiencies and rationalize its cost structure . The restructuring included a reduction in Scient'x's workforce and the closing of the manufacturing facilities in France. The Company has recorded total costs of $10.4 million through December 31, 2014 associated with this restructuring, which include employee severance, social plan benefits and related taxes, facility closing costs, manufacturing transfer costs, and contract termination costs.

Litigation settlement expenses. Litigation settlement expenses were $0 for the year ended December 31, 2014 compared to $46.0 million for the year ended December 31, 2013 . The 2013 amount relates to an accrual booked for litigation settlement in connection with the Orthotec litigation matter.

Interest expense. Interest expense was $13.6 million for the year ended December 31, 2014 compared to $4.0 million for the year ended December 31, 2013 , representing an increase of $9.7 million , or 243.9% . Interest expense for the years ended December 31, 2014 and 2013 consisted primarily of interest related to loan agreements and lines of credit and the associated amortization expenses related to debt issuance costs. The increase in interest expense in 2014 is primarily due to interest expense and amortization of debt discount related to the Deerfield facility ($6.2 million), imputed interest on the Orthotec settlement ($1.7 million) and interest on higher levels of borrowings under the MidCap facility ($1.7 million).

Other income (expense), net. Other income (expense) was an expense of less than $0.1 million for the year ended December 31, 2014 compared to an expense of $1.7 million for the year ended December 31, 2013 , representing a decrease in this expense of $1.6 million . The decrease in expense was primarily due to a gain from the decrease in the fair market value of certain warrants ($2.6 million), partially offset by an increase in unfavorable foreign currency exchange results due to U.S. denominated assets and liabilities on our foreign subsidiaries books and foreign currency losses ($1.0 million).

Income tax provision. Income tax provision (benefit) was a provision of $1.1 million for the year ended December 31, 2014 compared to a provision of $3.2 million for the year ended December 31, 2013 , representing a decrease of $2.1 million , or 65.8% . The income tax provision in 2014 and 2013 consists primarily of income tax provisions related to state income taxes, the tax effect of changes in deferred tax liabilities associated with tax deductible goodwill and operations in foreign jurisdictions where we operate.

Non-GAAP Financial Measures

We utilize certain financial measures that are not calculated based on U.S. Generally Accepted Accounting Principles, or GAAP. Certain of these financial measures are considered "non-GAAP" financial measures within the meaning of Item 10 of Regulation S-K promulgated by the SEC. We believe that non-GAAP financial measures reflect an additional way of viewing aspects of our operations that, when viewed with the GAAP results, provide a more complete understanding of our results of operations and the factors and trends affecting our business. These unaudited non-GAAP financial measures are also used by our management to evaluate financial results and to plan and forecast future periods. However, non-GAAP financial measures should be considered as a supplement to, and not as a substitute for, or superior to, the corresponding measures calculated in accordance with GAAP. Non-GAAP financial measures used by us may differ from the non-GAAP measures used by other companies, including our competitors.

Adjusted EBITDA represents net income (loss) excluding the effects of interest, taxes, depreciation, amortization, stock-based compensation and other non-recurring income or expense items, such as in-process research and development expense and acquisition related transaction expenses, restructuring expenses, litigation exposure expenses, trial related legal costs and litigation settlement expenses. We believe that the most directly comparable GAAP financial measure to adjusted EBITDA is net income (loss). Adjusted EBITDA has limitations, however, and therefore, should not be considered either in isolation or as a substitute for analysis of our results as reported under GAAP. Furthermore, adjusted EBITDA should not be considered as an alternative to operating income (loss) or net income (loss) as a measure of operating performance or to net cash provided by operating, investing or financing activities, or as a measure of our ability to meet cash needs.

The following is a reconciliation of adjusted EBITDA to the most comparable GAAP measure, net loss, for the years ended December 31, 2015 , 2014 and 2013 (in thousands):

	Year Ended December 31,		
	2015	2014	2013
Net loss	$ (178,676)	$ (12,882)	$ (82,227)
Stock-based compensation	2,643	4,554	4,078
Depreciation	12,974	12,160	14,638
Amortization of intangible assets	2,204	1,515	6,898
Amortization of acquired intangible assets	3,853	4,710	4,741
Goodwill and intangible assets impairment	165,171	—	—
In-process research and development	274	527	—
Stock price guarantee	4,877	—	—
Interest expense, net	12,536	13,606	3,953
Income tax provision	681	1,087	3,179
Other (income) expense, net	(6,980)	33	1,662
Restructuring and other expenses	1,188	742	18,603
Litigation expenses and trial costs	—	4,779	49,657
Adjusted EBITDA	$ 20,745	$ 30,831	$ 25,182

Liquidity and Capital Resources

We have incurred significant net losses since inception and relied on our ability to fund our operations through revenues from the sale of our products, equity financings and debt financings. As we have incurred losses, successful transition to profitability is dependent upon achieving a level of revenues adequate to support our cost structure. This may not occur and, unless and until it does, we will continue to need to raise additional capital. Additionally, as discussed below, we have a significant amount of debt that is classified as current debt. Operating losses and negative cash flows may continue for at least the next year as we continue to incur costs related to the execution of our operating plan, introduction of new products and expansion into new geographies. Our amended and restated credit facility with MidCap Financial, LLC, or MidCap, as amended, or the Amended Credit Facility, matures in December 2016, which will require us to refinance the Amended Credit

Facility with MidCap or seek alternative financing. We were not in compliance with the fixed charge coverage ratio covenant related to the Amended Credit Facility with MidCap for June, August, September, October, November and December of 2015 and January 2016. We obtained waivers from MidCap to cure the non-compliance for these periods. Our default under the Amended Credit Facility with MidCap also constitutes an event of default under our facility agreement, or Facility Agreement, with Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P., Deerfield Special Situations Fund, L.P., and Deerfield Special Situations International Master Fund, L.P., or collectively Deerfield, and such default has been similarly waived for these periods. There is no assurance that we will be in compliance with the financial covenants of the Amended Credit Facility in the future. If we have future defaults and we do not obtain waivers from MidCap or Deerfield they would have the right to call their respective debts due immediately, which would significantly impact our ability to continue as a going concern. We intend to pursue additional opportunities to raise additional capital through public or private equity offerings, debt financings, receivables financings or collaborations or partnerships with other companies to further support our planned operations. However, there is no assurance that we will be able to do so. Accordingly, as of December 31, 2015, there is substantial doubt about our ability to continue as a going concern through December 31, 2016.

Historically, our principal sources of cash have included customer payments from the sale of our products, proceeds from the issuance of common and preferred stock and proceeds from the issuance of debt. Our principal uses of cash have included cash used in operations, acquisitions of businesses and intellectual property rights, payments relating to purchases of surgical instruments, repayments of borrowings under the Amended Credit Facility, and payments due under the Orthotec settlement agreement. We expect that our principal uses of cash in the future will be for operations, working capital, capital expenditures, and potential acquisitions. We expect that, as our revenues grow, our sales and marketing and research and development expenses will continue to grow and, as a result, we will need to generate significant net revenues to achieve profitability. We anticipate that we will raise additional capital through borrowings under our Amended Credit Facility, the incurrence of other indebtedness, additional equity financings or a combination of these potential sources of liquidity.

We will need to invest in working capital and surgical instruments in order to support our revenue projections through the end of 2016. If we are not able to achieve our revenue forecast and cash consumption starts to exceed forecasted consumption, management will need to adjust our investment in surgical instruments and manage our inventory to the decreased sales volumes. If we do not make these adjustments in a timely manner, there could be an adverse impact on our financial resources. Our revenue projections may be negatively impacted as a result of a decline in sales of our products, including declines due to changes in our customers' ability to obtain third-party coverage and reimbursement for procedures that use our products, increased pricing pressures resulting from intensifying competition, and cost increases and slower product development cycles resulting from a changing regulatory environment.

On July 6, 2015, we announced a restructuring of our manufacturing operations in California in an effort to improve our cost structure. The restructuring includes a reduction in workforce and closing the California manufacturing facility.

A substantial portion of our available cash funds is held in business accounts with reputable financial institutions. At times, however, our deposits, may exceed federally insured limits and thus we may face losses in the event of insolvency of any of the financial institutions where our funds are deposited. We did not hold any marketable securities as of December 31, 2015 .

Amended Credit Facility, Facility Agreement and Other Debt

On August 30, 2013, we entered into the Amended Credit Facility to, among other things, increase the borrowing limit under the existing credit facility from $50 million to $73 million and extend the maturity to August 2016. The Amended Credit Facility consists of a $33 million term loan, $28 million of which was drawn at closing and a $5 million delayed draw that was drawn in April 2014, and a revolving line of credit with a maximum borrowing base of $40 million. We used the term loan proceeds of $28 million to repay a portion of the outstanding balance on the prior revolving line of credit. In addition to monthly payments of interest, monthly repayments of $0.3 million of the principal for the term loan were made beginning in October 2013, increasing to $0.5 million beginning in October 2014, and are due through maturity, with the remaining principal due upon maturity.

On March 17, 2014, we entered into the First Amendment to the Amended Credit Facility, or the First Amendment. The First Amendment permits, among other things, our execution of, and borrowing of loans, under the Facility Agreement and our granting of liens as security therefore, the payment of amounts due under the Orthotec settlement agreement and the completion of certain conditions. The First Amendment also added a total leverage ratio financial covenant to the Amended Credit Facility.

On July 10, 2015, we entered into a Second Amendment to the Amended Credit Facility, or the Second Amendment, to increase the term loan commitment from $33 million to $38 million. We borrowed the additional $5 million on July 10, 2015, which is the third term loan tranche under the Amended Credit Facility, or the Third Term Loan Tranche. Until January 1, 2016, only interest payments were due for the Third Term Loan Tranche. Thereafter, we will pay an amount equal to $0.5 million on

the first day of each calendar month as an amortization payment in respect of all tranches of the term loan. We agreed to pay MidCap, a commitment fee equal to 1.0% of the principal amount of the funds disbursed in the Third Term Loan Tranche.

The Amended Credit Facility includes traditional lending and reporting covenants including a fixed charge coverage ratio, a senior leverage ratio and a total leverage ratio to be maintained by us. The Amended Credit Facility also provides for several event of default provisions, such as payment default and insolvency conditions, which could cause interest to be charged at a rate which is up to five percentage points above the rate effective immediately before the event of default or result in MidCap's right to declare all outstanding obligations immediately due and payable.

We were in compliance with all of the covenants of the Amended Credit Facility as of December 31, 2015 , except for our non-compliance with the fixed charge coverage ratio covenant discussed above. We have obtained waivers from MidCap to cure the breach of the fixed charge coverage ratio covenant for each of June, August, September, October, November and December of 2015. There is no assurance that we will be in compliance with the financial covenants of the Amended Credit Facility in the future.

On March 11, 2016, we entered into a third amendment and waiver to the Amended Credit Facility with MidCap, or the Third Amendment to the Amended Credit Facility. The Third Amendment to the Amended Credit Facility extends the maturity date of the Amended Credit Facility from August 30, 2016 to December 31, 2016 and contains an amendment fee in the amount of $0.5 million, which is due and payable at the earlier of the termination of the Amended Credit Facility or the maturity date. The Third Amendment also contains a waiver of the December 2015 defaults under the Facility Agreement, provides a waiver for the fixed charge coverage ratio for January 2016 and eliminates the fixed charge coverage ratio covenant for February 2016.

On March 17, 2014, we entered into the Facility Agreement, pursuant to which Deerfield agreed to loan us up to $50 million, subject to the terms and conditions set forth in the Facility Agreement. Under the terms of the Facility Agreement, we had the option, but were not required, upon certain conditions to draw the entire amount available under the Facility Agreement, at any time until January 30, 2015, provided that the initial draw be used for a portion of the payments made in connection with the Orthotec settlement described above, or the Litigation Satisfaction. Following such initial draw down, we had the opportunity to draw down additional amounts under the Facility Agreement up to an aggregate of $15.0 million for working capital or general corporate purposes. We agreed to pay Deerfield, upon each disbursement of funds under the Facility Agreement, a transaction fee equal to 2.5% of the principal amount of the funds disbursed in addition to the issuance of additional warrants to purchase up to 10,000,000 shares of the Company's common stock to Deerfield. On March 20, 2014, we drew $20 million under the Facility Agreement and received net proceeds of $19.5 million to fund the Orthotec settlement payment obligations due in 2014. On November 21, 2014, we drew an additional $6 million under the Facility Agreement and received net proceeds of $5.9 million to fund future Orthotec settlement payment obligations through 2016. The unused proceeds from the Facility Agreement are classified as restricted cash and may not be used for other purposes. As of January 30, 2015, we can no longer draw down additional funds under the Facility Agreement. Amounts borrowed under the Facility Agreement bear interest at a rate of 8.75% per annum and are payable in March 2017, March 2018 and March 2019, which are the third, fourth and fifth anniversary date of the first amount borrowed under the Facility Agreement, with the final payment due on March 20, 2019.

In connection with the execution of the Facility Agreement, we issued to Deerfield warrants to purchase an aggregate of 6,250,000 shares of our common stock (the "Initial Warrants"). Additionally, we agreed that upon each disbursement under the Facility Agreement we would issue to Deerfield warrants to purchase up to 10,000,000 shares of our common stock, in proportion to the amount of draw compared to the total $50 million facility (the "Draw Warrants").

On March 20, 2014, we made an initial draw of $20 million under the Facility Agreement and received net proceeds of $19.5 million to fund the portion of the Orthotec settlement payment obligations that were due in 2014. The $0.5 million transaction fee was recorded as a debt discount and is being amortized over the term of the draw, which ends on March 20, 2019. In connection with this borrowing, we issued Draw Warrants to purchase 4,000,000 shares of common stock, which were valued at $4.7 million and recorded as a debt discount and are being amortized over the term of the draw. Additionally, $2.3 million of the value of the Initial Warrants was reclassified as a debt discount and is being amortized through interest expense over the term of the debt using the effective interest method.

On November 21, 2014, we made a second draw of $6 million under the Facility Agreement and received net proceeds of $5.9 million to fund the portion of the Orthotec settlement payments through July 2016. The $0.2 million transaction fee was recorded as a debt discount and is being amortized over the remaining term of the draw, which ends on March 20, 2019. In connection with this borrowing, we issued Draw Warrants to purchase 1,200,000 shares of common stock, which were valued at $0.9 million and recorded as a debt discount and is being amortized over the term of the debt using the effective interest method.

On July 10, 2015, we entered into a First Amendment to the Facility Agreement, or the Facility Agreement First Amendment, with Deerfield. The Facility Agreement First Amendment permitted us, among other things, to enter into and

borrow the additional $5 million under the term loan in July 2015 under the Second Amendment to the Amended Credit Facility.

On February 5, 2016, we entered into a Limited Waiver and Second Amendment to the Facility Agreement, or the Second Amendment. The Second Amendment increases the interest rate under the Facility Agreement from 8.75% per annum to 14.75% per annum. In addition, under the Second Amendment we may elect to have (i) until August 30, 2016, six percent (6%), and (ii) thereafter, three percent (3%), in each case, of the interest on the outstanding principal amount under the Facility Agreement paid in kind, which would be added to the outstanding principal amount under the Facility Agreement and bear interest at the interest rate of 14.75% per annum, hereinafter referred to as the PIK Interest. All accrued and unpaid PIK Interest is due and payable when the outstanding amounts under the Facility Agreement are due and payable thereunder or are fully repaid, whichever occurs first. The Second Amendment also contains an amendment fee in the amount of $0.6 million , which is due and payable in installments of $0.2 million in March 2017, March 2018 and March 2019 on the third, fourth and fifth anniversaries of the Facility Agreement; provided, that all unpaid amendment fees shall be due and payable when the outstanding amounts under the Facility Agreement are due and payable or are fully repaid, whichever occurs first. The Second Amendment also changes the prior date of March 31, 2017 to March 31, 2018, as the date through which we must pay interest in the event we prepay amounts outstanding under the Facility Agreement prior to such date. The Second Amendment also contains the waivers of the defaults under the Facility Agreement discussed above.

As of December 31, 2015 , Orthotec settlement payments of $23.0 million have been made, leaving remaining proceeds from the funds borrowed under the Facility Agreement of $2.4 million , which are classified as short-term restricted cash, as their use is limited under the terms of the Facility Agreement for the payments of amounts due under the Orthotec litigation settlement agreement. Additionally, an Orthotec settlement payment of $1.1 million was made on January 1, 2016. As of March 14, 2016 , there remains aggregate of $33.7 million of Orthotec settlement payments to be paid by us. The amounts borrowed under the Facility Agreement, which total $26.0 million in principal and accrued interest as of December 31, 2015 , are due in three equal annual payments beginning March 20, 2017. Additionally, $0.2 million of the value of the Initial Warrants was reclassified as a debt discount and is being amortized through interest expense over the term of the debt using the effective interest method.

The Facility Agreement contains various representations and warranties, and affirmative and negative covenants, customary for financings of this type, including restrictions on our ability to incur additional indebtedness or liens on its assets, except as permitted under the Facility Agreement. As security for our repayment of our obligations under the Facility Agreement, we granted to Deerfield a security interest in substantially all of our property and interests in property, which is subordinated to the security interest granted under the Amended Credit Facility. As a result of our non-compliance with the MidCap fixed charge coverage ratio covenant, we were in cross-default of the Facility Agreement as discussed above. There is no assurance that we will be in compliance with the financial covenants of the Amended Credit Facility in the foreseeable future, which would result in cross-default under the Facility Agreement in which case Deerfield would have the right to call the debt outstanding under the Facility Agreement due immediately.

We have various capital lease arrangements. The leases bear interest at rates ranging from 6.6% to 9.6% , are generally due in monthly principal and interest installments, are collateralized by the related equipment, and have various maturity dates through September 2018 . As of December 31, 2015 , the balance of these capital leases, net of interest totaled $1.3 million . There was one new lease in 2015 .

NASDAQ Notice for Failure to Satisfy Continued Listing Rules

Our common stock is currently listed on the NASDAQ Global Select Market. In order to maintain that listing, we must satisfy minimum financial and other requirements. On September 17, 2015, we received written notice from the Listing Qualifications Department of the NASDAQ Stock Market LLC, or NASDAQ, notifying us that for the preceding 30 consecutive business days, our common stock did not maintain a minimum closing bid price of $1.00 per share as required for continued inclusion on The NASDAQ Global Select Market under NASDAQ Listing Rule 5450(a)(1). The notification letter states that pursuant to NASDAQ Listing Rule 5810(c)(3)(A), we will be afforded 180 calendar days, or until March 15, 2016, to regain compliance with the minimum bid price requirement. In order to regain compliance, shares of our common stock must maintain a minimum closing bid price of at least $1.00 per share for a minimum of 10 consecutive business days during such 180-day period. However, we will not be able to maintain a minimum closing bid price of at least $1.00 per share for a minimum of 10 consecutive business days prior to the March 15, 2016 compliance deadline. If we do not regain compliance by March 15, 2016, NASDAQ will provide written notification to us that our common stock will be delisted. At that time, we may appeal NASDAQ’s delisting determination to a NASDAQ Listing Qualifications Panel. Alternatively, we may be eligible to transfer to The NASDAQ Capital Market in order to receive an additional 180 day grace period if we satisfy all of the requirements, other than the minimum bid price requirement, for listing on The NASDAQ Capital Market. However, we currently do not satisfy the minimum stockholders’ equity requirements of The NASDAQ Capital Market.

A delisting of our common stock from The NASDAQ Global Select Market and our failure to transfer our listing to The NASDAQ Capital Market could substantially further reduce the liquidity of our common stock and result in a corresponding material reduction in the price of our common stock. In addition, delisting could harm our ability to raise capital through alternative financing sources on terms acceptable to us, or at all, and may result in the potential loss of confidence by investors, suppliers, customers and employees and fewer business development opportunities.

Operating Activities

We generated net cash of $10.1 million from operating activities for the year ended December 31, 2015 . During this period, net cash provided by operating activities primarily consisted of a net loss of $178.7 million and a decrease in working capital and other assets of $0.9 million offset by non-cash impairment charge of $165.2 million and $24.5 million of other non-cash costs, including amortization, depreciation, stock-based compensation, provision for excess and obsolete inventory and interest expense related to amortization of debt discount and issue costs. The decrease in working capital and other assets of $0.9 million consisted of decreases in accrued expenses and other liabilities of $6.4 million and deferred revenue of $0.3 million and a decrease in inventories of $5.5 million partially offset by and an increase in accounts payable of $3.2 million ; and decreases in restricted cash of $4.4 million , accounts receivable of $1.2 million , and prepaid expenses and other current assets of $2.5 million .

Investing Activities

We used net cash of $12.2 million in investing activities for the year ended December 31, 2015 primarily related to the purchase of surgical instruments.

Financing Activities

We used net cash of $6.5 million in financing activities for the year ended December 31, 2015 . We drew $141.6 million under the Amended Credit Facility with MidCap and made principal payments totaling $144.6 million . We received proceeds from notes payable of $5.0 million and made principal payments on notes payable totaling $8.2 million and capital leases totaling $0.7 million for the year ended December 31, 2015 .

Contractual obligations and commercial commitments

Total contractual obligations and commercial commitments as of December 31, 2015 are summarized in the following table (in thousands):

	Payment Due by Year						
	Total	**2016**	**2017**	**2018**	**2019**	**2020**	**Thereafter**
Amended Credit Facility with MidCap [1]	$ 56,799	$ 56,799	$ —	$ —	$ —	$ —	$ —
Facility Agreement with Deerfield [1]	26,000	—	8,667	8,667	8,666	—	—
Interest expense [1]	8,468	5,087	1,706	948	727	—	—
Note payable for software licenses	189	189	—	—	—	—	—
Note payable for insurance premiums	1,599	1,599	—	—	—	—	—
Capital lease obligations	1,382	877	437	68	—	—	—
Operating lease obligations [2]	3,570	2,268	823	304	170	5	—
Litigation settlement obligations	34,833	4,400	4,400	4,400	4,400	4,400	12,833
Guaranteed minimum royalty obligations	5,840	2,036	1,450	1,368	618	368	—
Stock price guarantee [3]	4,877	—	2,185	2,195	497	—	—
New product development milestones [4]	575	175	200	—	200	—	—
Total	$ 144,132	$ 73,430	$ 19,868	$ 17,950	$ 15,278	$ 4,773	$ 12,833

(1) The amounts above are presented based on the contractual payment schedule in each of the respective agreements. However, the debt balance under the Amended Credit Facility and Facility Agreement was callable as of December 31, 2015 due to the events of default (See Note 1 of the notes to consolidated financial statements) and therefore, is presented as a current liability in the consolidated balance sheet as of December 31, 2015.

(2) The amounts above do not reflect the commitments under the new Lease agreement that we entered into in January 2016 as disclosed in the "Real Property Leases" section below.

(3) Based on our closing stock price as of December 31, 2015 of $0.30 per share. Actual cash obligation will vary depending on the price of our common stock on the settlement dates.

(4) This commitment represents payments in cash, and is subject to attaining certain development milestones such as FDA approval, product design and functionality testing requirements, which we believe are reasonably likely to be achieved in 2016 through 2019.

Real Property Leases

In February 2008, we entered into a sublease agreement, or the Sublease, for office, engineering, and research and development space in Carlsbad, California, or Building 1. The Sublease term commenced May 2008 and ended on January 31, 2016. In January 2016, we entered into a new lease agreement, or the Building 1 Lease, for the same property with the lease term through July 31, 2021. Under the original Sublease agreement, we were obligated to pay base rent and certain operating costs and taxes for Building 1. Monthly base rent payable by us was approximately $80,500 during the first year of the Sublease, increasing annually at a fixed annual rate of 2.5% to approximately $93,500 per month in the final year of the Sublease. Our rent was abated for months one through seven of the Sublease. Under the Sublease, we were required to provide the sublessor with a security deposit in the amount of approximately $93,500. Under the new Building 1 Lease our monthly rent payable is approximately $105,000 per month during the first year and increases by approximately $3,000 each year thereafter. The Building 1 Lease allowed us to consolidate all corporate, marketing, finance, administrative, and research and development activities into one building.

In March 2008, we entered into a lease agreement, or the Building 2 Lease, for additional office, engineering, research and development and warehouse and distribution space in Carlsbad, California, or Building 2. The Building 2 Lease term commenced on December 1, 2008 and ends on January 31, 2017. We are obligated under the Building 2 Lease to pay base rent and certain operating costs and taxes for Building 2. The monthly base rent payable for Building 2 was approximately $73,500 during the first year of the Building 2 Lease, increasing annually at a fixed annual rate of 3.0% to approximately $93,000 per month in the final year of the Building 2 Lease. Our rent was abated for the months two through eight of the term of the Lease in the amount of $38,480. Under the Building 2 Lease, we were required to provide the lessor with a security deposit in the amount of $293,200, consisting of cash and/or one or more letters of credit. Following our achievement of certain financial milestones, the lessor is obligated to return a portion of the security deposit to us. The lessor provided a tenant improvement allowance of $1.1 million to assist with the configuration of the facility to meet our business needs. As a result of the restructuring of our manufacturing activities we plan to vacate the premises during 2016.

Off-Balance Sheet Arrangements

As of December 31, 2015 , we did not have any off-balance sheet arrangements.

Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the U.S. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses and related disclosures. On an on-going basis, we evaluate our estimates and assumptions, including those related to revenue recognition, allowances for accounts receivable, inventories, goodwill and intangible assets, stock-based compensation and income taxes. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions conditions.

We believe the following accounting policies to be critical to the judgments and estimates used in the preparation of our consolidated financial statements.

Revenue Recognition

We recognize revenue when all four of the following criteria are met: (i) persuasive evidence that an arrangement exists; (ii) delivery of the products and/or services has occurred; (iii) the selling price is fixed or determinable; and (iv) collectability is reasonably assured. In addition, we account for revenue under provisions which set forth guidelines for the timing of revenue recognition based upon factors such as passage of title, installation, payment and customer acceptance. Determination of criteria (iii) and (iv) are based on management's judgment regarding the fixed nature of the fee charged for products delivered and the collectability of those fees. Specifically, our revenue from sales of spinal and other surgical implants is recognized upon receipt of written acknowledgment that the product has been used in a surgical procedure or upon shipment to third-party

customers who immediately accept title to such implant. Should changes in conditions cause management to determine these criteria are not met for certain future transactions, revenues recognized for any reporting period could be adversely impacted.

Deferred Revenues

Deferred revenues consist of sales transactions where circumstances indicate that collectability is not reasonably assured due to payment terms, regional market risks, or customer history.

Inventories

Inventories are stated at the lower of cost or market, with cost primarily determined under the first-in, first-out method. We review the components of inventory on a periodic basis for excess, obsolete and impaired inventory, and record a reserve for the identified items. We calculate an inventory reserve for estimated excess and obsolete inventory based upon historical turnover and assumptions about future demand for our products and market conditions. Our biologics product inventories are subject to demand fluctuations based on the availability and demand for alternative implant products. Our estimates and assumptions for excess and obsolete inventory are subject to uncertainty as we are continually reviewing our existing products and introducing new products. Increases in the reserve for excess and obsolete inventory result in a corresponding increase to cost of revenues and establish a new cost basis for the inventory component.

Valuation of Goodwill and Intangible Assets

We assess the impairment of our goodwill and intangible assets annually in December or whenever business conditions change and an earlier impairment indicator arises. This assessment requires us to make assumptions and judgments regarding the carrying value of these assets. These assets are considered to be impaired if we determine that their carrying value may not be recoverable based upon our assessment of certain events or changes in circumstances, including the following:

- a determination that the carrying value of such assets cannot be recovered through undiscounted cash flows;
- loss of legal ownership or title to the assets;
- significant changes in our strategic business objectives and utilization of the assets; or
- the impact of significant negative industry or economic trends.

If the assets are considered to be impaired, the impairment we recognize is the amount by which the carrying value of the assets exceeds the fair value of the assets. In the third quarter of 2015, the market value of our common stock substantially declined. This decline was considered to be a triggering indicator of potential impairment of our goodwill, and a goodwill impairment test was performed. We analyzed the carrying amount of goodwill for impairment under a two-part test in accordance with authoritative guidance.

We estimate the fair value in step one of the goodwill impairment test based on a combination of the income approach which includes discounted cash flows as well as a market approach that utilizes the market information. The fair value measurements utilized to perform the impairment analysis are categorized within Level 3 of the fair value hierarchy. The discounted cash flow projections require management judgment with respect to forecasted sales, launch of new products, gross margins, selling, general and administrative expenses, capital expenditures and the selection and use of an appropriate discount rate and terminal growth rate. For purposes of calculating the discounted cash flows, in the third quarter of 2015 we used estimated revenue growth rates between 3% and 13% for the discrete forecast period. Cash flows beyond the discrete forecast period were estimated using a terminal value calculation, which incorporated historical and forecasted financial trends and considered long-term earnings growth rates for publicly traded peer companies. Future cash flows were then discounted to present value at a discount rate of 13.5%, and terminal value growth rate of 3%. Our market capitalization is also considered in assessing the reasonableness of the Company's fair value as determined in step one of the goodwill impairment test. Our assessment resulted in a fair value that was lower than the Company's carrying value of net assets.

Based on the result of step one of the impairment test, we determined that our goodwill was impaired and step two of the test was performed to measure the amount of goodwill impairment. As a result of step two, in the third quarter of 2015 we recorded a goodwill impairment charge of $164.3 million, representing the write-off of the remaining balance of goodwill.

Significant management judgment is required in the forecast of future operating results that are used in our impairment analysis. The estimates we used are consistent with the plans and estimates that we use to manage our business. Significant assumptions utilized in our income approach model included the growth rate of sales for recently introduced products and the introduction of anticipated new products similar to our historical growth rates. Another important assumption involved in forecasted sales is the projected mix of higher margin U.S. based sales and lower margin non-U.S. based sales. Additionally, we have projected an improvement in our gross margin similar to our historical improvements in gross margins, as a result of

forecasted mix in U.S. sales versus non-U.S. based sales and lower manufacturing cost per unit based on the increase in forecasted volume to absorb applied overhead over the next 10 years.

Stock-Based Compensation

We account for stock-based compensation under provisions which require that share-based payment transactions with employees be recognized in the financial statements based on their fair value and recognized as compensation expense over the vesting period. The amount of expense recognized during the period is affected by subjective assumptions, including: estimates of our future volatility, the expected term for our stock options, the number of options expected to ultimately vest, and the timing of vesting for our share-based awards.

We use a Black-Scholes option-pricing model to estimate the fair value of our stock option awards. The calculation of the fair value of the awards using the Black-Scholes option-pricing model is affected by our stock price on the date of grant as well as assumptions regarding the following:

- Estimated volatility is a measure of the amount by which our stock price is expected to fluctuate each year during the expected life of the award. Our estimated volatility through December 31, 2015 was based on our actual historical volatility. An increase in the estimated volatility would result in an increase to our stock-based compensation expense.
- The expected term represents the period of time that awards granted are expected to be outstanding. Our estimated expected term through December 31, 2015 was calculated using a weighted-average term based on historical exercise patterns and the term from option grant date to exercise for the options granted within the specified date range. An increase in the expected term would result in an increase to our stock-based compensation expense.
- The risk-free interest rate is based on the yield curve of a zero-coupon U.S. Treasury bond on the date the stock option award is granted with a maturity equal to the expected term of the stock option award. An increase in the risk-free interest rate would result in an increase to our stock-based compensation expense.
- The assumed dividend yield is based on our expectation of not paying dividends in the foreseeable future.

We use historical data to estimate the number of future stock option forfeitures. Share-based compensation recorded in our consolidated statement of operations is based on awards expected to ultimately vest and has been reduced for estimated forfeitures. Our estimated forfeiture rates may differ from our actual forfeitures which would affect the amount of expense recognized during the period.

We account for stock option grants to non-employees under provisions which require that the fair value of these instruments be recognized as an expense over the period in which the related services are rendered.

Share-based compensation expense of awards with performance conditions is recognized over the period from the date the performance condition is determined to be probable of occurring through the time the applicable condition is met. Determining the likelihood and timing of achieving performance conditions is a subjective judgment made by management which may affect the amount and timing of expense related to these share-based awards. Share-based compensation is adjusted to reflect the value of options which ultimately vest as such amounts become known in future periods. As a result of these subjective and forward-looking estimates, the actual value of our share-based awards could differ significantly from those amounts recorded in our financial statements.

Stock-based compensation has been classified as follows in the accompanying consolidated statements of operations (in thousands, except per share data):

	Year Ended December 31,		
	2015	2014	2013
Cost of revenues	$ 72	$ 274	$ 228
Research and development	286	2,080	719
Sales and marketing	359	470	459
General and administrative	1,926	1,730	2,672
Total	$ 2,643	$ 4,554	$ 4,078
Effect on basic and diluted net loss per share	$ (0.03)	$ (0.05)	$ (0.04)

Income Taxes

We account for income taxes in accordance with provisions which set forth an asset and liability approach that requires the recognition of deferred tax assets and deferred tax liabilities for the expected future tax consequences of temporary

differences between the carrying amounts and the tax bases of assets and liabilities. Valuation allowances are established when necessary to reduce deferred tax assets to the amount that is more likely than not expected to be realized. In making such a determination, a review of all available positive and negative evidence must be considered, including scheduled reversal of deferred tax liabilities, projected future taxable income, tax planning strategies, and recent financial performance.

We recognize interest and penalties related to uncertain tax positions as a component of the income tax provision.

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board, or FASB, issued new accounting guidance related to revenue recognition. This new standard replaces all current U.S. GAAP guidance on this topic and eliminates all industry-specific guidance. The new revenue recognition standard provides a unified model to determine when and how revenue is recognized. The core principle is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration for which the entity expects to be entitled in exchange for those goods or services. This guidance is effective for the Company beginning January 1, 2018 and can be applied either retrospectively to each period presented or as a cumulative-effect adjustment as of the date of adoption. We are currently evaluating the impact of adopting this new accounting standard on our financial statements.

In August 2014, the FASB issued guidance related to disclosures of uncertainties about an entity's ability to continue as a going concern. The guidance requires management to evaluate whether there are conditions and events that raise substantial doubt about the entity's ability to continue as a going concern within one year after the financial statements are issued. Management will be required to make this evaluation for both annual and interim reporting periods and will have to make certain disclosures if it concludes that substantial doubt exists or when its plans alleviate substantial doubt about the entity's ability to continue as a going concern. Substantial doubt exists when relevant conditions and events, considered in the aggregate, indicate that it is probable that the entity will be unable to meet its obligations as they become due within one year after the date that the financial statements are issued. The guidance is effective for annual periods ending after December 15, 2016 and for interim reporting periods thereafter. We are currently evaluating the impact of this guidance and expect to adopt the standard for the annual reporting period ending December 31, 2016.

In January 2015, the FASB issued new accounting guidance, which eliminates the concept of extraordinary items from GAAP, which required certain classification and presentation of extraordinary items in the income statement and disclosures. The guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2015. We are currently evaluating the impact of adopting this new accounting standard on our financial statements.

In July 2015, the FASB issued new accounting guidance, which changes the measurement principle for inventory from the lower of cost or market to lower of cost and net realizable value for entities that do not measure inventory using the last-in, first-out or retail inventory method. The guidance also eliminates the requirement for these entities to consider replacement cost or net realizable value less an approximately normal profit margin when measuring inventory. The guidance is effective for annual periods beginning after December 15, 2016, and interim periods within those annual periods. We are currently evaluating the impact of adopting this new accounting standard on our financial statements.

In November 2015, the FASB issued new accounting guidance, which will require the presentation of deferred tax liabilities and asset be classified as noncurrent in a classified balance sheet. We have elected to early adopt this guidance during the fourth quarter of 2015. The adoption of this new guidance resulted in a reclassification of our deferred income taxes, net, being presented within other long-term liabilities on our consolidated balance sheet as of December 31, 2015. We did not retrospectively adjust the consolidated balance sheet as of December 31, 2014. The adoption did not have a material effect on the consolidated financial statements and had no impact on net loss.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Risk

Our borrowings under our line of credit expose us to market risk related to changes in interest rates. As of December 31, 2015 , our outstanding floating rate indebtedness totaled $56.8 million . The primary base interest rate is LIBOR. Assuming the outstanding balance on our floating rate indebtedness remains constant over a year, a 100 basis point increase in the interest rate would decrease pre-tax income and cash flow by approximately $0.6 million. Other outstanding debt consists of fixed rate instruments, including notes payable and capital leases.

Foreign Currency Risk

Our foreign currency exposure continues to grow as we expand internationally. Our exposure to foreign currency transaction gains and losses is the result of certain net receivables due from our foreign subsidiaries and customers being denominated in currencies other than the U.S. dollar, primarily the Euro and Japanese Yen, in which our revenues and profits are denominated. We do not currently engage in hedging or similar transactions to reduce these risks. Fluctuations in currency exchange rates could impact our results of operations, financial position, and cash flows.

Commodity Price Risk

We purchase raw materials that are processed from commodities, such as titanium and stainless steel. These purchases expose us to fluctuations in commodity prices. Given the historical volatility of certain commodity prices, this exposure can impact our product costs. However, because our raw material prices comprise a small portion of our cost of revenues, we have not experienced any material impact on our results of operations from changes in commodity prices. A 10 percent change in commodity prices would not have a material impact on our results of operations for the year ended December 31, 2015 .

Equity Price Risk

In connection with the Facility Agreement with Deerfield, we have issued warrants to purchase 11,450,000 shares of our common stock. We recorded the warrant liability at fair value and adjust the carrying value of these common stock warrants to their estimated fair value at each reporting date, with the increases or decreases in the fair value of such warrants at each reporting date recorded as other income (expense) in our consolidated statement of operations. A 10 percent increase in our stock price from its December 31, 2015 closing price of $0.30 per share would increase the fair value of the warrant liability by approximately $0.1 million with a corresponding charge to the Statements of Operations.

Item 8. Financial Statements and Supplementary Data

The consolidated financial statements and supplementary data required by this item are set forth at the pages indicated in Item 15.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

Not applicable.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed by us in the reports we file or submit pursuant to the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, or persons performing similar functions, as appropriate, to allow for timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, we carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as such term is defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) as of the end of the period covered by this Annual Report on Form 10-K. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were not effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act, is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms, and is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. This conclusion was a result of the material weakness in our internal control over financial reporting as of December 31, 2015 (discussed in paragraphs (b) and (c) of this Item 9A).

Management's Annual Report on Internal Control Over Financial Reporting

Our management, including our Chief Executive Officer and Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f)) and 15d-15(f) under the Exchange Act.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management, including our Chief Executive Officer and Chief Financial Officer, has performed an assessment of our internal control over financial reporting described in "Internal Control—Integrated Framework" (2013 framework) issued by the Committee of Sponsoring Organizations of the Treadway Commission. The objective of this assessment was to determine whether our internal control over financial reporting was effective as of December 31, 2015 .

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. In our assessment of the effectiveness of internal control over financial reporting at December 31, 2015, we identified a material weakness related to the design of controls over the release of inventory cost through cost of goods sold at a significant wholly owned subsidiary.

This deficiency results in a reasonable possibility that a material misstatement in our annual or interim consolidated financial statements may not be prevented or detected on a timely basis. Based on our assessment, and because of the material weakness described above, we have concluded that our internal control over financial reporting was not effective at December 31, 2015.

Ernst & Young LLP, our independent registered public accounting firm, has audited our consolidated financial statements included in this Annual Report on Form 10-K and has issued an attestation report on our internal control over financial reporting, which report is included herein.

Material Weakness Discussion and Remediation Measures

To address the material weakness in our internal control over financial reporting described above, we performed additional analyses and other post-closing procedures designed to provide reasonable assurance that our consolidated financial statements were prepared in accordance with generally accepted accounting procedures (GAAP). As a result of these procedures, we believe that the consolidated financial statements included in this Annual Report on Form 10-K for the year ended December 31, 2015 fairly present, in all material respects, our financial position, results of operations and cash flow for the periods presented in conformity with GAAP.

To address the material weakness in our internal control over financial reporting described above, we are in the process of developing and implementing new processes and controls. We are also in the process of providing additional training to personnel involved in the costing of inventory at our wholly owned subsidiary.

We intend to continue to take appropriate and reasonable steps to make necessary improvements to remediate the deficiency in our internal controls over financial reporting, including:

- Designing and evaluating a remediation action for each control deficiency at our wholly-owned subsidiary at which the deficiencies exist, including evaluating the skills of the process owners and resources dedicated to the affected area and adjusting our processes as required.
- Implementing specific remediation actions, including training process owners and allowing time for process adoption and adequate transaction volume for next steps;
- Testing and measuring the design and effectiveness of the remediation actions and testing and providing feedback on the design and operating effectiveness of the controls; and,
- Completing management's review and acceptance of the completion of the remediation effort.

We believe that the remediation measures described above will strengthen our internal control over financial reporting and remediate the material weakness we have identified as of December 31, 2015. We are committed to continuing to improve our internal control processes, and under the direction of the Audit Committee of our Board of Directors, we will continue to develop and implement policies and procedures to improve the overall effectiveness of our internal control over financial reporting. As we continue to evaluate and work to improve our internal control over financial reporting, management may determine to take additional measures to address control deficiencies or determine to modify the remediation plan described above. We expect that our remediation efforts including design, implementation and testing will continue through 2016.

Remediation of Previously Reported Material Weakness

In our Quarterly Reports on Form 10-Q/A for the quarters ended June 30, 2015 and September 30, 2015 filed with the SEC on February 10, 2016, we reported a material weakness in our internal control over financial reporting in which we failed to design effective controls to assess whether we were in compliance with the fixed charge coverage ratio covenant in our Amended Credit Facility with MidCap, which resulted in the restatement of our condensed consolidated balance sheets as of June 30, 2015 and September 30, 2015. To address the material weakness described above, during the first quarter of 2016, we designed and implemented new and enhanced controls to ensure that the calculation of the fixed charge coverage ratio reflects an accurate interpretation of the definitions in the underlying debt agreement and that the appropriate level of review is performed.

We believe that these remediation measures have strengthened our internal control over financial reporting and remediated the material weakness we had identified. We will continue to monitor the effectiveness of these controls and will make any further changes management determines appropriate.

Changes in Internal Control over Financial Reporting

Except for the remediation measures disclosed above, there were no changes in our internal control over financial reporting identified in connection with our evaluation of such internal control that occurred during the quarter ended December 31, 2015 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of
Alphatec Holdings, Inc.

We have audited Alphatec Holdings, Inc.'s internal control over financial reporting as of December 31, 2015, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). Alphatec Holdings, Inc.'s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. The following material weakness has been identified and included in management's assessment. Management has identified a material weakness related to the design of controls over the release of inventory cost through cost of goods sold at a significant wholly owned subsidiary. We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Alphatec Holdings, Inc. as of December 31, 2015 and 2014 and the related consolidated statements of operations, comprehensive loss, stockholders' (deficit) equity and cash flows for each of the three years in the period ended December 31, 2015. This material weakness was considered in determining the nature, timing and extent of audit tests applied in our audit of the 2015 financial statements, and this report does not affect our report dated March 15, 2016, which expressed an unqualified opinion on those financial statements.

In our opinion, because of the effect of the material weakness described above on the achievement of the objectives of the control criteria, Alphatec Holdings, Inc. has not maintained effective internal control over financial reporting as of December 31, 2015 , based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Alphatec Holdings, Inc. as of December 31, 2015 and 2014 , the related consolidated statements of operations, comprehensive loss, stockholders' (deficit) equity and cash flows for each of the three years in the period ended December 31, 2015 of Alphatec Holdings, Inc. and our report dated March 15, 2016 expressed an unqualified opinion thereon that included an explanatory paragraph regarding Alphatec Holdings, Inc.'s ability to continue as a going concern.

/s/ Ernst & Young LLP

San Diego, California
March 15, 2016

Item 9B. Other Information

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The information required by Item 10 of this Annual Report on Form 10-K is incorporated by reference from the discussion responsive thereto under the captions “Management,” “Corporate Governance Matters,” “Compliance with Section 16(a) of the Securities Exchange Act of 1934,” and “Code of Conduct and Ethics” in our Proxy Statement for the 2016 Annual Meeting of Stockholders.

Item 11. Executive Compensation

The information required by Item 11 of this Annual Report on Form 10-K is incorporated by reference from the discussion responsive thereto under the captions “Executive Officer and Director Compensation,” “Compensation Discussion and Analysis,” “Compensation Committee Interlocks and Insider Participation,” “Compensation Committee Report,” and “Compensation Practices and Policies Relating to Risk Management” in our Proxy Statement for the 2016 Annual Meeting of Stockholders.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by Item 12 of this Annual Report on Form 10-K is incorporated by reference from the discussion responsive thereto under the captions “Security Ownership of Certain Beneficial Owners and Management” and “Equity Compensation Plan Information” and the planned proposal entitled “Adoption of Equity Incentive Plan” in our Proxy Statement for the 2016 Annual Meeting of Stockholders.

Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required by Item 13 of this Annual Report on Form 10-K is incorporated by reference from the discussion responsive thereto under the captions “Certain Relationships and Related Transactions,” “Management” and “Corporate Governance Matters” in our Proxy Statement for the 2016 Annual Meeting of Stockholders.

Item 14. Principal Accounting Fees and Services

The information required by Item 14 of this Annual Report on Form 10-K is incorporated by reference from the discussion responsive thereto under the caption “Independent Public Accountants” in our Proxy Statement for the 2016 Annual Meeting of Stockholders.

PART IV

Item 15. Exhibits, Financial Statement Schedules

Item 15 (a) The following documents are filed as part of this Annual Report on Form 10-K:

(1) Financial Statements:

(2) Financial Statement Schedules:

All other financial statement schedules have been omitted because they are not applicable, not required or the information required is included in the consolidated financial statements or the notes thereto.

Item 15(a)(3) Exhibits List

The following is a list of exhibits filed as part of this Annual Report on Form 10-K.

Exhibit Number	Exhibit Description	Filed with this Report	Incorporated by Reference herein from Form or Schedule	Filing Date	SEC File/ Reg. Number
3.1	Restated Certificate of Incorporation		Amendment No. 2 to Form S-1 (Exhibit 3.2)	04/20/06	333-131609
3.2	Restated Bylaws		Amendment No. 5 to Form S-1 (Exhibit 3.4)	05/26/06	333-131609
4.1	Form of Common Stock Certificate		Form 10-K (Exhibit 4.1)	03/20/14	333-131609
4.2	Corporate Governance Agreement, dated December 17, 2009, between the Company and certain shareholders of Scient'x Groupe S.A.S. and Scient'x S.A.		Form 8-K (Exhibit 10.1)	12/22/09	000-52024
4.3	Registration Rights Agreement, dated March 26, 2010, by and among Alphatec Holdings, Inc. and the other signatories thereto		Form 8-K (Exhibit 4.1)	03/31/10	000-52024
4.4	Warrant with Silicon Valley Bank as the Warrantholder, dated December 16, 2011		Form 10-K (Exhibit 4.8)	03/05/12	000-52024

Exhibit Number	Exhibit Description	Filed with this Report	Incorporated by Reference herein from Form or Schedule	Filing Date	SEC File/ Reg. Number
4.5	Form of Warrant to Purchase Common Stock issued to each of Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P., Deerfield Special Situations Fund, L.P. and Deerfield Special Situations International Master Fund, L.P. (collectively, "Deerfield") on each of March 17, 2014 and November 21, 2014.		Form 8-K (Exhibit 4.1)	03/19/14	000-52024
4.6	Registration Rights Agreement, dated March 17, 2014, by and among Alphatec Holdings, Inc., Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P., Deerfield Special Situations Fund, L.P. and Deerfield Special Situations International Master Fund, L.P.		Form 8-K (Exhibit 4.2)	03/19/14	000-52024
				Real Property Lease Agreements	
10.1	Standard Industrial Lease (Net) by and between Alphatec Holdings, Inc. and H.G. Fenton Property Company, dated as of January 30, 2008		Form 10-Q (Exhibit 10.2)	05/12/08	000-52024
10.2	Lease Agreement by and between Alphatec Holdings, Inc. and Fenton Property Company., dated as of January 21, 2016	X			
	Loan Agreements				
10.3†	Amended and Restated Credit, Security and Guaranty Agreement dated August 30, 2013 by and among Alphatec Holdings, Inc., Alphatec Spine, Inc., Alphatec International LLC, Alphatec Pacific, Inc. and MidCap Funding IV, LLC		Form 10-Q/A (Exhibit 10.1)	10/21/15	000-52024
10.4†	First Amendment to Amended and Restated Credit, Security and Guaranty Agreement, dated March 17, 2014, with MidCap Funding IV, LLC as Administrative Agent and lender and other lenders from time to time a party thereto		Form 8-K/A (Exhibit 10.3)	10/21/15	000-52024
10.5†	Second Amendment to the Amended and Restated Credit, Security and Guaranty Agreement, dated July 10, 2015, with MidCap Funding IV Trust, as a lender and other lenders from time to time a party thereto		Form 10-Q (Exhibit 10.1)	11/03/15	000-52024
10.6	Amended and Restated Term Loan Note, dated July 10, 2015, with MidCap Funding IV Trust		Form 10-Q (Exhibit 10.3)	11/03/15	000-52024
10.7†	Facility Agreement, dated March 17, 2014, by and among Alphatec Holdings, Inc., Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P., Deerfield Special Situations Fund, L.P., and Deerfield Special Situations International Master Fund, L.P.		Form 8-K/A (Exhibit 10.1)	10/21/15	000-52024

Exhibit Number	Exhibit Description	Filed with this Report	Incorporated by Reference herein from Form or Schedule	Filing Date	SEC File/ Reg. Number
10.8	First Amendment to the Facility Agreement, dated July 10, 2015, by and among Alphatec Holdings, Inc., Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P., and Deerfield Special Situations Fund, L.P.		Form 10-Q (Exhibit 10.2)	10/03/15	000-52024
10.9	Guaranty and Security Agreement, dated March 17, 2014 by and among Alphatec Holdings, Inc., Alphatec Spine, Inc., Alphatec International LLC, Alphatec Pacific, Inc., Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P., Deerfield Special Situations Fund, L.P., and Deerfield Special Situations International Master Fund, L.P.		Form 8-K (Exhibit 10.2)	03/19/14	000-52024
		Agreements with Respect to Collaborations, Licenses, Research and Development			
10.10†	Supply Agreement by and between Alphatec Spine, Inc. and Invibio, Inc., dated as of October 18, 2004 and amended by Letter of Amendment in respect of the Supply Agreement, dated as of December 13, 2004		Amendment No. 4 to Form S-1 (Exhibit 10.29)	05/15/06	333-131609
10.11†	Letter Amendment between Alphatec Spine, Inc. and Invibio, Inc., dated November 24, 2010		Form 10-Q (Exhibit 10.3)	05/06/11	000-52024
10.12†	Exclusive License Agreement by and between Alphatec Spine, Inc. and Stout Medical Group, LP, dated as of September 11, 2007		Form 10-Q (Exhibit 10.2)	11/09/07	000-52024
10.13†	First Amendment to the Exclusive License Agreement, effective March 31, 2009 between Alphatec Spine, Inc. and Stout Medical Group LP		Form 10-Q (Exhibit 10.4)	05/05/09	000-52024
10.14†	Amendment to the Exclusive License Agreement dated August 1, 2014 between Alphatec Spine, Inc. and Stout Medical Group, L.P.		Form 10-Q (Exhibit 10.	10/30/14	000-52024
10.15†	Collaboration Agreement by and among Alphatec Spine, Inc., Elite Medical Holdings, LLC and Pac 3 Surgical Products, LLC, dated as of October 22, 2013		Form 10-K (Exhibit 10.26)	03/20/14	333-18790
10.16	First Amendment to the Collaboration Agreement by and among Alphatec Spine, Inc., Elite Medical Holdings, LLC and Pac 3 Surgical Products, LLC, dated November 2, 2015	X			
	Agreements with Officers and Directors				
10.17*	Employment Agreement by and among Alphatec Spine, Inc., Alphatec Holdings, Inc. and Michael O'Neill, dated October 11, 2010		Form 10-Q (Exhibit 10.2)	11/08/10	000-52024
10.18*	Employment Agreement, dated February 26, 2012, by and among Alphatec Holdings, Inc., Alphatec Spine, Inc, and Leslie Cross		Form 10-Q (Exhibit 10.1)	05/08/12	000-52024

Exhibit Number	Exhibit Description	Filed with this Report	Incorporated by Reference herein from Form or Schedule	Filing Date	SEC File/ Reg. Number
10.19*	Amendment to the Employment Agreement by and among Les Cross, Alphatec Holdings, Inc. and Alphatec Spine, Inc., dated May 1, 2014		Form 10-K (Exhibit 10.23)	02/27/15	000-52024
10.20*	Employment Agreement by and between Alphatec Spine, Inc. and Mitsuo Asai, dated February 17, 2014		Form 10-Q (Exhibit 10.5)	05/01/14	000-52024
10.21*	Amended and Restated Employment Agreement by and among Alphatec Holdings, Inc., Alphatec Spine, Inc. and Ebun S. Garner, Esq., dated July 17, 2006		Form 10-K (Exhibit 10.20)	03/07/08	000-52024
10.22*	Employment Agreement by and among James M. Corbett, Alphatec Holdings, Inc. and Alphatec Spine, Inc., dated April 25, 2014		Form 10-Q (Exhibit 10.1)	07/31/14	000-52024
10.23*	Employment Agreement by and among Michael Plunkett, Alphatec Spine, Inc., and Alphatec Holdings, Inc., dated February 17, 2014		Form 10-Q (Exhibit 10.4)	05/01/14	000-52024
10.24*	Form of Indemnification Agreement entered into with each of the Company's non-employee directors		Form 10-Q (Exhibit 10.5)	05/05/09	000-52024
10.25*	Vesting Acceleration Agreement by and between James Glynn and Alphatec Holdings, Inc., dated November 2, 2015	X			
					Equity Compensation Plans
10.26*	Amended and Restated 2005 Employee, Director and Consultant Stock Plan		Form S-8 (Exhibit 99.1)	03/23/13	333-187190
10.27*	Amendment to the Amended and Restated 2005 Employee, Director and Consultant Stock Plan		Schedule 14A (Appendix B)	06/11/13	000-52024
10.28*	Amendment to the Alphatec Holdings, Inc. Amended and Restated 2005 Employee, Director and Consultant Stock Plan		Form 10-Q (Exhibit 10.1)	10/30/14	000-52024
10.29*	Form of Non-Qualified Stock Option Agreement issued under the Amended and Restated 2005 Stock Plan		Form 10-K (Exhibit 10.40)	03/05/13	000-52024
10.30*	Form of Incentive Stock Option Agreement issued under the Amended and Restated 2005 Stock Plan		Form 10-K (Exhibit 10.41)	03/05/13	000-52024
10.31*	Form of Restricted Stock Agreement issued under the Amended and Restated 2005 Stock Plan		Form 10-K (Exhibit 10.42)	03/05/14	000-52024
10.32*	Form of Performance-Based Restricted Unit Agreement issued under the Amended and Restated 2005 Employee, Director and Consultant Stock Plan, as amended.		Form 10-Q (Exhibit 10.2)	10/30/14	000-52024
10.33*	Amended 2007 Employee Stock Purchase Plan		Schedule 14A (Appendix C)	06/11/13	000-52024

Exhibit Number	Exhibit Description	Filed with this Report	Incorporated by Reference herein from Form or Schedule	Filing Date	SEC File/ Reg. Number
10.34*	Summary of the Alphatec Holdings, Inc. 2015 Discretionary Bonus Plan		Form 10-Q (Exhibit 10.1)	05/01/15	000-52024
	Settlement Agreements				
10.35	Settlement and Release Agreement, dated as of August 13, 2014, by and among Alphatec Holdings, Inc. and its direct and indirect subsidiaries and affiliates, Orthotec, LLC, Patrick Bertranou and the other parties named therein		Form 10-Q (Exhibit 10.3)	10/30/14	000-52024
21.1	Subsidiaries of the Registrant and Wholly Owned Subsidiaries of the Registrant's Subsidiaries	X			
23.1	Consent of Independent Registered Public Accounting Firm	X			
31.1	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X			
31.2	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X			
32	Certification pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X			
101.1	XBRL Instance Document**				
101.2	XBRL Taxonomy Extension Schema Document**				
101.3	XBRL Taxonomy Extension Calculation Linkbase Document**				
101.4	XBRL Taxonomy Extension Definition Linkbase Document**				
101.5	XBRL Taxonomy Extension Label Linkbase Document**				
101.6	XBRL Taxonomy Extension Presentation Linkbase Document**				

(*) Management contract or compensatory plan or arrangement.
(†) Confidential treatment has been granted by the Securities and Exchange Commission as to certain portions.
(**) Confidential treatment is being requested as to certain portions of this exhibit.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ALPHATEC HOLDINGS, INC.

Dated: March 15, 2016

By: /s/ JAMES M. CORBETT

Name: **James M. Corbett**

Title: **President and Chief Executive Officer**

(principal executive officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated:

Signature	Title	Date
/S/ JAMES M. CORBETT **James M. Corbett**	President and Chief Executive Officer and Director (principal executive officer)	March 15, 2016
/S/ MICHAEL O'NEILL **Michael O'Neill**	Chief Financial Officer, Vice President and Treasurer (principal financial officer and principal accounting officer)	March 15, 2016
/S/ LESLIE H. CROSS **Leslie H. Cross**	Chairman of the Board of Directors	March 15, 2016
/S/ MORTIMER BERKOWITZ III **Mortimer Berkowitz III**	Chairman of the Executive Committee of the Board of Directors	March 15, 2016
/S/ TOM C. DAVIS **Tom C. Davis**	Director	March 15, 2016
/S/ SIRI S. MARSHALL **Siri S. Marshall**	Director	March 15, 2016
/S/ R. IAN MOLSON **R. Ian Molson**	Director	March 15, 2016
/S/ STEPHEN E. O'NEIL **Stephen E. O'Neil**	Director	March 15, 2016
/S/ DONALD A. WILLIAMS **Donald A. Williams**	Director	March 15, 2016

ALPHATEC HOLDINGS, INC.
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of
Alphatec Holdings, Inc.

We have audited the accompanying consolidated balance sheets of Alphatec Holdings, Inc. as of December 31, 2015 and 2014 , and the related consolidated statements of operations, comprehensive loss, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2015 . Our audits also included the financial statement schedule listed in the Index at Item 15(a)(2). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Alphatec Holdings, Inc., at December 31, 2015 and 2014 , and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2015 , in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has recurring operating losses and has a working capital deficiency. In addition, the Company has not complied with certain covenants of loan agreements with its lenders and has significant debt obligations due in December 2016. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters also are described in Note 1. The 2015 consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the outcome of this uncertainty.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Alphatec Holdings, Inc.'s internal control over financial reporting as of December 31, 2015 , based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated March 15, 2016 expressed an adverse opinion thereon.

/s/ Ernst & Young LLP

San Diego, California
March 15, 2016

ALPHATEC HOLDINGS, INC.

CONSOLIDATED BALANCE SHEETS

(In thousands, except par value data)

	December 31,	
	2015	2014
Assets		
Current assets:		
Cash	$ 11,229	$ 19,735
Restricted cash	2,350	4,400
Accounts receivable, net	38,319	40,440
Inventories, net	44,908	41,747
Prepaid expenses and other current assets	5,052	5,466
Deferred income tax assets	—	1,324
Total current assets	101,858	113,112
Property and equipment, net	21,945	26,040
Goodwill	—	171,333
Intangibles, net	21,616	30,259
Other assets	1,285	4,179
Total assets	$ 146,704	$ 344,923
Liabilities and Stockholders' (Deficit) Equity		
Current liabilities:		
Accounts payable	$ 14,169	$ 10,130
Accrued expenses	29,791	35,393
Deferred revenue	648	1,300
Common stock warrant liabilities	687	8,702
Current portion of long-term debt	80,105	8,076
Total current liabilities	125,400	63,601
Long-term debt, less current portion	480	74,597
Other long-term liabilities	33,797	32,220
Deferred income tax liabilities	—	1,948
Redeemable preferred stock, $0.0001 par value; 20,000 authorized at December 31, 2015 and 2014; 3,319 shares issued and outstanding at both December 31, 2015 and 2014	23,603	23,603
Commitments and contingencies		
Stockholders' (deficit) equity:		
Common stock, $0.0001 par value; 200,000 authorized; 102,158 and 99,856 shares issued and outstanding at December 31, 2015 and 2014, respectively	10	10
Treasury stock, 19 shares	(97)	(97)
Additional paid-in capital	416,939	413,921
Shareholder note receivable	(5,000)	(5,000)
Accumulated other comprehensive loss	(21,188)	(11,316)
Accumulated deficit	(427,240)	(248,564)
Total stockholders' (deficit) equity	(36,576)	148,954
Total liabilities and stockholders' (deficit) equity	$ 146,704	$ 344,923

See accompanying notes to consolidated financial statements.

ALPHATEC HOLDINGS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands, except per share amounts)

	Year Ended December 31,		
	2015	**2014**	**2013**
Revenues	$ 185,279	$ 206,980	$ 204,724
Cost of revenues	63,742	61,834	78,669
Amortization of acquired intangible assets	1,453	1,736	1,733
Gross profit	120,084	143,410	124,322
Operating expenses:			
Research and development	17,767	16,799	14,190
In-process research and development	274	527	—
Sales and marketing	70,856	77,179	76,960
General and administrative	34,867	43,381	47,949
Amortization of acquired intangible assets	2,400	2,974	3,009
Goodwill and intangible assets impairment	165,171	—	—
Restructuring expenses	1,188	706	9,665
Litigation settlement expenses	—	—	45,982
Total operating expenses	292,523	141,566	197,755
Operating (loss) income	(172,439)	1,844	(73,433)
Other income (expense):			
Interest income	53	10	6
Interest expense	(12,589)	(13,616)	(3,959)
Other income (expense), net	6,980	(33)	(1,662)
Total other income (expense)	(5,556)	(13,639)	(5,615)
Loss before income taxes	(177,995)	(11,795)	(79,048)
Income tax provision	681	1,087	3,179
Net loss	$ (178,676)	$ (12,882)	$ (82,227)
Net loss per basic share	$ (1.79)	$ (0.13)	$ (0.85)
Net loss per diluted share	$ (1.79)	$ (0.16)	$ (0.85)
Shares used in calculating basic net loss per share	99,574	97,347	96,235
Shares used in calculating diluted net loss per share	99,574	97,735	96,235

See accompanying notes to consolidated financial statements.

ALPHATEC HOLDINGS, INC.

CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(in thousands)

	Year Ended December 31,		
	2015	**2014**	**2013**
Net loss	$ (178,676)	$ (12,882)	$ (82,227)
Foreign currency translation adjustments	(9,872)	(15,193)	3,765
Comprehensive loss	$ (188,548)	$ (28,075)	$ (78,462)

See accompanying notes to consolidated financial statements.

ALPHATEC HOLDINGS, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' (DEFICIT) EQUITY

(In thousands)

	Common stock		Additional paid-in capital	Shareholder note receivable	Treasury stock	Accumulated other comprehensive income (loss)	Accumulated deficit	Total stockholders' (deficit) equity
	Shares	Amount						
Balance at December 31, 2012	96,703	$ 10	$ 399,246	$ —	$ (97)	$ 112	$ (153,455)	$ 245,816
Stock-based compensation	—	—	2,590	—	—	—	—	2,590
Exercise of stock options	6	—	8	—	—	—	—	8
Repurchase and/or forfeiture of common stock	(142)	—	(172)	—	—	—	—	(172)
Shares issued for consulting services	354	—	1,488	—	—	—	—	1,488
Issuance of common stock in connection with license agreements	130	—	250	—	—	—	—	250
Forfeiture of common stock in connection with business acquisition	(328)	—	(561)	—	—	—	—	(561)
Issuance of common stock for employee stock purchase plan	500	—	719	—	—	—	—	719
Issuance of common stock for restricted share awards granted to employees	376	—	—	—	—	—	—	—
Foreign currency translation adjustments	—	—	—	—	—	3,765	—	3,765
Net loss	—	—	—	—	—	—	(82,227)	(82,227)
Balance at December 31, 2013	97,599	10	403,568	—	(97)	3,877	(235,682)	171,676
Stock-based compensation	—	—	2,690	—	—	—	—	2,690
Exercise of stock options	21	—	29	—	—	—	—	29
Repurchase and/or forfeiture of common stock	(266)	—	(3)	—	—	—	—	(3)
Shares issued for consulting services	1,327	—	1,864	—	—	—	—	1,864
Issuance of common stock for employee stock purchase plan	608	—	671	—	—	—	—	671
Issuance of common stock for restricted share awards granted to employees	493	—	—	—	—	—	—	—
Shareholder note receivable	—	—	5,000	(5,000)	—	—	—	—
Issuance of common stock for acquired technology	74	—	102	—	—	—	—	102
Foreign currency translation adjustments	—	—	—	—	—	(15,193)	—	(15,193)
Net loss	—	—	—	—	—	—	(12,882)	(12,882)
Balance at December 31, 2014	99,856	10	413,921	(5,000)	(97)	(11,316)	(248,564)	148,954
Stock-based compensation	—	—	2,562	—	—	—	—	2,562
Exercise of stock options	5	—	—	—	—	—	—	—
Repurchase and/or forfeiture of common stock	(261)	—	—	—	—	—	—	—
Shares issued for consulting services	1,325	—	81	—	—	—	—	81
Issuance of common stock for employee stock purchase plan	868	—	375	—	—	—	—	375
Issuance of common stock for restricted share awards granted to employees	292	—	—	—	—	—	—	—
Issuance of common stock for acquired technology	73	—	—	—	—	—	—	—
Foreign currency translation adjustments	—	—	—	—	—	(9,872)	—	(9,872)
Net loss	—	—	—	—	—	—	(178,676)	(178,676)
Balance at December 31, 2015	102,158	$ 10	$ 416,939	$ (5,000)	$ (97)	$ (21,188)	$ (427,240)	$ (36,576)

See accompanying notes to consolidated financial statements.

ALPHATEC HOLDINGS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

	Year Ended December 31,		
	2015	**2014**	**2013**
Operating activities:			
Net loss	$ (178,676)	$ (12,882)	$ (82,227)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:			
Depreciation and amortization	19,031	18,385	26,277
Goodwill and intangible assets impairment	165,171	—	—
Stock-based compensation	2,643	4,554	4,078
Interest expense related to amortization of debt discount and debt issuance costs	4,695	6,700	368
In-process research and development	98	102	—
Provision for doubtful accounts	584	522	404
Provision for excess and obsolete inventory	2,156	3,539	11,652
Deferred income tax (benefit) provision	(333)	251	816
Other non-cash items	(4,363)	1,913	1,464
Changes in operating assets and liabilities:			
Restricted cash	4,400	(6,750)	—
Accounts receivable	1,197	(1,028)	(1,940)
Inventories	(5,456)	(4,348)	(4,407)
Prepaid expenses and other current assets	2,472	4,863	450
Other assets	(6)	(276)	64
Accounts payable	3,209	(1,042)	(3,853)
Accrued expenses and other	(6,365)	(35,130)	55,171
Deferred revenue	(333)	356	(510)
Net cash provided by (used in) operating activities	10,124	(20,271)	7,807
Investing activities:			
Purchases of property and equipment	(12,247)	(11,300)	(14,352)
Purchase of intangible assets	—	—	(750)
Cash paid for acquisitions	—	—	(4,000)
Cash received from sale of assets	—	300	—
Net cash used in investing activities	(12,247)	(11,000)	(19,102)
Financing activities:			
Exercise of stock options	375	26	8
Borrowings under lines of credit	141,583	163,067	154,622
Repayments under lines of credit	(144,567)	(156,106)	(168,855)
Principal payments on capital lease obligations	(747)	(766)	(434)
Proceeds from issuance of notes payable	5,000	30,350	28,000
Principal payments on notes payable	(8,176)	(5,837)	(2,654)
Net cash (used in) provided by financing activities	(6,532)	30,734	10,687
Effect of exchange rate changes on cash	149	(1,073)	(288)
Net decrease in cash	(8,506)	(1,610)	(896)
Cash at beginning of period	19,735	21,345	22,241
Cash at end of period	$ 11,229	$ 19,735	$ 21,345

See accompanying notes to consolidated financial statements.

ALPHATEC HOLDINGS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS—(Continued)

(in thousands)

	Year Ended December 31,		
	2015	**2014**	**2013**
Supplemental disclosure of cash flow information:			
Cash paid for interest	$ 7,627	$ 5,885	$ 3,973
Cash paid for income taxes	$ 621	$ 565	$ 1,780
Purchases of property and equipment in accounts payable	$ 2,323	$ 1,638	$ 1,513
Purchase of property and equipment through capital leases	$ 243	$ 1,212	$ —
Non-cash purchases of license agreements	$ —	$ —	$ 250
Non-cash debt discount	$ —	$ 650	$ —
Initial fair value of warrant liability	$ —	$ 11,280	$ —

See accompanying notes to consolidated financial statements.

1. The Company and Basis of Presentation

The Company

Alphatec Holdings, Inc. (“Alphatec”, “Alphatec Holdings” or the “Company”), through its wholly owned subsidiary, Alphatec Spine, Inc. and its subsidiaries (“Alphatec Spine”) designs, develops, manufactures and markets products for the surgical treatment of spine disorders. In addition to its U.S. operations, the Company also markets its products in over 50 international markets through its affiliate, Scient’x S.A.S. and its subsidiaries (“Scient’x”), via a direct salesforce in Italy and the United Kingdom and via independent distributors in the rest of Europe, the Middle East and Africa. In South America and Latin America the Company conducts its operations through its Brazilian subsidiary, Cibramed Productos Medicos. In Asia, the Company markets its products through its subsidiary, Alphatec Pacific, Inc. and its subsidiaries (“Alphatec Pacific”) via a direct sales force and independent distributors, and through distributors in other parts of Asia and Australia.

Basis of Presentation

The consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") and include the accounts of Alphatec and Alphatec Spine and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

The Company has incurred significant net losses since inception and has relied on its ability to fund its operations through revenues from the sale of its products, equity financings and debt financings. As the Company has incurred losses, successful transition to profitability is dependent upon achieving a level of revenues adequate to support the Company’s cost structure. This may not occur and, unless and until it does, the Company will continue to need to raise additional capital. Additionally, as discussed below, the Company has a significant amount of debt that is classified as current debt. These conditions raise substantial doubt about the Company's ability to continue as a going concern. The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern and do not include any adjustments that might result from the outcome of this uncertainty. A going concern basis of accounting contemplates the recovery of the Company’s assets and the satisfaction of its liabilities in the normal course of business. Operating losses and negative cash flows may continue for at least the next year as the Company continues to incur costs related to the execution of its operating plan, introduction of new products and expansion into new geographies.

The Company's amended and restated credit facility (the "Amended Credit Facility") with MidCap Financial, LLC ("MidCap") matures in December 2016, which will require the Company to refinance the Amended Credit Facility with MidCap or to seek alternative financing. In addition, as disclosed in Note 5 as of December 31, 2015 the Company has determined that it failed to comply with the fixed charge coverage ratio covenant under its Amended Credit Facility with MidCap for June, August, September, October and December of 2015 and January 2016. The Company’s default under the MidCap credit facility also constitutes an event of default under the facility agreement (the "Facility Agreement") with Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P., Deerfield Special Situations Fund, L.P., and Deerfield Special Situations International Master Fund, L.P., (collectively "Deerfield"). In 2016, MidCap and Deerfield provided waivers of the Company’s failure to comply with the fixed charge coverage ratio covenant during such periods and MidCap and Deerfield has provided waivers of such defaults. The Company can provide no assurance that it will be in compliance with the financial covenants in the future. If the Company does not obtain waivers from MidCap or Deerfield, they would have the right to call the debts due immediately, which would significantly impact the Company's ability to continue as a going concern. Management intends to pursue additional opportunities to raise additional capital through public or private equity offerings, debt financings, receivables financings or collaborations or partnerships with other companies to further support its planned operations. However, there is no assurance that it will be able to do so.

2. Summary of Significant Accounting Policies

Use of Estimates

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant items subject to such estimates and assumptions include the useful lives of fixed assets; allowances for doubtful accounts and sales returns,

the valuation of share based liabilities, deferred tax assets, fixed assets, inventory, investments, notes receivable and share-based compensation; and reserves for employee benefit obligations, restructuring liabilities, income tax uncertainties and other contingencies.

Concentrations of Credit Risk and Significant Customers

Financial instruments, which potentially subject the Company to concentrations of credit risk, consist primarily of cash and accounts receivable. The Company limits its exposure to credit loss by depositing its cash with established financial institutions. As of December 31, 2015 , a substantial portion of the Company's available cash funds is held in business accounts. Although the Company deposits its cash with multiple financial institutions, its deposits, at times, may exceed federally insured limits.

The Company's customers are primarily hospitals, surgical centers and distributors and no single customer represented greater than 10 percent of consolidated revenues or accounts receivable for any of the periods presented. Credit to customers is granted based on an analysis of the customers' credit worthiness and credit losses have not been significant.

Revenue Recognition

The Company derives its revenues primarily from the sale of spinal surgery implants used in the treatment of spine disorders. The Company sells its products primarily through its direct sales force and independent distributors. Revenue is recognized when all four of the following criteria are met: (i) persuasive evidence of an arrangement exists; (ii) delivery of the products and/or services has occurred; (iii) the selling price is fixed or determinable; and (iv) collectability is reasonably assured. In addition, the Company accounts for revenue under provisions which set forth guidelines for the timing of revenue recognition based upon factors such as passage of title, installation, payment and customer acceptance.

The Company's revenue from sales of spinal and other surgical implant products is recognized upon receipt of written acknowledgment that the product has been used in a surgical procedure or upon shipment to third-party customers who immediately accept title to such product.

Deferred revenues consist of sales transactions where circumstances indicate that collectibility is not reasonably assured due to payment terms, regional market risks or customer history. The Company defers the recognition of revenue until payments become due and cash is received from these distributors. As of December 31, 2015 and 2014 , the balance in deferred revenue totaled $0.6 million and $1.3 million , respectively.

Restricted Cash

In March and November 2014, the Company borrowed and set aside cash for the payment of a portion of the Orthotec litigation settlement, which is subject to the terms of the facility agreement that it entered into with Deerfield on March 17, 2014. The Company classified this cash as restricted, because it may not be used for purposes other than payments of amounts due under the Orthotec litigation settlement agreement. As of December 31, 2015 , the Company had $2.4 million classified as short-term restricted cash.

Accounts Receivable

Accounts receivable are presented net of allowance for doubtful accounts. The Company makes judgments as to its ability to collect outstanding receivables and provides allowances for a portion of receivables when collection becomes doubtful. Provisions are made based upon a specific review of all significant outstanding invoices and the overall quality and age of those invoices not specifically reviewed. In determining the provision for invoices not specifically reviewed, the Company analyzes historical collection experience. If the historical data used to calculate the allowance provided for doubtful accounts does not reflect the Company's future ability to collect outstanding receivables or if the financial condition of customers were to deteriorate, resulting in impairment of their ability to make payments, an increase in the provision for doubtful accounts may be required.

Inventories

Inventories are stated at the lower of cost or market, with cost primarily determined under the first-in, first-out method. The Company reviews the components of inventory on a periodic basis for excess, obsolete and impaired inventory, and records a reserve for the identified items. The Company calculates an inventory reserve for estimated excess and obsolete inventory based upon historical turnover and assumptions about future demand for its products and market conditions. The Company's biologics inventories have an expiration based on shelf life and are subject to demand fluctuations based on the availability and

demand for alternative implant products. The Company's estimates and assumptions for excess and obsolete inventory are reviewed and updated on a quarterly basis. Increases in the reserve for excess and obsolete inventory result in a corresponding increase to cost of revenues and establish a new cost basis for the part. Approximately $16.3 million and $17.3 million of inventory was held at consigned locations as of December 31, 2015 and 2014 , respectively.

Property and Equipment

Property and equipment are stated at cost, net of accumulated depreciation and amortization. Depreciation is computed using the straight-line method over the estimated useful lives of the related assets, generally ranging from three to seven years. Leasehold improvements and assets acquired under capital leases are amortized over the shorter of their useful lives or the terms of the related leases.

Goodwill and Other Intangible Assets

The Company accounts for goodwill and other intangible assets in accordance with provisions which require that goodwill and other identifiable intangible assets with indefinite useful lives be tested for impairment at least annually. The Company tests goodwill and intangible assets for impairment in December of each year, or more frequently if events and circumstances warrant. These assets are considered impaired if the Company determines that their carrying values may not be recoverable based on an assessment of certain events or changes in circumstances. If the assets are considered to be impaired, the Company recognizes the amount by which the carrying value of the assets exceeds the fair value of the assets as an impairment loss. In the third quarter of 2015, the market value of the Company's common stock substantially declined. As a result of this decline, the Company determined that it had an indicator of impairment of the goodwill, and an interim test of goodwill impairment was performed. The Company analyzed the carrying amount of goodwill for impairment under a two-part test in accordance with authoritative guidance.

The Company estimated the fair value in step one of the goodwill impairment test based on a combination of the income approach which included discounted cash flows as well as a market approach that utilized the Company's market information. The fair value measurements utilized to perform the impairment analysis are categorized within Level 3 of the fair value hierarchy. Significant management judgment is required in the forecast of future operating results that are used in the Company's impairment analysis. The estimates the Company used are consistent with the plans and estimates that it uses to manage its business. Significant assumptions utilized in the Company's income approach model included the growth rate of sales for recently introduced products and the introduction of anticipated new products similar to its historical growth rates. Another important assumption involved in forecasted sales is the projected mix of higher margin U.S. based sales and lower margin non-U.S. based sales. Additionally, the Company has projected an improvement in its gross margin, similar to its historical improvement in gross margins, as a result of its forecasted mix in U.S. sales versus non-U.S. sales and lower manufacturing cost per unit based on the increase in forecasted volume to absorb applied overhead over the next ten years.

The Company's discounted cash flows required management judgment with respect to forecasted sales, launch of new products, gross margins, selling, general and administrative expenses, capital expenditures and the selection and use of an appropriate discount rate and terminal growth rate. For purposes of calculating the discounted cash flows, the Company used estimated revenue growth rates averaging between 3% and 13% for the discrete forecast period. Cash flows beyond the discrete forecast period were estimated using a terminal value calculation, which incorporated historical and forecasted financial trends and considered long-term earnings growth rates for publicly traded peer companies. Future cash flows were then discounted to present value at a discount rate of 13.5% , and terminal value growth rate of 3% . The Company's market capitalization was also considered in assessing the reasonableness of the Company's fair value as determined in step one of the goodwill impairment test. The Company's assessment resulted in a fair value that was lower than the Company's carrying value of net assets at September 30, 2015.

Based upon step one of the interim impairment test, the Company determined that its goodwill was impaired and that step two of the test was required to measure the amount of goodwill impairment. As a result of step two, in the third quarter of 2015 the Company recorded a charge of $164.3 million , representing the write-off of the entire balance of goodwill. The Company finalized the step two test in the fourth quarter of 2015, which did not change the amount of the impairment charge.

The accounting provisions also require that intangible assets with finite useful lives be amortized over their respective estimated useful lives and reviewed for indicators of impairment. The Company is amortizing its intangible assets, other than goodwill, on a straight-line basis over a one to fifteen -year period. In connection with the step two goodwill impairment test above the Company determined that certain intangible acquired were impaired. As a result, in the third quarter of 2015, the Company recorded an impairment charge of $0.9 million to physician education intangible assets acquired in the Scient'x acquisition, which is included in cost of goods sold. Prior to the impairment, amortization of the physician education intangible assets had been recorded in amortization of acquired intangible assets within operating expenses.

During the year ended December 31, 2013, the Company decided that it would not continue to market an adult stem cell product sold under the Company's private label name of PureGen. The Company also decided that it would no longer actively market two additional products. The Company expensed $1.3 million as impairment charges in cost of goods sold in the year ended December 31, 2013 for the write-off of intangible assets related to these products.

Impairment of Long-Lived Assets

The Company assesses potential impairment to its long-lived assets when there is evidence that events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. An impairment loss is recognized when the carrying amount of the long-lived assets is not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the asset. Any required impairment loss is measured as the amount by which the carrying amount of a long-lived asset exceeds its fair value and is recorded as a reduction in the carrying value of the related asset and a charge to operating results.

Foreign Currency

The Company’s results of operations and cash flows are subject to fluctuations due to changes in foreign currency exchange rates. The Company’s primary functional currency is the U.S. dollar, while the functional currency of the Company’s foreign subsidiaries include the Japanese Yen, the Euro, the Brazilian Real, the British Pound and the Hong Kong Dollar. Assets and liabilities denominated in foreign currencies are translated at the rate of exchange on the balance sheet date. Revenues and expenses are translated using the average exchange rate for the period. Net gains and losses resulting from the translation of foreign financial statements are recorded as accumulated other comprehensive income (loss) in stockholders’ (deficit) equity. Net foreign currency gains or (losses) resulting from transactions in currencies other than the functional currencies are included in other income (expense), net in the accompanying consolidated statements of operations. For the years ended December 31, 2015 , 2014 and 2013 , the Company recorded net foreign currency losses of approximately $1.2 million , $1.0 million and $1.7 million , respectively.

Warrants to Purchase Common Stock

Common stock warrants that contain compliance covenants and cash payment obligations are classified as common stock warrant liabilities on the consolidated balance sheet. The Company records the warrant liability at fair value and adjusts the carrying value of these common stock warrants to their estimated fair value at each reporting date with the increases or decreases in the fair value of such warrants at each reporting date recorded as other income (expense) in the consolidated statements of operations.

Fair Value Measurements

The carrying amount of financial instruments consisting of cash, restricted cash, trade accounts receivable, prepaid expenses and other current assets, accounts payable, accrued expenses, accrued compensation and current portion of long-term debt included in the Company’s consolidated financial statements are reasonable estimates of fair value due to their short maturities. Based on the borrowing rates currently available to the Company for loans with similar terms, management believes the fair value of long-term debt approximates its carrying value.

Authoritative guidance establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value as follows:

Level 1:	Observable inputs such as quoted prices in active markets;
Level 2:	Inputs, other than the quoted prices in active markets, that are observable either directly or indirectly; and
Level 3:	Unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

The Company does not maintain any financial instruments that are considered to be Level 1 or Level 2 instruments as of December 31, 2015 or December 31, 2014 . The Company classifies its common stock warrant liabilities within Level 3 of the fair value hierarchy because they are valued using valuation models with significant unobservable inputs. The following table provides a reconciliation of liabilities measured at fair value using significant unobservable inputs (Level 3) for the year ended December 31, 2015 (in thousands):

	Common Stock Warrant Liabilities
Balance at December 31, 2013	$ —
Issuance	11,280
Changes in fair value	(2,578)
Balance at December 31, 2014	8,702
Issuance	—
Changes in fair value	(8,015)
Balance at December 31, 2015	$ 687

Common stock warrant liabilities are measured at fair value using the Black-Scholes option pricing valuation model. The assumptions used in the Black-Scholes option pricing valuation model for the common stock warrant liabilities were: (a) a risk-free interest rate based on the rates for U.S. Treasury zero-coupon bonds with maturities similar to those of the remaining contractual term of the warrants; (b) an assumed dividend yield of zero percent based on the Company’s expectation that it will pay no dividends in the foreseeable future; (c) an expected term based on the remaining contractual term of the warrants; and (d) an expected volatility based upon the Company's historical volatility over the remaining contractual term of the warrants. The significant unobservable input used in measuring the fair value of the common stock warrant liabilities associated with the Deerfield Facility Agreement (defined below) is the expected volatility. Significant increases in volatility would result in a higher fair value measurement. The decrease in the fair value of the common stock warrant liabilities as of December 31, 2015 was primarily driven by the decrease in the Company's common stock price at December 31, 2015 .

Research and Development

Research and development expense consists of costs associated with the design, development, testing, and enhancement of the Company’s products. Research and development costs also include salaries and related employee benefits, research-related overhead expenses, fees paid to external service providers, and costs associated with the Company’s Scientific Advisory Board and Executive Surgeon Panels. Research and development costs are expensed as incurred.

In-Process Research and Development

In-process research and development (“IPR&D”) consists of acquired research and development assets that are not part of an acquisition of a business and were not technologically feasible on the date the Company acquired them and had no alternative future use at that date or assets acquired in a business acquisition that are determined to have no alternative future use. The Company expects all acquired IPR&D will reach technological feasibility, but there can be no assurance that commercial viability of these products will ever be achieved. The nature of the efforts to develop the acquired technologies into commercially viable products consists principally of planning, designing, developing and testing products in order to obtain regulatory approvals. If commercial viability were not achieved, the Company would likely look to other alternatives to provide these products. Until the technological feasibility of the acquired research and development assets are established, the Company expenses these costs.

Leases

The Company leases its facilities and certain equipment and vehicles under operating leases, and certain equipment under capital leases. For facility leases that contain rent escalation or rent concession provisions, the Company records the total rent payable during the lease term on a straight-line basis over the term of the lease. The Company records the difference between the rent paid and the straight-line rent as a deferred rent liability in the accompanying consolidated balance sheets.

Product Shipment Cost

Product shipment costs are included in sales and marketing expense in the accompanying consolidated statements of operations. Product shipment costs totaled $3.8 million , $3.7 million and $3.1 million for the years ended December 31, 2015 , 2014 and 2013 , respectively.

Stock-Based Compensation

The Company accounts for stock-based compensation under provisions which require that share-based payment transactions with employees be recognized in the financial statements based on their fair value and recognized as compensation expense over the vesting period. The amount of expense recognized during the period is affected by subjective assumptions, including estimates of the future volatility of the Company's share price, the expected term for its stock options, the number of options expected to ultimately vest, and the timing of vesting for the Company's share-based awards.

The Company uses a Black-Scholes option pricing valuation model to estimate the fair value of its stock option awards. The calculation of the fair value of the awards using the Black-Scholes option pricing model is affected by the Company's common stock price on the date of grant as well as assumptions regarding the following:

- Estimated volatility is a measure of the amount by which the Company's common stock price is expected to fluctuate each year during the expected life of the award. The Company's estimated volatility through December 31, 2015 was based on a weighted-average volatility of its actual historical volatility over a period equal to the expected remaining life of the awards.
- The expected term represents the period of time that awards granted are expected to be outstanding. Through December 31, 2015 , the Company calculated the expected term using a weighted-average term based on historical exercise patterns and the term from option date to full exercise for the options granted within the specified date range.
- The risk-free interest rate is based on the yield curve of a zero-coupon U.S. Treasury bond on the date the stock option award is granted with a maturity equal to the expected term of the stock option award.
- The assumed dividend yield is based on the Company's expectation of not paying dividends in the foreseeable future.

The Company used historical data to estimate the number of future stock option forfeitures. Share-based compensation recorded in the Company's consolidated statement of operations is based on awards expected to ultimately vest and has been reduced for estimated forfeitures. The Company's estimated forfeiture rates may differ from its actual forfeitures which would affect the amount of expense recognized during the period.

The Company accounts for stock option grants to non-employees in accordance with provisions which require that the non-employee awards are remeasured at each reporting period end and fair value of these instruments be recognized as an expense over the period in which the related services are rendered.

Share-based compensation expense of awards with performance conditions is recognized over the period from the date the performance condition is determined to be probable of occurring through the time the applicable condition is met. Determining the likelihood and timing of achieving performance conditions is a subjective judgment made by management which may affect the amount and timing of expense related to these share-based awards. Share-based compensation is adjusted to reflect the value of options which ultimately vest as such amounts become known in future periods.

Valuation of Stock Option Awards

The assumptions used to compute the share-based compensation costs for the stock options granted during the years ended December 31, 2015 , 2014 and 2013 are as follows:

	Year Ended December 31,		
	2015	2014	2013
Risk-free interest rate	1.6-1.8%	1.8-1.9%	1.1-1.8%
Expected dividend yield	—	—	—
Weighted average expected life (years)	5.4-5.5	5.4-5.5	5.3-5.5
Volatility	59-68%	60-71%	75-76%

Stock-Based Compensation Costs

The compensation cost that has been included in the Company's consolidated statement of operations for all stock-based compensation arrangements is detailed as follows (in thousands):

	Year Ended December 31,		
	2015	2014	2013
Cost of revenues	$ 72	$ 274	$ 228
Research and development	286	2,080	719
Sales and marketing	359	470	459
General and administrative	1,926	1,730	2,672
Total	$ 2,643	$ 4,554	$ 4,078

The amounts provided above include stock-based compensation expense of $0.1 million , $1.9 million and $1.5 million during the years ended December 31, 2015 , 2014 and 2013 , respectively, related to the vesting of stock options and awards granted to non-employees under consulting agreements.

Income Taxes

The Company accounts for income taxes in accordance with provisions which set forth an asset and liability approach that requires the recognition of deferred tax assets and deferred tax liabilities for the expected future tax consequences of temporary differences between the carrying amounts and the tax bases of assets and liabilities. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. In making such determination, a review of all available positive and negative evidence must be considered, including scheduled reversal of deferred tax liabilities, projected future taxable income, tax planning strategies, and recent financial performance.

The Company recognizes interest and penalties related to uncertain tax positions as a component of the income tax provision.

Net Loss per Share

Basic earnings per share ("EPS") is calculated by dividing the net income or loss available to common stockholders by the weighted average number of common shares outstanding for the period, without consideration for common stock equivalents. Diluted EPS is computed by dividing the net income or loss available to common stockholders by the weighted average number of common shares outstanding for the period and the weighted average number of dilutive common stock equivalents outstanding for the period determined using the treasury-stock method. For purposes of this calculation, common stock subject to repurchase by the Company, options and warrants are considered to be common stock equivalents and are only included in the calculation of diluted earnings per share when their effect is dilutive. The following table sets forth the computation of basic and diluted loss per share (in thousands, except per share data):

	Year Ended December 31,		
	2015	2014	2013
Numerator:			
Net loss for basic earnings per share	$ (178,676)	$ (12,882)	$ (82,227)
Decrease in fair value of warrants	—	(2,578)	—
Diluted net loss attributable to common stockholders	$ (178,676)	$ (15,460)	$ (82,227)
Denominator:			
Weighted average common shares outstanding	100,385	98,138	97,111
Weighted average unvested common shares subject to repurchase	(811)	(791)	(876)
Weighted average common shares outstanding—basic	99,574	97,347	96,235
Effect of dilutive securities:			
Conversion of preferred stock	—	—	—
Options	—	—	—
Warrants	—	388	—
Weighted average common shares outstanding—diluted	99,574	97,735	96,235
Net loss per share:			
Basic	$ (1.79)	$ (0.13)	$ (0.85)
Diluted	$ (1.79)	$ (0.16)	$ (0.85)

As of December 31, 2015 , 2014 and 2013 , none of the outstanding shares of redeemable preferred stock were convertible to common stock.

The anti-dilutive securities not included in diluted net loss per share were as follows (in thousands):

	Year Ended December 31,		
	2015	2014	2013
Options to purchase common stock	7,941	7,057	4,597
Warrants to purchase common stock	11,544	725	594
Unvested restricted stock awards	811	791	876
	20,296	8,573	6,067

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board ("FASB") issued new accounting guidance related to revenue recognition. This new standard replaces all current U.S. GAAP guidance on this topic and eliminates all industry-specific guidance. The new revenue recognition standard provides a unified model to determine when and how revenue is recognized. The core principle is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration for which the entity expects to be entitled in exchange for those goods or services. This guidance is effective for the Company beginning January 1, 2018 and can be applied either retrospectively to each period presented or as a cumulative-effect adjustment as of the date of adoption. The Company is evaluating the impact of adopting this new accounting standard on its financial statements.

In August 2014, the FASB issued guidance related to disclosures of uncertainties about an entity's ability to continue as a going concern. The guidance requires management to evaluate whether there are conditions and events that raise substantial doubt about the entity's ability to continue as a going concern within one year after the financial statements are issued. Management will be required to make this evaluation for both annual and interim reporting periods and will have to make certain disclosures if it concludes that substantial doubt exists or when its plans alleviate substantial doubt about the entity's ability to continue as a going concern. Substantial doubt exists when relevant conditions and events, considered in the aggregate, indicate that it is probable that the entity will be unable to meet its obligations as they become due within one year after the date that the financial statements are issued. The guidance is effective for annual periods ending after December 15, 2016 and for interim reporting periods thereafter. The Company is evaluating the impact of this guidance and expects to adopt the standard for the annual reporting period ending December 31, 2016.

In January 2015, the FASB issued new accounting guidance, which eliminates the concept of extraordinary items from GAAP, which required certain classification and presentation of extraordinary items in the income statement and disclosures. The guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2015. The Company is evaluating the impact of adopting this new accounting standard on its financial statements.

In July 2015, the FASB issued new accounting guidance, which changes the measurement principle for inventory from the lower of cost or market to lower of cost and net realizable value for entities that do not measure inventory using the last-in, first-out or retail inventory method. The guidance also eliminates the requirement for these entities to consider replacement cost or net realizable value less an approximately normal profit margin when measuring inventory. The guidance is effective for annual periods beginning after December 15, 2016, and interim periods within those annual periods. The Company is evaluating the impact of adopting this new accounting standard on its financial statements.

In November 2015, the FASB issued new accounting guidance, which will require the presentation of deferred tax assets and liabilities be classified as noncurrent in a consolidated balance sheet. The Company has elected to early adopt this guidance during the fourth quarter of 2015. The adoption of this new guidance resulted in a reclassification in the Company's deferred income taxes, net, being presented within other long-term liabilities on the Company's consolidated balance sheet as of December 31, 2015. The Company did not retrospectively adjust the consolidated balance sheet as of December 31, 2014. The adoption did not have a material effect on the consolidated financial statements and had no impact on net income.

3. Balance Sheet Details

Accounts Receivable

Accounts receivable consist of the following (in thousands):

	December 31,	
	2015	**2014**
Accounts receivable	$ 39,380	$ 41,233
Less allowance for doubtful accounts	(1,061)	(793)
Accounts receivables, net	$ 38,319	$ 40,440

Inventories

Inventories consist of the following (in thousands):

	December 31,	
	2015	2014
Raw materials	$ 7,237	$ 5,020
Work-in-process	1,908	1,032
Finished goods	55,393	57,020
	64,538	63,072
Less reserve for excess and obsolete finished goods	(19,630)	(21,325)
Inventories, net	$ 44,908	$ 41,747

Property and Equipment

Property and equipment consist of the following (in thousands except for useful lives):

	Useful lives (in years)	December 31,	
		2015	2014
Surgical instruments	4	$ 65,723	$ 62,872
Machinery and equipment	7	15,520	15,382
Computer equipment	3	3,984	3,180
Office furniture and equipment	5	3,746	3,789
Leasehold improvements	various	3,856	3,841
Building	39	65	65
Land	n/a	9	9
Construction in progress	n/a	354	1,320
		93,257	90,458
Less accumulated depreciation and amortization		(71,312)	(64,418)
Property and equipment, net		$ 21,945	$ 26,040

Total depreciation expense was $13.0 million , $12.2 million and $14.6 million for the years ended December 31, 2015 , 2014 and 2013 , respectively. At December 31, 2015 , assets recorded under capital leases of $2.6 million were included in the machinery and equipment balance and $0.1 million are included in the construction in progress balance. At December 31, 2014 , assets recorded under capital leases of $3.2 million were included in the machinery and equipment balance and $0.6 million are included in the construction in progress balance. Amortization of assets under capital leases is included in depreciation expense.

Intangible Assets

Intangible assets consist of the following (in thousands except for useful lives):

	Remaining Avg. Useful lives (in years)	December 31, 2015	December 31, 2014
Developed product technology	1	$ 21,633	$ 22,526
Distribution rights	4	2,100	2,095
Intellectual property	—	1,004	1,004
License agreements	1	16,714	16,716
Core technology	4	4,086	4,554
Trademarks and trade names	2	3,245	3,559
Customer-related	9	19,169	20,493
Distribution network	5	4,027	4,027
Physician education programs	—	2,513	2,802
Supply agreement	—	225	225
		74,716	78,001
Less accumulated amortization		(53,100)	(47,742)
Intangible assets, net		$ 21,616	$ 30,259

Total expense related to amortization of intangible assets was $6.1 million , $6.2 million and $11.6 million for the years ended December 31, 2015 , 2014 and 2013 , respectively.

In 2015, the Company determined that the physician education intangible asset acquired in the Scient’x acquisition was impaired. As a result, the Company recorded a $0.9 million expense, which is included in goodwill and intangible impairment in the year ended December 31, 2015. Prior to the impairment, amortization of the physician eduction intangible asset had been recorded in amortization of acquired intangible assets within operating expenses.

On June 19, 2015, the Company entered into an exclusive distribution agreement with a third party to market a biologic product that would replace its existing NEXoss Synthetic Bone Graft. The Company expensed $0.3 million as an impairment charge in cost of goods sold for the write-off of an intangible asset related to this product. Additionally, due to a revised marketing strategy for the Company's Epicage interbody fusion device, the Company evaluated the related intangible asset for impairment in June 2015. As a result of this impairment analysis the Company expensed $0.9 million as an impairment charge in cost of goods sold for the write-off of an intangible asset related to this product.

During 2013, the Company decided to discontinue marketing and selling of an adult stem cell product sold under the Company's private label name of PureGen and two additional products. The Company expensed $1.3 million as impairment charges in cost of goods sold in the year ended December 31, 2013 for the write-off of intangible assets related to these products.

The future expected amortization expense related to intangible assets as of December 31, 2015 is as follows (in thousands):

Year Ending December 31,	
2016	$ 4,001
2017	3,995
2018	2,844
2019	2,410
2020	1,811
Thereafter	6,555
Total	$ 21,616

Goodwill

The changes in the carrying amount of goodwill from December 31, 2014 through December 31, 2015 were as follows (in thousands):

	2015	2014
Balance at January 1	$ 171,333	$ 183,004
Impairment charge	(164,266)	—
Effect of foreign exchange rate on goodwill	(7,067)	(11,671)
Balance at December 31	$ —	$ 171,333

Accrued Expenses

Accrued expenses consist of the following (in thousands):

	December 31,	
	2015	2014
Commissions and sales milestones	$ 5,920	$ 6,259
Payroll and payroll related	5,577	8,291
Litigation settlements	4,400	7,393
Accrued professional fees	2,203	2,342
Royalties	1,578	2,129
Restructuring and severance accruals	1,358	849
Accrued taxes	1,074	1,344
Accrued interest	999	946
Other	6,682	5,840
Total accrued expenses	$ 29,791	$ 35,393

4. License and Consulting Agreements

OsseoFix Spinal Fracture Reduction System License Agreement

On April 16, 2009, the Company and Stout Medical Group LP ("Stout") amended the license agreement that the parties had entered into in September 2007 (the "License Amendment") that provides the Company with a worldwide license to develop and commercialize Stout's proprietary intellectual property related to a treatment for vertebral compression fractures. The effective date of the License Amendment is March 31, 2009. Under the License Amendment, the timing of the minimum royalty payments has been adjusted and Stout's ability to terminate the License Amendment was revised. Under the original license agreement, the Company's minimum royalty obligation began in the year ending December 31, 2009 and there are milestones due upon attainment of sales volumes. Pursuant to the License Amendment, the minimum royalty obligation is suspended until a licensed product obtains regulatory approval from the United States Food and Drug Administration (the "FDA"). In addition, under the terms of the License Amendment, Stout has the ability to terminate the License Amendment if the Company is not using commercially reasonable efforts to obtain regulatory approval to market and sell a licensed product; provided that the Company has the right to delay such termination in exchange for making certain payments to Stout. If, during the time period when such payments are made, the Company were to make a regulatory filing for the marketing and sale of a licensed product, such termination will be null and void. Pursuant to the License Amendment, Stout is entitled to retain all up-front payments that had been previously paid to it. The other material terms of the license agreement were not changed in the License Amendment.

In August 2014, the Company entered a third amendment (the "Third Amendment") to the License Agreement. Pursuant to the Third Amendment: (i) the royalty rate paid by the Company for the net sales of licensed products is a fixed amount per quarter through December 31, 2016; (ii) the royalty rate starting in 2017 will be increased from 7.0% to 8.5% ; (ii) starting in 2017, the minimum royalty obligation is $0.2 million per year, with such minimum royalty obligation being further reduced

stating in 2018; (iii) the territory is amended so that the United States is removed from the territory in which the Company can sell and market licensed products; (iv) all obligations of the Company to pursue a clinical trial in the United States are deleted; and (v) all milestone payments based on the achievement of certain sales milestones are deleted. In connection with this amendment the Company reversed the $1.7 million accrual it had recorded for the sales milestone payment into cost of goods sold for the year ended December 31, 2014 .

OsseoScrew License Agreement

In December 2007, the Company entered into an exclusive license agreement (the "OsseoScrew License Agreement"), with Progressive Spinal Technologies LLC ("PST"), which provides the Company with an exclusive worldwide license to develop and commercialize PST's proprietary intellectual property related to an expanding pedicle screw with increased pull-out strength. The financial terms of the OsseoScrew License Agreement include: (i) a cash payment payable following the execution of the agreement; (ii) development and sales milestone payments in cash and the Company's common stock that began to be achieved and paid in 2008; and (iii) a royalty payment based on net sales of licensed products. The agreement included milestone payments of $3.6 million consisting of cash and the Company's common stock upon the completion of the biomechanical testing, which were attained in 2009. Furthermore, the agreement includes milestone payments of $2.5 million consisting of cash and the Company's common stock upon market launch.

In November 2010, the Company and PST entered into a fifth amendment to the OsseoScrew License Agreement. The fifth amendment includes (i) a milestone payment of a $1.5 million and the issuance of $1.0 million in shares of the Company's common stock upon market launch in Europe; and (ii) royalty payments based on net sales of licensed products with minimum annual royalties beginning at the end of 2011. During the fourth quarter of 2010, the Company recorded an intangible asset of $2.5 million for a milestone payment required upon market launch in Europe which consisted of the cash payment of $1.5 million and $1.0 million in shares of the Company's common stock. The Company is amortizing this asset over seven years, the estimated life of the product. The total number of shares of common stock that were issued on December 15, 2010 was 452,488 .

On December 12, 2013, the Company and PST entered into a sixth amendment to the OsseoScrew License Agreement . The sixth amendment provides (i) the royalty rate paid by the Company for net sales of licensed products is increased; (ii) the territory is amended so that the United States is removed from the territory in which the Company can sell and market licensed products, and such rights are non-exclusive in Russia and the People's Republic of China; (iii) all milestone payments based on the achievement of certain sales milestones are deleted; and (iv) a $0.3 million milestone payment to be paid upon the achievement of regulatory approval of a licensed product in the People's Republic of China was added. In connection with this amendment, the Company reversed the $0.6 million accrual it had recorded for the sales milestone payment into cost of goods sold for the year ended December 31, 2013.

License Agreement with Helix Point, LLC

In February 2009, the Company entered into a license agreement (the "Helifuse/Helifix License Agreement") with Helix Point, LLC ("Helix Point") that provides the Company with a worldwide exclusive license (excluding the People's Republic of China) to develop and commercialize Helix Point's proprietary intellectual property related to a device for the treatment of spinal stenosis. The financial terms of the Helifuse/Helifix License Agreement include: (i) a cash payment of $0.2 million payable following the execution of the Helifuse/Helifix License Agreement; (ii) the issuance of $0.4 million of shares of the Company's common stock following the execution of the Helifuse/Helifix License Agreement; (iii) development and sales milestone payments in cash and the Company's common stock; and (iv) a royalty payment based on net sales of licensed products, with minimum annual royalties beginning in the year after the first commercial sale of a licensed product. During the third quarter of 2010, the Company recorded an intangible asset of $0.2 million for the assets received as this product is cleared for sale in Europe and technological feasibility is considered to have been achieved. Based on the analysis of the estimated remaining useful life of this asset performed in 2015 , the Company has accelerated amortization so that the carrying value of this asset will be fully amortized by December 2016.

License Agreement with International Spinal Innovations, LLC

In June 2009, the Company entered into a cross license agreement (the "ISI License Agreement") with International Spinal Innovations, LLC ("ISI") that provides the Company with a worldwide license to develop and commercialize ISI's proprietary intellectual property related to a stand-alone anterior lumbar interbody fusion device. The financial terms of the ISI License Agreement include: (i) the issuance of 260,000 shares of the Company's common stock following the execution of the ISI License Agreement; (ii) sales milestone payments in cash that could begin to be achieved and paid in 2016; and (iii) a royalty payment based on net sales of licensed products. In 2012, the Company entered into an amended agreement that established a minimum royalty payment amount that began in 2012.

Distribution Agreement with Parcell Spine, LLC

In January 2010, the Company entered into an exclusive distribution agreement (the "Parcell Agreement") with Parcell Spine, LLC ("Parcell Spine"), which provides the Company with the exclusive right to distribute Parcell Spine's proprietary adult stem cells for the treatment of spinal disorders under either Parcell's trademarks or Alphatec Spine's private label. The financial terms of the Parcell Agreement include: (i) a cash payment of $0.5 million payable following the execution of the Parcell Agreement; (ii) a milestone payment consisting of $1.0 million in cash and the issuance of $1.0 million of shares of the Company's common stock following the successful completion of a pre-clinical study; and (iii) sales milestone payments in cash and the Company's common stock. In 2010, the Company recorded an intangible asset of $1.5 million for a milestone payment required upon market launch when the product became commercially ready for sale which consisted of a cash payment of $0.5 million and $1.0 million worth of the Company's common stock. The Company is amortizing this asset over seven years, the estimated life of the product.

During the year ended December 31, 2013, the Company decided that it would not continue to sell its PureGen product, which is currently the only product commercialized by the Company under the Parcell Agreement. During the year ended December 31, 2013, the Company expensed $0.9 million as impairment charges in cost of goods for the write-off of intangible assets related to the Parcell Agreement and expensed $2.6 million related to the write-off of inventory and certain prepaid assets in cost of goods sold.

License Agreement with R Tree Innovations LLC

In September 2010, the Company entered into a License Agreement (the "R Tree License Agreement") with R Tree Innovations LLC ("R Tree") that provides the Company with a worldwide license to develop and commercialize R Tree's proprietary intellectual property related to its Epicage interbody fusion device and related instrumentation. The financial terms of the R Tree License Agreement include: (i) a cash payment of $0.8 million and the issuance of $0.5 million of the Company's common stock following the execution of the R Tree License Agreement; (ii) development and sales milestone payments in cash that could begin to be achieved and paid in 2013; and (iii) a royalty payment based on net sales of licensed products. During the third quarter of 2010, the Company recorded an intangible asset of $1.3 million following the execution of the R Tree License Agreement. In November 2012, the Company and R Tree entered into an amendment to the R Tree License Agreement (the "R Tree Amendment"). In connection with the R Tree Amendment, the Company made a cash payment of $0.3 million and issued $0.2 million of its common stock to R Tree. The total consideration of $0.5 million was recorded as an intangible asset. The Company is amortizing the intangible asset over seven years, the estimated life of the product. The total number of shares of common stock, which were issued in accordance with the R Tree License Agreement and the R Tree Amendment was 367,044 . In October 2013, another milestone was reached and the Company made a $0.3 million cash payment and issued $0.2 million worth of its common stock to R Tree. The total consideration of $0.5 million was recorded as an intangible asset.

Biologic Supply Agreement

In June 2015, the Company entered into an exclusive distribution agreement with a third party supplier pursuant to which the Company acquired exclusive worldwide distribution rights to market a synthetic biologic product under the Company's own brand name (the "Biologic Supply Agreement"). The Biologic Supply Agreement requires the Company to make minimum payments to the third party supplier for the Company's worldwide distribution rights under the agreement to remain exclusive.

Asset Purchase Agreement

In July 2014, the Company entered into an asset purchase and product development services agreement (the "Asset Agreement") whereby the Company purchased rights to the conceptual design for an intervertebral implant device. The financial terms of the Agreement include payments in cash and the Company's common stock upon achievement of various milestones. The Company accounted for this arrangement as an asset acquisition. In the year ended December 31, 2014, the Company made cash payments totaling $0.2 million and issued 72,992 shares of the Company's common stock valued at $0.1 million . The Company recognized the cash and stock payments of $0.3 million as in-process research and development expense in the year ended December 31, 2014 . Under the terms of the Asset Agreement as amended in 2015 the Company was obligated to pay $0.2 million cash compensation and issue 72,992 shares of the Company's common stocks valued at less than $0.1 million . The Company expensed $0.3 million as in-process research and development in the year ended December 31, 2015 .

5. Debt

MidCap Loan and Security Agreement

On August 30, 2013, the Company entered into the Amended Credit Facility with MidCap. The Amended Credit Facility amended and restated the prior credit facility that the Company had with MidCap (the "Prior Credit Facility"). Pursuant to the Amended Credit Facility, the Company increased the borrowing limit from $50 million to $73 million and extended the maturity to August 2016 . In July 2015, the Company further amended the Amended Credit Facility to provide for an additional term loan of $5 million . As of December 31, 2015, the Amended Credit Facility consisted of a $38 million term loan, $28 million of which was drawn at closing, the remaining $5 million of which was drawn in April 2014, a $5 million term loan drawn in July 2015 and a revolving line of credit with a maximum borrowing base of $40 million , of which $28.8 million was outstanding at December 31, 2015 . The Company used the term loan proceeds of $28 million drawn at closing to repay a portion of the outstanding balance on the prior revolving line of credit.

The term loan interest rate is priced at the London Interbank Offered Rate ("LIBOR") plus 8.0% , subject to a 9.5% floor, and the revolving line of credit interest rate bears interest at LIBOR plus 6.0% , reset monthly. At December 31, 2015 , the revolving line of credit carries an interest rate of 6.2% and the term loan carries an interest rate of 9.5% . The borrowing base is determined, from time to time, based on the value of domestic eligible accounts receivable and domestic eligible inventory. As collateral for the Amended Credit Facility, the Company granted MidCap a security interest in substantially all of its assets, including all accounts receivable and all securities evidencing its interests in its subsidiaries. In addition to monthly payments of interest, monthly repayments of $0.3 million of the principal for the term loan were made beginning in October 2013, increasing to $0.5 million beginning in October 2014, and are due through maturity, with the remaining principal due upon maturity.

In connection with the execution of the Amended Credit Facility, the Company incurred approximately $0.4 million in costs, which were capitalized as debt issuance costs within the consolidated balance sheet as of December 31, 2014 . At December 31, 2015 , $0.2 million re mains as unamortized debt issuance costs related to the prior and Amended Credit Facility within the consolidated balance sheet, which will be amortized over the remaining term of the Amended Credit Facility.

In February 2013, the Company and MidCap entered into a first amendment to the Credit Facility (the "First Amendment to the Credit Facility”). The First Amendment to the Credit Facility allowed the Company to exclude payments related to an acquisition and a settlement agreement from calculation of the fixed charge coverage ratio and the senior leverage ratio. In conjunction with the First Amendment to the Credit Facility, the Company paid MidCap a fee of $0.1 million .

On March 17, 2014, the Company entered into a first amendment to the Amended Credit Facility with MidCap (the "First Amendment to the Amended Credit Facility"). Under the First Amendment to the Amended Credit Facility, MidCap gave the Company its consent to enter into the Facility Agreement and make settlement payments in connection with the Orthotec litigation. The First Amendment to the Amended Credit Facility also added a total leverage ratio financial covenant.

The Amended Credit Facility includes traditional lending and reporting covenants including a fixed charge coverage ratio, a senior leverage ratio and a total leverage ratio to be maintained by the Company. The First Amendment to the Amended Credit Facility added a total leverage ratio financial covenant.The Amended Credit Facility also provides for several event of default provisions, such as payment default and insolvency conditions, which could cause interest to be charged at a rate which is up to five percentage points above the rate effective immediately before the event of default or result in MidCap’s right to declare all outstanding obligations immediately due and payable.

The Company was in compliance with all of the covenants of the Amended Credit Facility as of December 31, 2015 , except for the non-compliance disclosed in Note 1. The Company has obtained a waiver from MidCap to cure the breach of the fixed charge coverage ratio covenant for each of June, August, September, October, November and December of 2015 and

January 2016. There is no assurance that the Company will be in compliance with the financial covenants of the Amended Credit Facility in the future.

During the year ended December 31, 2015 , the Company repaid $144.6 million and drew an additional $141.6 million on its working capital line of credit under the Amended Credit Facility. The balance of the line of credit and the term loan as of December 31, 2015 and 2014 was $28.8 million and $28.0 million , respectively. Amortization of the debt discount and debt issuance costs, accretion of the finance charge and non-cash extinguishment of debt costs, which were recorded as non-cash interest expense, totaled $0.3 million , $0.3 million and $0.2 million for the years ended December 31, 2015 , 2014 and 2013 , respectively. Interest expense for the term loans and the Company's working capital line of credit, excluding debt discount and debt issuance cost amortization, accretion of the additional finance charge and extinguishment of debt costs, totaled $5.3 million , $5.3 million and $3.6 million for the years ended December 31, 2015 , 2014 and 2013 , respectively.

On March 11, 2016, the Company entered into a third amendment and waiver to the Amended Credit Facility with MidCap (the "Third Amendment to the Amended Credit Facility"). The Third Amendment to the Amended Credit Facility extends the maturity date of the Amended Credit Facility from August 30, 2016 to December 31, 2016 and contains an amendment fee in the amount of $0.5 million , which is due and payable at the earlier of the termination of the Amended Credit Facility or the maturity date. The Third Amendment also contains a waiver of the December 2015 defaults under the Facility Agreement, provides a waiver for the fixed charge coverage ratio for January 2016 and eliminates the fixed charge coverage ratio covenant for February 2016.

Deerfield Facility Agreement

On March 17, 2014, the Company entered into the Facility Agreement with Deerfield, pursuant to which Deerfield agreed to loan the Company up to $50 million , subject to the terms and conditions set forth in the Facility Agreement. Under the terms of the Facility Agreement, the Company had the option, but was not required, upon certain conditions to draw the entire amount available under the Facility Agreement, at any time until January 30, 2015 (the "Draw Period"), provided that the initial draw be used for a portion of the payments made in connection with the Orthotec settlement described in Note 6 below. Following such initial draw down, the Company was permitted to draw down additional amounts under the Facility Agreement up to an aggregate $15 million for working capital or general corporate purposes in $2.5 million increments until the end of the Draw Period. The Company agreed to pay Deerfield, upon each disbursement of funds under the Facility Agreement, a transaction fee equal to 2.5% of the principal amount of the funds disbursed. Amounts borrowed under the Facility Agreement bear interest at a rate of 8.75% per annum and are payable on the third, fourth and fifth anniversary date of the first amount borrowed under the Facility Agreement, with the final payment due on March 20, 2019.

In connection with the execution of the Facility Agreement on March 17, 2014, the Company issued to Deerfield warrants to purchase an aggregate of 6,250,000 shares of the Company's common stock (the "Initial Warrants") (See Note 8). Additionally, the Company agreed that upon each disbursement under the Facility Agreement, the Company would issue to Deerfield warrants to purchase up to 10,000,000 shares of the Company's common stock, in proportion to the amount of draw compared to the total $50 million facility (the "Draw Warrants") (See Note 8).

On March 20, 2014, the Company made an initial draw of $20.0 million under the Facility Agreement and received net proceeds of $19.5 million to fund the portion of the Orthotec settlement payment obligations that were due in 2014. The $0.5 million transaction fee was recorded as a debt discount and is being amortized over the term of the draw, which ends March 20, 2019. In connection with this borrowing, the Company issued Draw Warrants to purchase 4,000,000 shares of common stock, which were valued at $4.7 million and recorded as a debt discount and is being amortized over the term of the draw. Additionally, $2.3 million of the value of the Initial Warrants was reclassified as a debt discount and is being amortized through interest expense over the term of the debt using the effective interest method.

On November 21, 2014, the Company made a second draw of $6.0 million under the Facility Agreement and received net proceeds of $5.9 million to fund the portion of the Orthotec settlement payments through 2016. The $0.2 million transaction fee was recorded as a debt discount and is being amortized over the remaining term of the draw, which ends March 20, 2019. In connection with this borrowing, the Company issued Draw Warrants to purchase 1,200,000 shares of common stock, which were valued at $0.9 million and recorded as a debt discount and is being amortized over the term of the debt using the effective interest method.

On July 10, 2015, the Company entered into a First Amendment to the Facility Agreement (the "Facility Agreement First Amendment"), with Deerfield. The Facility Agreement First Amendment permitted the Company, among other things, to enter into and borrow the additional $5 million under the term loan in July 2015 under the Second Amendment to the Amended Credit Facility.

As of December 31, 2015 , Orthotec settlement payments of $23.0 million have been made, leaving remaining proceeds from the funds borrowed under the Facility Agreement of $2.4 million . These proceeds are classified as short-term restricted cash, as their use is limited by the terms of the Facility Agreement to the payments of amounts due under the Orthotec litigation settlement agreement. Additionally, a payment of $1.1 million was made on January 1, 2016. The amounts borrowed under the Facility Agreement, which total $26.0 million in principal as of December 31, 2015 , are due in three equal annual payments beginning March 20, 2017. Additionally, $0.2 million of the value of the Initial Warrants was reclassified as a debt discount and is being amortized through interest expense over the term of the debt using the effective interest method.

The Facility Agreement contains various representations and warranties, and affirmative and negative covenants, customary for financings of this type, including restrictions on the ability of the Company and its subsidiaries to incur additional indebtedness or liens on its assets, except as permitted under the Facility Agreement. As security for our repayment of our obligations under the Facility Agreement, the Company granted to Deerfield a security interest in substantially all of our property and interests in property, which is subordinated to the security interest granted under the Amended Credit Facility. As a result of the Company's non-compliance with the MidCap fixed charge coverage ratio covenant, the Company was in cross-default of the Facility Agreement, for which the Company received a waiver from Deerfield for the months of June, August, September, October, November and December of 2015. There is no assurance that the Company will be in compliance with the financial covenants of the Amended Credit Facility in the foreseeable future, which would result in a cross-default under the Facility Agreement in which case Deerfield would have the right to call the debt outstanding under the Facility Agreement due immediately. Accordingly, the amounts borrowed under the Facility Agreement are presented on the consolidated balance sheet as of December 31, 2015 under current liabilities, net of unamortized issuance discount.

On February 5, 2016, the Company entered into a Limited Waiver and Second Amendment to the Facility Agreement (the “Second Amendment”) with Deerfield. The Second Amendment increases the interest rate under the Facility Agreement from 8.75% per annum to 14.75% per annum. In addition, the Second Amendment provides that the Company may elect to have (i) until August 30, 2016, six percent (6%), and (ii) thereafter, three percent (3%), in each case, of the interest on the outstanding principal amount under the Facility Agreement paid in kind, which would be added to the outstanding principal amount under the Facility Agreement and bear interest at the interest rate of 14.75% per annum (the “PIK Interest”). All accrued and unpaid PIK Interest is due and payable when the outstanding amounts under the Facility Agreement are due and payable thereunder or are fully repaid, whichever occurs first. The Second Amendment also contains an amendment fee in the amount of $0.6 million , which is due and payable in installments of $0.2 million on each of the third, fourth and fifth anniversaries of the Facility Agreement; provided, that all unpaid amendment fees shall be due and payable when the outstanding amounts under the Facility Agreement are due and payable or are fully repaid, whichever occurs first. The Second Amendment also changes the date March 31, 2017 to March 31, 2018, as the date through which the Company must pay interest in the event the Company prepays amounts outstanding under the Facility Agreement prior to such date. The Second Amendment also contains a waiver of the defaults under the Facility Agreement discussed in Note 1.

Other Debt Agreements

The Company has various capital lease arrangements. The leases bear annual interest at rates ranging from 6.6% to 9.6% , are generally due in monthly principal and interest installments, are collateralized by the related equipment, and have various maturity dates through September 2018 .

Long-term debt consists of the following (in thousands):

	December 31,	
	2015	2014
Amended Credit Facility with MidCap	$ 56,799	$ 60,390
Facility Agreement with Deerfield	26,000	26,000
Note payable related to software license purchases	189	250
Financing agreements for premiums on insurance policies	1,599	1,580
Total	84,587	88,220
Add: capital leases (See Note 6)	1,277	1,784
Less: debt discount	(5,279)	(7,331)
Total	80,585	82,673
Less: current portion of long-term debt	(80,105)	(8,076)
Total long-term debt, net of current portion	$ 480	$ 74,597

Principal payments on debt are as follows as of December 31, 2015 (in thousands):

Year Ending December 31,	
2016 [1]	$ 58,587
2017 [1]	8,667
2018 [1]	8,667
2019 [1]	8,666
Total	84,587
Add: capital lease principal payments	1,277
Less: debt discount	(5,279)
Total	80,585
Less: current portion of long-term debt [1]	(80,105)
Long-term debt, net of current portion	$ 480

[1] The amounts above are presented based on the contractual payment schedule in each of the respective agreements. However, the debt balances under the Amended Credit Facility and Facility Agreement were callable as of December 31, 2015 due to the event of default (See Note 1) and therefore, are presented as a current liability in the consolidated balance sheet as of December 31, 2015.

6. Commitments and Contingencies

Leases

During 2008, the Company entered into a lease agreement and sublease agreement in order to consolidate the use and occupation of its then existing premises into two adjacent facilities, as described below. The Company also leases certain equipment and vehicles under operating leases which expire on various dates through 2018, and certain equipment under capital leases which expire on various dates through 2017.

In February 2008, the Company entered into a sublease agreement (the “Sublease”), for office, engineering, and research and development space. The Sublease term commenced May 2008 and ended on January 31, 2016. The Company renewed this Sublease in January 2016 with a commitment through July 2021 .

The Company was obligated under the Sublease to pay base rent and certain operating costs and taxes for the building. Monthly base rent payable by the Company was approximately $80,500 during the first year of the Sublease, increasing annually at a fixed annual rate of 2.5% to approximately $93,500 per month in the final year of the Sublease. The Company's rent was abated for months one through seven of the Sublease. At the sublease inception, the Company paid a security deposit in the amount of approximately $93,500 .

In March 2008, the Company entered into a lease agreement (the "Lease") for additional office, engineering, research and development and warehouse and distribution space. The Lease term commenced on December 1, 2008 and ends on January 31, 2017. The Company is obligated under the Lease to pay base rent and certain operating costs and taxes for the building. The monthly base rent payable by the Company was approximately $73,500 during the first year of the Lease, increasing annually at a fixed annual rate of 3.0% to approximately $93,000 per month in the final year of the Lease. The Company's rent was abated for the months two through eight of the term of the Lease in the amount of $38,480 . At the lease inception, the Company paid a security deposit in the amount of approximately $293,200 consisting of cash and two letters of credit. In the event the Company achieves certain financial milestones, the lessor is obligated to return a portion of the security deposit to the Company. The lessor provided a tenant improvement allowance of $1.1 million to assist with the configuration of the facility to meet the Company's business needs.

Future minimum annual lease payments under the Company's operating and capital leases are as follows (in thousands):

Year ending December 31,	Operating	Capital
2016	$ 2,268	$ 877
2017	823	437
2018	304	68
2019	170	—
2020	5	—
Thereafter	—	—
	$ 3,570	1,382
Less: amount representing interest		(105)
Present value of minimum lease payments		1,277
Current portion of capital leases		(797)
Capital leases, less current portion		$ 480

Rent expense under operating leases for the years ended December 31, 2015 , 2014 and 2013 was $3.1 million , $3.4 million and $3.8 million , respectively.

Litigation

The Company is and may become involved in various legal proceedings arising from its business activities. While management is not aware of any litigation matter that in and of itself would have a material adverse impact on the Company's consolidated results of operations, cash flows or financial position, litigation is inherently unpredictable, and depending on the nature and timing of a proceeding, an unfavorable resolution could materially affect the Company's future consolidated results of operations, cash flows or financial position in a particular period. The Company assesses contingencies to determine the degree of probability and range of possible loss for potential accrual or disclosure in our consolidated financial statements. An estimated loss contingency is accrued in the Company's consolidated financial statements if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. Because litigation is inherently unpredictable and unfavorable resolutions could occur, assessing contingencies is highly subjective and requires judgments about future events. When evaluating contingencies, the Company may be unable to provide a meaningful estimate due to a number of factors, including the procedural status of the matter in question, the presence of complex or novel legal theories, and/or the ongoing discovery and development of information important to the matters. In addition, damage amounts claimed in litigation against the Company may be unsupported, exaggerated or unrelated to reasonably possible outcomes, and as such are not meaningful indicators of the Company's potential liability.

Royalties

The Company has entered into various intellectual property agreements requiring the payment of royalties based on the sale of products that utilize such intellectual property. These royalties primarily relate to products sold by Alphatec Spine and are calculated either as a percentage of net sales or in one instance on a per-unit sold basis. Royalties are included on the accompanying consolidated statement of operations as a component of cost of revenues.

7. Redeemable Preferred Stock

The Company issued shares of redeemable preferred stock in connection with its initial public offering in June 2006. As of December 31, 2015 , the redeemable preferred stock carrying value was $23.6 million and there were 20 million shares of redeemable preferred stock authorized. The redeemable preferred stock is not convertible into common stock but is redeemable at $9.00 per share, (i) upon the Company's liquidation, dissolution or winding up, or the occurrence of certain mergers, consolidations or sales of all or substantially all of the Company's assets, before any payment to the holders of the Company's common stock, or (ii) at the Company's option at any time. Holders of redeemable preferred stock are generally not entitled to vote on matters submitted to the stockholders, except with respect to certain matters that will affect them adversely as a class, and are not entitled to receive dividends. The carrying value of the redeemable preferred stock was $7.11 per share at December 31, 2015 and 2014 .

The redeemable preferred stock is presented separately from stockholders' (deficit) equity in the consolidated balance sheets and any adjustments to its carrying value up to its redemption value of $9.00 per share will be reported as a dividend.

8. Equity Transactions

Deerfield Warrants

In connection with the execution of the Facility Agreement, on March 17, 2014, the Company issued to Deerfield the Initial Warrants to purchase an aggregate of 6,250,000 shares of the Company's common stock immediately exercisable at an exercise price equal to $1.39 expiring on March 17, 2020. The number of shares of common stock into which the Initial Warrants are exercisable and the exercise price will be adjusted to reflect any stock splits, payment of stock dividends, recapitalizations, reclassifications or other similar adjustments in the number of outstanding shares of the Company's common stock. The warrants have the same dividend rights to the same extent as if the warrants had been exercised for shares of common stock.

The Company agreed that upon each disbursement borrowing under the Facility Agreement, the Company would issue to Deerfield Draw Warrants to purchase up to an aggregate of 10,000,000 shares of the Company's common stock, at an exercise price equal to the lesser of the Initial Warrant exercise price or the average daily volume weighted average price per share of the Company's common stock for the 15 days following the request for borrowing. The number of Draw Warrants issued for each draw is in proportion to the amount of draw compared to the total $50 million facility.

The Initial Warrants were valued on March 17, 2014 using a Black-Scholes option pricing model that resulted in a value of $5.7 million , which was recorded as a current liability with an offset to a deferred charge asset and will be amortized on a straight line basis through interest expense over the term of the Facility Agreement commitment period ended January 30, 2015. To the extent the Company draws on the $50 million Facility Agreement, a proportionate amount of the unamortized current deferred charge are reclassified as debt discount and are being amortized through interest expense over the term of the debt using the effective interest method.

On March 20, 2014, the Company made an initial draw of $20 million under the Facility Agreement and received net proceeds of $19.5 million to fund the portion of the Orthotec settlement payment obligations that were due in 2014. In connection with this borrowing, the Company issued Draw Warrants to purchase 4,000,000 shares of common stock at an exercise price of $1.39 . The Draw Warrants were valued at $4.7 million using the Black-Scholes option pricing model, which was recorded as a current liability with an offset to debt discount.

On November 21, 2014, the Company made a second draw of $6 million under the Facility Agreement and received net proceeds of $5.9 million to fund the portion of the Orthotec settlement payments payable through 2016. The $0.2 million transaction fee was recorded as a debt discount and is being amortized over the remaining term of the draw, which ends March 20, 2019. In connection with this borrowing, the Company issued Draw Warrants to purchase 1,200,000 shares of common stock at an exercise price of $1.39 , which were valued at $0.9 million and recorded as a debt discount and is being amortized over the term of the draw.

As of December 31, 2015 , the outstanding Initial Warrants and Draw Warrants to purchase an aggregate of 11,450,000 shares of common stock outstanding were revalued to their fair value with a gain recorded to to other income (expense) of $8.0 million for the year ended December 31, 2015 . The warrant liability of $0.7 million is recorded as common stock warrant liabilities within current liabilities on the consolidated balance sheet as of December 31, 2015 .

At December 31, 2015 , the Company's outstanding warrants were valued using the Black-Scholes option pricing model. This is a Level 3 measurement using the following assumptions:

	December 31, 2015
Risk-free interest rate	1.3%
Dividend yield	—%
Expected volatility	70%
Expected life (years)	4.3

SVB Warrants

In December 2011, in connection with the third amendment to former credit facility with the SiliconValley Bank ("SVB"), finance charges totaling $0.2 million were waived in exchange for the issuance to SVB of warrants to purchase 93,750 shares of the Company’s common stock. The warrants are immediately exercisable, can be exercised through a cashless exercise, have an exercise price of $1.60 per share and have a 10 -year term.

9. Stock Benefit Plans and Stock-Based Compensation

In 2005, the Company adopted its 2005 Employee, Director, and Consultant Stock Plan (the “2005 Plan”). The 2005 Plan allows for the grant of options, restricted stock and restricted stock unit awards to employees, directors, and consultants of the Company. Since its adoption, the 2005 Plan has had 17,400,000 shares of common stock reserved for issuance. The Board of Directors determines the terms of the restricted stock, the terms of the restricted stock units, and the terms of the stock options, including the number of shares for which each option is granted, the exercise price, vesting schedule, expiration date, and whether restrictions will be imposed on the shares subject to options. Options granted under the 2005 Plan expire no later than 10 years from the date of grant (5 years for incentive stock options granted to holders of more than 10% of the Company’s voting stock). Options generally vest over a four year period and may be immediately exercisable upon a change of control of the Company. The exercise price of incentive stock options may not be less than 100% of the fair value of the Company’s common stock on the date of grant. The exercise price of any option granted to a 10% stockholder may be no less than 110% of the fair value of the Company’s common stock on the date of grant. At December 31, 2015 , approximately 3.8 million shares of common stock remained available for issuance under the 2005 Plan. The 2005 Plan will expire in April 2016.

On July 30, 2014, the Company amended the 2005 Plan (the “Plan Amendment”) to authorize the granting of time-based and performance-based restricted stock units, which represent a contingent entitlement to receive shares of the Company’s common stock, to employees, directors and consultants of the Company under the Plan. Prior to the Plan Amendment, the Plan provided solely for the granting of stock options and restricted stock.

Stock Options

A summary of the Company's stock option activity under the 2005 Plan and related information is as follows (in thousands, except as indicated and per share data):

	Shares	Weighted average exercise price	Weighted average remaining contractual term (in years)	Aggregate intrinsic value
Outstanding at December 31, 2014	8,267	$ 2.08	7.35	$ 71
Granted	457	$ 1.28	—	—
Exercised	(5)	$ —	—	—
Forfeited	(1,081)	$ 2.10	—	—
Outstanding at December 31, 2015	7,638	$ 2.03	6.36	$ —
Options vested and exercisable at December 31, 2015	5,170	$ 2.25	5.63	$ —
Options vested and expected to vest at December 31, 2015	7,304	$ 2.05	6.25	$ —

The weighted-average grant-date fair value per share of stock options granted during the years ended December 31, 2015 , 2014 and 2013 was $1.28 , $0.81 and $1.09 , respectively. The aggregate intrinsic value of options at December 31, 2015 is based on the Company's closing stock price on that date of $0.30 per share.

As of December 31, 2015 , there was $2.4 million of unrecognized compensation expense for stock options and awards which is expected to be recognized on a straight-line basis over a weighted average period of approximately 1.8 years. The total intrinsic value of options exercised was immaterial for the years ended December 31, 2015 , 2014 and 2013 .

Restricted Stock Awards

The following table summarizes information about the restricted stock awards activity (in thousands, except as indicated and per share data):

	Shares	Weighted average grant date fair value	Weighted average remaining recognition period (in years)
Unvested at December 31, 2014	690	$ 1.60	1.83
Awarded	291	$ 1.36	
Vested	(243)	$ 1.44	
Forfeited	(5)	$ 1.80	
Unvested at December 31, 2015	733	$ 1.55	0.88

The weighted average fair value per share of awards granted during the years ended December 31, 2015 , 2014 and 2013 was $1.36 , $1.32 and $1.97 , respectively.

Performance-Based Restricted Stock Units

In July 2014, the Company granted 932,000 performance-based restricted stock units ("PSUs") to certain employees under its 2005 Plan. The PSUs vest based upon the Company's achievement of certain performance goals over the period from July 1, 2014 through December 31, 2016. The number of PSUs that may vest varies between 0% - 200% based on the achievement of such goals. The PSUs were valued at $1.42 per share based on the closing price of the Company's common stock on the date of grant.

In February 2015, the Company granted 1,854,000 PSUs to certain employees under its 2005 Plan. The PSUs vest based upon the Company's achievement of certain performance goals over the period from January 1, 2015 through December 31, 2017. The number of PSUs that may vest varies between 0% - 200% based on the achievement of such goals. The PSUs were valued at $1.35 per share based on the closing price of the Company's common stock on the date of grant.

For purposes of measuring compensation expense, the amount of PSUs ultimately expected to vest is estimated at each reporting date based on management's expectations regarding the relevant performance criteria. The related compensation expense was $ 0.2 million , $ 0.2 million and $0.0 million for the years ended December 31, 2015 , 2014 and 2013 , respectively. The recognition of compensation expense associated with PSUs requires judgment in assessing the probability of meeting the performance goals, as well as defined criteria for assessing achievement of the performance-related goals (in thousands, except as indicated and per share data):

	Shares		Weighted average grant date fair value	Weighted average remaining recognition period (in years)
Unvested at December 31, 2014	854	$	1.42	2.00
Awarded	1,854	$	1.34	
Vested	—	$	—	
Forfeited	(338)	$	1.36	
Unvested at December 31, 2015	2,370	$	1.37	1.67

Elite Medical Holdings and Pac 3 Surgical Collaboration Agreement

In October 2013, the Company entered into a three -year collaboration agreement with Elite Medical Holdings, LLC and Pac 3 Surgical Products, LLC (the "Collaborators") (the "Collaboration Agreement") to provide consultation services to assist the Company in the development of its products and its products in development. Under the terms of the collaboration agreement, the Company will gain exclusive rights to the use of all intellectual property developed by the collaborators. The Company agreed to make three annual payments to the collaborator as sole consideration for services provided, totaling an aggregate of up to $8 million , paid in common stock of Alphatec Holdings at a per share price of $1.95 , which was equal to the average NASDAQ closing price of the common stock on the five days leading up to and including the date of signing the Collaboration Agreement. The actual number of shares issued each year will be determined by the fair market value of the services provided over the prior 12 months.

On November 2, 2015, the Company entered into a first amendment (the "First Amendment") to the Collaboration Agreement. Pursuant to the First Amendment, in exchange for a "lock up" restriction on selling or transferring each tranche of shares issued to the Collaborators and a maximum value cap, as discussed below, the Company has agreed to make a cash payment to the Collaborators in the event that the shares in such tranche do not have a minimum amount of value based on the market value of the Company's common stock at the end of the lock up period applicable to such tranche of shares. In addition, in the event that at the end of a lock up period the value of a tranche of shares issued to the Collaborators exceeds a certain amount, the Collaborators have agreed to forfeit shares back to the Company, so as to limit the maximum amount of value derived from such shares at the end of a lock up period. Pursuant to the First Amendment, the shares issued to the Collaborators in each of 2014, 2015 and 2016 are subject to a lock up that lasts until the first quarter of 2017, 2018 and 2019, respectively. The valuation of each tranche of shares occurs at the end of the applicable lock up period.

Based on the closing price of the Company's common stock on December 31, 2015, the Company has recorded a guaranteed compensation liability of $ 4.9 million for shares of the Company's common stock previously issued under the Collaboration Agreement, with $2.2 million payable in January of 2017, $2.2 million payable in January of 2018 and $0.5 million payable in January of 2019. This liability is presented under other long-term liabilities in the consolidated balance sheet. In addition, based on the closing price of the Company's common stock on December 31, 2015, the Company would have an additional cash liability of $2.1 million for shares of the Company's common stock issuable under the remaining terms of the Collaboration Agreement (assuming that all of the shares issuable under the Collaboration Agreement are issued) payable in 2019 in addition to the amount accrued above. If the Collaborators elect to sell, assign or transfer: (i) more than 20% of the shares issued to the Collaborators prior to the first valuation date; or (ii) any of the Collaborator shares still subject to a lockup after the first valuation date, all of the aforementioned restrictions on transfer and valuation minimums and maximums are null and void.

As of December 31, 2015, the Company has issued 2,780,787 shares of its common stock under this agreement and recorded expense of $4.9 million , $1.9 million and $0.5 million in the years ended December 31, 2015, 2014 and 2013, respectively, which is included in research and development expenses.

Common Stock Reserved for Future Issuance

Common stock reserved for future issuance consists of the following (in thousands):

	December 31, 2015
Stock options outstanding	7,638
Awards outstanding	733
Performance restricted stock units outstanding	2,370
Warrants outstanding	11,544
Authorized for future grant under 2005 Plan	3,840
	26,125

10. Income Taxes

The components of the pretax loss from operations for the years ended December 31, 2015 , 2014 and 2013 are as follows (in thousands):

	Year Ended December 31,		
	2015	2014	2013
U.S. Domestic	$ (90,342)	$ (8,106)	$ (9,264)
Foreign	(87,653)	(3,689)	(69,784)
Pretax loss from operations	$ (177,995)	$ (11,795)	$ (79,048)

The components of the provision for income taxes are presented in the following table (in thousands):

	Year Ended December 31,		
	2015	2014	2013
Current income tax expense (benefit):			
Federal	$ 221	$ —	$ (21)
State	149	145	186
Foreign	634	526	2,525
Total current	1,004	671	2,690
Deferred income tax (benefit) expense:			
Federal	(1,363)	238	229
State	(154)	24	15
Foreign	1,194	154	245
Total deferred	(323)	416	489
Total income tax expense	$ 681	$ 1,087	$ 3,179

The provision for income taxes differs from the amount of income tax determined by applying the applicable U.S. statutory federal income tax rate to pretax income as a result of the following differences:

	December 31,		
	2015	2014	2013
Federal statutory rate	(35.0)%	(35.0)%	(35.0)%
Adjustments for tax effects of:			
State taxes, net	(0.3)	(1.1)	(0.1)
Stock-based compensation	0.3	6.2	0.5
Foreign taxes	0.2	3.4	1.1
Tax credits	(0.3)	(3.3)	(0.4)
Deemed foreign dividend	0.1	—	—
Fair market value adjustments	(1.6)	(7.6)	—
Intercompany debt forgiveness and other permanent adjustments	0.6	3.1	9.5
Goodwill impairment	29.1	—	—
Tax rate adjustment	0.4	0.4	0.2
Uncertain tax positions	(0.1)	5.3	2.7
Other	3.1	0.2	(0.4)
Valuation allowance	3.8	37.5	25.9
Effective income tax rate	0.3 %	9.1 %	4.0 %

The 2015 provision for income taxes primarily consists of goodwill impairment, an increase in unrecognized tax benefits associated with the European operations, tax expense related to non-income based state tax in the U.S., an increase in the valuation allowance for Japanese deferred tax assets and current year income in Japan and Brazil.

Significant components of the Company's deferred tax assets and liabilities as of December 31, 2015 and 2014 are as follows (in thousands):

	December 31,	
	2015	2014
Deferred tax assets:		
Allowances and reserves	$ 955	$ 818
Accrued expenses	2,331	3,674
Inventory reserves	9,631	8,532
Net operating loss carryforwards	43,427	41,965
Property and equipment	2,420	1,976
Stock-based compensation	2,377	2,168
Legal settlement	11,806	1,204
Goodwill	3,362	—
Income tax credit carryforwards	3,235	2,218
Total deferred tax assets	79,544	62,555
Valuation allowance	(63,612)	(58,781)
Total deferred tax assets, net of valuation allowance	15,932	3,774
Deferred tax liabilities:		
Investment in foreign partnership	15,467	—
Intangible assets	465	2,881
Goodwill	—	1,518
Total deferred tax liabilities	15,932	4,399
Net deferred tax assets (liabilities)	$ —	$ (625)

The realization of deferred tax assets is dependent on the Company's ability to generate sufficient taxable income in future years in the associated jurisdiction to which the deferred tax assets relate. As of December 31, 2015 , a valuation allowance of $63.6 million has been established against the net deferred tax assets as realization is uncertain. The deferred tax liabilities consist primarily of the excess of the book value over the tax basis of their investment in the foreign partnership.

In determining the need for a valuation allowance the Company considers all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax planning strategies, and recent financial performance. Based on the review of all positive and negative evidence, including a three year cumulative pre-tax loss, the Company determined that a full valuation allowance should be recorded against all deferred tax assets at December 31, 2015 .

At December 31, 2015 , the Company has unrecognized tax benefits of $10.4 million of which $8.9 million will affect the effective tax rate if recognized when the Company no longer has a valuation allowance offsetting its deferred tax assets.

The following table summarizes the changes to unrecognized tax benefits for the years ended December 31, 2015 , 2014 and 2013 (in thousands):

	Year ended December 31,		
	2015	2014	2013
Unrecognized tax benefit at the beginning of the year	8,861	7,835	5,897
Additions based on tax positions related to the current year	859	1,050	1,664
Additions based on tax positions related to the prior year	1,144	391	221
Reductions as a result of lapse of applicable statute of limitations	(76)	(40)	(20)
Reductions as a result of foreign exchange rates and other	(429)	(375)	73
Unrecognized tax benefits at the end of the year	$ 10,359	$ 8,861	$ 7,835

The Company believes it is reasonably possible it will not materially reduce its unrecognized tax benefits within the next 12 months .

The Company and its subsidiaries are subject to federal income tax as well as income tax of multiple state and foreign jurisdictions. With few exceptions, the Company is no longer subject to income tax examination by tax authorities in major jurisdictions for years prior to 2010. However, to the extent allowed by law, the taxing authorities may have the right to examine prior periods where net operating losses and tax credits were generated and carried forward, and make adjustments up to the amount of the carryforwards. The Company is not currently under examination by the Internal Revenue Service, foreign or state and local tax authorities.

The Company recognizes interest and penalties related to uncertain tax positions as a component of the income tax provision. As of December 31, 2015 , accrued interest and penalties were $1.2 million , which primarily relates to the uncertain tax positions of the Scient'x operations. During 2015 , there was an increase of $0.1 million in the accrued interest and penalties related to the uncertain tax positions of the Scient'x operations.

At December 31, 2015 , the Company had federal and state net operating loss carryforwards of $91.1 million and $90.4 million , respectively, expiring at various dates through 2035 . At December 31, 2015 , the Company had federal and state research and development tax credits of $3.3 million and $3.0 million , respectively. The federal research and development tax credits expire at various dates through 2035 , while the state credits do not expire. The Company had foreign net operating loss carryforwards of $37.6 million beginning to expire in 2018 . Utilization of the net operating loss and tax credit carryforwards may become subject to annual limitations due to ownership change limitations that could occur in the future as provided by Section 382 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), as well as similar state and foreign provisions. These ownership changes may limit the amount of the net operating loss and tax credit carryforwards that can be utilized annually to offset future taxable income.

The Company does not record U.S. income taxes on the undistributed earnings of its foreign subsidiaries based upon the Company's intention to permanently reinvest undistributed earnings to ensure sufficient working capital and further expansion of existing operations outside the United States. The undistributed earnings of the foreign subsidiaries as of December 31, 2015 are immaterial. In the event the Company is required to repatriate funds from outside of the United States, such repatriation would be subject to local laws, customs, and tax consequences. Determination of the amount of unrecognized deferred tax liability related to these earnings is not practicable.

Under current GAAP, in a classified statement of financial position, deferred tax assets and liabilities are separated into a current amount and a non-current amount on the basis of the classification of the related asset or liability for financial reporting. Deferred tax assets and liabilities that are not related to an asset or liability for financial reporting are classified according to the expected reversal date of the temporary difference. On November 20, 2015, the FASB issued Accounting Standards Update 2015-17, Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes which requires noncurrent classification of all deferred tax assets and liabilities for all public entities for annual periods beginning after December 15, 2016. Accounting Standards Update 2015-17 also provides for early adoption for all entities as of the beginning of an annual period. For the year ended December 31, 2015, the Company has elected to early adopt Accounting Standards Update 2015-17 and presents all of its deferred tax assets and liabilities as non-current for the period ended December 31, 2015. The Company has applied the Standard on a prospective basis. Therefore, the classification of deferred tax assets and liabilities in periods prior to the period ended December 31, 2015 has not been changed from the original presentation.

11. Segment and Geographical Information

Operating segments are defined as components of an enterprise for which separate financial information is available and evaluated regularly by the chief operating decision maker, or decision-making group, in deciding how to allocate resources and in assessing performance. The Company operates in one reportable business segment.

During the years ended December 31, 2015 , 2014 and 2013 , the Company operated in two geographic regions, consisting of the U.S. region and the International region. The International region consists of locations outside of the U.S. In the International region, sales in Japan for the years ended December 31, 2015 , 2014 and 2013 totaled $33.0 million , $31.9 million and $28.0 million , respectively, which represented greater than 10 percent of the Company's consolidated revenues for such years. For the years ended December 31, 2015 , 2014 and 2013 , sales in other individual countries included in the International region did not exceed 10 percent of consolidated revenues.

Revenues attributed to the geographic location of the customers were as follows (in thousands):

	Year Ended December 31,		
	2015	2014	2013
United States	$ 114,578	$ 137,060	$ 134,951
International	70,701	69,920	69,773
Total consolidated revenues	$ 185,279	$ 206,980	$ 204,724

Total assets by geographic region were as follows (in thousands):

	December 31,	
	2015	2014
United States	$ 97,967	$ 200,978
International	48,737	143,945
Total consolidated assets	$ 146,704	$ 344,923

12. Related Party Transactions

For the years ended December 31, 2015 , 2014 and 2013 , the Company incurred costs of less than $0.1 million , $0.2 million and $0.2 million , respectively, to Foster Management Company and HealthpointCapital, LLC for travel and administrative expenses. John H. Foster, who was one of the Company's directors until March 2, 2016 is a significant equity holder of HealthpointCapital, LLC, an affiliate of HealthpointCapital Partners, L.P. and HealthpointCapital Partners II, L.P., which are the Company's principal stockholders.

Indemnification Agreements

The Company has entered into indemnification agreements with certain of its directors, which are named defendants in the Orthotec litigation matter in New York (See Note 6). The indemnification agreements require the Company to indemnify these individuals to the fullest extent permitted by applicable law and to advance expenses incurred by them in connection with any proceeding against them with respect to which they may be entitled to indemnification by the Company. For the years ended December 31, 2015 , 2014 and 2013, the Company paid less than $0.1 million , less than $0.1 million and $1.7 million ,

respectively, in connection with the indemnification obligations of Scient’x and Surgiview, all of which was related to the Orthotec matter. (See Note 6).

13. Retirement Plan

The Company maintains an employee savings plan that qualifies as a deferred salary arrangement under Section 401(k) of the Internal Revenue Code. Under the savings plan, participating employees may contribute a portion of their pre-tax earnings, up to the Internal Revenue Service annual contribution limit. Additionally, the Company may elect to make matching contributions into the savings plan at its sole discretion of up to 4% of each individual’s compensation. Matching contributions vest after one year of service. The Company’s total contributions to the 401(k) plan were $0.6 million in each of the years ended December 31, 2015 , 2014 and 2013 .

14. Restructuring Activities

In 2013, the Company announced that Scient'x began a process to significantly restructure its business operations in France in an effort to improve operating efficiencies and rationalize its cost structure and in 2015 the Company iniitated plans to close its French operations. The restructuring included a reduction in Scient'x's workforce and closing of the manufacturing facilities in France. The Company has recorded total costs of $10.6 million through December 31, 2015, which includes employee severance, social plan benefits and related taxes, facility closing costs, manufacturing transfer costs, and contract termination costs. The Company has substantially completed the activities associated with the restructuring as of December 31, 2015 , and majority of the related liabilities have been settled.

In connection with the restructuring plan, the Company modified its estimate of inventory and instrument net book value at its Scient'x entities based on revised global demand. The Company recorded an additional inventory reserve of $4.9 million in the year ended December 31, 2013 which is included in cost of goods sold within the consolidated statements of operations.

On July 6, 2015, the Company announced a restructuring of its manufacturing operations in California in an effort to improve its cost structure. The restructuring includes a reduction in workforce and closing the California manufacturing facility. Restructuring liabilities are measured at fair value and recognized as incurred. The restructuring will be completed in 2016 and the Company estimates that it will incur termination benefits, accelerated depreciation, facility closing and other restructuring costs of up to $4 million . The Company incurred expenses of $2.2 million in the year ended December 31, 2015 related to these restructuring activities.

15. Cross Medical

On February 12, 2010, a complaint was filed in the U.S. District Court for the Central District of California, by Cross Medical Products, LLC, or Cross, (a subsidiary of Biomet), *Cross Medical Products, LLC v. Alphatec Spine, Inc.,* Case No. 8:10-cv-176-MRP -MLG, alleging that we breached a patent license agreement with Cross by failing to make certain royalty payments allegedly due under the agreement. Cross was seeking payment of prior royalties allegedly due from the Company’s sales of polyaxial screws and an order from the court regarding payment of future royalties by us. In its complaint, Cross alleged a material amount of damages were due to it as a result of our alleged breach of the patent license agreement.

In January 2011, we filed a complaint in the U.S. District Court for the Southern District of California against Biomet, Inc., or Biomet, alleging that Biomet’s TPS-TL products infringe one of our patents. On December 30, 2011, we reached a global settlement agreement of the pending lawsuits with Biomet and Cross. Under the terms of the settlement, all parties obtained a release of all claims that were the subject of the disputes. No party has admitted liability in connection with the settlement. The settlement also includes an amendment to the April 23, 2003 License Agreement.

As part of the settlement, we agreed to pay Cross an initial payment of $5 million , which was paid in January 2012. In addition to the initial payment, we agreed to make thirteen quarterly payments of $1 million beginning on August 1, 2012, with each subsequent payment due three months thereafter until the final payment in August 2015. The remaining cash obligations totaling $3 million were paid in 2015. In addition, pursuant to the settlement, the parties have exchanged covenants not to sue for patent infringement with respect to products that each respective company had on the market as of December 30, 2011.

16. Quarterly Financial Data (Unaudited)

The following financial information reflects all normal recurring adjustments, which are, in the opinion of management, necessary for a fair statement of the results of the interim periods. Summarized quarterly data for fiscal 2015 and 2014 are as follows (in thousands, except per share data):

	Year ended December 31, 2015			
	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Selected quarterly financial data:				
Revenue	$ 48,647	$ 46,633	$ 42,996	$ 47,003
Gross profit	32,943	27,527	28,479	31,135
Total operating expenses	31,801	30,354	193,427	36,941
Net loss	(4,561)	(3,947)	(160,265)	(9,903)
Net loss per basic share (1)	(0.05)	(0.04)	(1.61)	(0.10)
Net loss per diluted share (1)	(0.05)	(0.04)	(1.61)	(0.10)

	Year ended December 31, 2014			
	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Selected quarterly financial data:				
Revenue	$ 49,173	$ 53,167	$ 51,013	$ 53,627
Gross profit	33,294	36,120	36,306	37,690
Total operating expenses	37,996	34,279	34,574	34,717
Net loss	(6,673)	(2,895)	(3,041)	(273)
Net loss per basic share (1)	(0.07)	(0.03)	(0.03)	0.00
Net loss per diluted share (1)	(0.07)	(0.03)	(0.04)	(0.03)

(1) Basic and diluted net loss per share is computed independently for each of the quarters presented. Therefore, the sum of the quarterly per share amounts will not necessarily equal the total for the year.

SCHEDULE II—VALUATION AND QUALIFYING ACCOUNTS

	Allowance for Doubtful Accounts (1)	Reserve for Excess and Obsolete Inventories (2)
	(In thousands)	
Balance at December 31, 2012	$ 1,074	$ 17,222
Provision	404	11,652
Write-offs and recoveries, net	(430)	(4,928)
Balance at December 31, 2013	1,048	23,946
Provision	522	3,539
Write-offs and recoveries, net	(777)	(6,160)
Balance at December 31, 2014	793	21,325
Provision	584	2,159
Write-offs and recoveries, net	(315)	(3,854)
Balance at December 31, 2015	$ 1,062	$ 19,630

(1) The provision is included in selling expenses.
(2) The provision is included in cost of revenues.

Exhibit 10.24

STANDARD INDUSTRIAL LEASE

(Net)

CARLSBAD CORPORATE CENTER

5818 El Camino Real

H. G. FENTON PROPERTY COMPANY,

a California corporation

"Landlord"

and

ALPHATEC HOLDINGS, INC.,

a Delaware corporation

"Tenant"

The parties acknowledge that double underlined text and ~~lined-through text~~ are intentional changes in language and incorporated as a part of this Lease.

Exhibit 10.24

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Exhibit 10.24

INDEX OF DEFINED TERMS

Exhibit 10.24

STANDARD INDUSTRIAL LEASE - NET

THIS STANDARD INDUSTRIAL LEASE - NET (" **Lease** "), dated for reference purposes only November __, 2015, is made at San Diego, California, between H. G. FENTON PROPERTY COMPANY, a California corporation (" **Landlord** "), and ALPHATEC HOLDINGS, INC., a Delaware corporation (" **Tenant** ").

1. **BASIC LEASE PROVISIONS**

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1. **Premises**

: Approximately **76,693 rentable square feet** (" **RSF** ") of space located in the Building, as depicted on Exhibit A, and the exterior patio area immediately adjacent to the Building (the " **Premises** "). The address for the Premises is 5818 El Camino Real, Carlsbad, California 92121.

2. **Building**

: The single-story building in which the Premises is located at 5818 El Camino Real, Carlsbad, California 92121 (the " **Building** ").

3. **Project**

: The two (2) buildings, including all appurtenances and common area thereto, located at 5818 and 5830 El Camino Real, Carlsbad, California, 92008, consisting of approximately **150,173** rsf.

Term:	Sixty-six (66) full calendar months.
Commencement and Expiration Dates:	
Commencement Date:	February 1, 2016.
Expiration Date:	July 31, 2021.
Extension Option Period:	**Subject to the provisions set forth in Section 23**
Initial Monthly Base Rent:	$105,069.00 ($1.37 per RSF x 76,693 RSF)
Prepaid Base Rent:	None.
Adjustment to Monthly Base Rent:	

Months of Term	Base Rent	
2	$105,069.00	(conditionally abated, subject to provisions of Section 22)
3 - 12	$105,069.00	
13	$108,221.00	(conditionally abated, subject to provisions of Section 22)
14 - 24	$108,221.00	
25 - 36	$111,468.00	
37 - 48	$114,812.00	
49 - 60	$118,256.00	
61 - 66	$121,804.00	

Security Deposit Amount:	$121,804.00$121,804.00
Improvement Allowance:	$493,723.00 (subject to the provisions of Exhibit B) $510,008.45 subject to the provision of Exhibit B
Tenant's Share:	51.070% for all Operating Expenses other than Real Property Taxes and 51.070% for Real Property Taxes.

Permitted Use:	The Premises shall be used and occupied as corporate offices, general offices, engineering, research and development, warehousing and distribution, and light manufacturing. Research and development may include demonstrative surgical activities associated with the Tenant's spinal and orthopedic surgical products and for the storage and use of medical biological and other materials incidental to such activities, including without limitation, a specially equipped cadaver lab that includes radiographic equipment.
Guarantor(s):	None.
Broker(s):	Hughes Marino. Inc. (Tenant) DTZ (Landlord)
Parking:	Two Hundred and sixty-five (265) unreserved parking spaces.
Landlord's Address for Notice:	H. G. Fenton Company 7577 Mission Valley Road, Suite 200 San Diego, California 92108 Tel: (619) 400-0120 Fax: (619) 400-0111 Attention: Property Manager
Tenant's Address for Notice:	Alphatec Holdings, Inc. 5818 El Camino Real Carlsbad, California 92008 Tel: (858) Fax: (858) Attention: General Counsel
Addendum:	Sections 22, 23, 24

2. PREMISES.

1. **Lease of Premises** . Subject to all of the conditions set forth in this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises. Except as otherwise provided herein, this Lease is subject to: (i) if applicable, any recorded declaration of covenants, conditions and restrictions or other similar documents recorded against the Project as of the date of this Lease (the " **Declaration** "), all Mortgages (as defined in Section 17.1), and any other matters of record now affecting the Project (collectively with the Declaration and Mortgages, the " **Encumbrances** "); and (ii) all Laws (as defined in Section 6.2) affecting the Project, Building or the Premises. Landlord represents and warrants that, as of the date of this Lease, no part of the Project or the Premises is subject to a ground-leasehold interest. Landlord shall not enter into any amendments to the Encumbrances or enter into any new Encumbrances without the prior written consent of Tenant if and to the extent such amendments or new Encumbrances conflict with Tenant's Permitted Use, unreasonably interfere with Tenant's access to the Premises or materially reduce the parking ratio at the Project.

2. **Landlord's Reserved Rights** . Landlord reserves to itself the absolute right, without materially interfering with Tenant's use of the Premises for the Permitted Use, unless required to comply with applicable Laws: (i) to the use of the roof, the exterior surfaces of exterior walls and areas above and subterranean areas beneath the Premises, and (ii) to install, use, maintain and replace the Systems and Equipment (as defined in Section 4.2(e)(i)(A)) located within the Premises which serve other parts of the Project, in a manner and locations that do not unreasonably interfere with Tenant's use of or access to the Premises.

3. **Condition of Premises** . Tenant acknowledges that, except as expressly set forth in this Lease, neither Landlord nor its agents have made (i) any promise to alter, remodel or otherwise improve the Premises, the Building or the Project, or (ii) any representation or warranty with respect to the condition of the Premises, the Building or the Project. Subject to the completion of any Landlord's Work (as defined in Section 3.3) and subject to Landlord's obligations regarding payment of the Improvement Allowance and further subject to any representations and warranties of Landlord expressly set forth in this Lease, Tenant accepts possession of the Premises in its current, "as is", condition, and Tenant acknowledges that Tenant's possession of the Premises pursuant to a sublease between Tenant and the current tenant of the Premises (the " **Sublease** ") immediately preceding the Commencement Date shall be deemed conclusive evidence that, as of the Commencement Date, the Premises were in good order and satisfactory condition, subject to any then-existing repair requests or notices to Landlord regarding the condition of the Premises as may have been delivered by Tenant or the prior tenant from which Tenant is currently subleasing the Premises prior to the Commencement Date.

4. **Rights in Common Areas** . Landlord grants to Tenant and to Tenant's, agents, employees and invitees a non-exclusive license during the Term (as defined in Section 3.1) to use all areas and facilities outside the Premises and within the Building and Project designated by Landlord from time to time as common areas (collectively, the " **Common Areas** "), subject to the terms and conditions of this Lease; provided that Common Areas shall not include any portion of the Project currently leased or available for lease, which rentable areas shall be either maintained by the tenants thereof in accordance with maintenance obligations consistent with Section 7.1 of this Lease, or maintained by Landlord at its sole cost and expense and not as an Operating Expense of the Project. Without any liability to Tenant, at any time during the Term, Landlord shall have the right to: (a) close off any of the Common Areas to the extent reasonably required in Landlord's opinion to prevent a dedication of any of the Common Areas or the accrual of any rights by any person or the public to the Common Areas; (b) temporarily close any of the Common Areas for maintenance, alteration or improvement purposes; (c) select or contract with any person for the purpose of operating and maintaining the Common Areas, subject to such terms and rates as Landlord deems reasonable; (d) change the size, use, shape or nature of any portions of the Common Areas, including the right to change the arrangement and/or location of, or to regulate or eliminate the use of, any parking spaces, garage, elevators, stairs, toilets or other public conveniences in the Project (provided that such changes shall not unreasonably interfere with Tenant's use and access to the Premises, the visibility of the Premises or materially reduce the parking ratio at the Project, unless required to comply with applicable Laws); and (e) erect additional buildings on the Common Areas, expand buildings to cover a portion of the Common Areas, convert Common Areas to a portion of the Building or other buildings (provided that such conversion does not materially and adversely affect the parking ratio at the Project or Tenant's access to the Premises or the visibility of the Premises), or convert any portion of the Building or such other buildings to Common Areas. Upon erection of any additional buildings, the portion of the Project upon which buildings have been erected will no longer be deemed to be a part of the Common Areas. In the event of any of the foregoing, Landlord may make an appropriate adjustment in the total RSF of the Project, and a corresponding adjustment to Tenant's Share (as defined in Section 4.2(e)(iii)).

Subject to Section 9 of the Lease and Tenant's rights in the event of an Abatement Event, Landlord's exercise of the foregoing rights shall not entitle Tenant to any abatement of rent nor shall the same constitute an actual or constructive eviction of Tenant; however, Landlord shall (except in an emergency) take reasonable steps to minimize interference with Tenant's business while exercising such rights.

5. **Measurement of Premises and Project** . Landlord hereby represents and warrants that, absent any improvement or addition to the Premises during the Term or any extension thereto, the rsf of the Premises set

forth in Section 1.1 above shall not increase during the Term or any extension thereto. For purposes hereof, Tenant's expansion of any outdoor patio space or improvement of the same shall not constitute an addition to the Premises triggering a remeasurement. If there is a change in the total rentable area of the Project as a result of an addition to the Building or the Project, as applicable, partial destruction, modification or similar cause, which event causes a reduction or increase on a permanent basis, Landlord shall cause adjustments in the computations for Tenant's Share of Operating Expenses as shall be necessary to provide for any such changes.

3. **TERM; DELIVERY OF PREMISES; CONSTRUCTION.**

1. **Term** . Landlord's obligation to lease the Premises to Tenant and Tenant's obligation to lease the Premises from Landlord in accordance with this Lease shall be effective as of the date of this Lease, but all other terms and provisions of this Lease shall be effective as of the Commencement Date. The term of this Lease (the " **Term** ") shall be for the number of months set forth at Section 1.4 above, beginning on the date (the " **Commencement Date** ") set forth in Section 1.5(a) above, and ending on the date (the " **Expiration Date** ") set forth in Section 1.5(b) above. " **Lease Year** " shall mean each consecutive twelve (12) calendar period or portion thereof during the Term, commencing with the Commencement Date and without regard to calendar years; provided, however, if the Commencement Date is not the first day of the month, then the first Lease Year shall commence on the first day of the first calendar month after the Commencement Date and be deemed to include the partial month at the beginning of the Term.

2. **Delivery of the Premises** . Landlord and Tenant acknowledge and agree that Tenant currently occupies, and as of the date immediately preceding the Commencement Date, will occupy, the Premises pursuant to the Sublease; consequently, Landlord shall have no obligation to physically deliver possession of the Premises to Tenant on the Commencement Date; provided, however, Landlord shall be obligated to have terminated any rights of the sublessor to the Premises as of the Commencement Date. Tenant hereby waives any and all claims Tenant may have with respect to the condition of the Premises as of the Commencement Date (except and to the extent subject to any then-existing repair requests or notices to Landlord regarding the condition of the Premises as may have been delivered by Tenant or the prior tenant from which Tenant is currently subleasing the Premises prior to the Commencement Date). Landlord makes no representation or warranty as to the nature, quality, or suitability for Tenant's business of the Project, the Building, or the Premises, and Tenant shall have no rights against Landlord by reason of such matters. Notwithstanding the foregoing or anything to the contrary contained in this Lease, Landlord shall, at its sole cost and expense (and as not part of Operating Expenses, other than as set forth in Section 7.4 herein) and throughout the initial Term and any Extension Term (if applicable), repair any structural and/or latent design or construction defects in the original construction of the Project of which Landlord has notice or that Landlord discovers.

3. **Initial Construction** . The initial construction of any improvements in the Premises shall be performed in accordance with the terms and conditions of Exhibit B, with any work to be performed by Tenant pursuant to Exhibit B being referred to as " **Tenant's Work** " and any work to be performed by Landlord pursuant to Exhibit B being referred to as " **Landlord's Work** ".

4. **Tenant Delay** . **[INTENTIONALLY OMITTED]** .

5. **Memorandum of Commencement Date** . Following the Commencement Date, Landlord shall deliver to Tenant two (2) copies of a written "Memorandum of Commencement Date," signed by Landlord, confirming the Commencement Date and the Expiration Date. Within ten (10) days after receipt thereof, Tenant shall sign and return one (1) copy of the Memorandum of Commencement Date. Tenant's failure to return a copy of the Memorandum of Commencement Date within such ten (10) day period shall be conclusively deemed Tenant's agreement with all matters set forth therein; however, if Tenant returns the same with any of the information corrected, Tenant shall not be deemed to have failed to sign and return the same, but Landlord shall not be bound by such corrections unless Landlord agrees to such corrections in writing.

4. **RENT.**

1. **General** . From and after the Commencement Date, Tenant agrees to pay Landlord, in advance, on the first day of each calendar month during the Term, Base Rent in the amount set forth in Section 1.7, as adjusted pursuant to Section 1.9 (the " **Base Rent** "), subject to abatement as set forth in Section 22 below. All sums payable by Tenant hereunder other than Base Rent, including without limitation, Tenant's Share of Operating Expenses (as defined in Section 4.2(e)(i)), shall be referred to herein as " **Additional Rent** ." Payment of all such Base Rent and Additional Rent shall be without offset or demand, in lawful money of the United States of America and made at the address set forth for Landlord herein or at such other place as Landlord may direct. If any Base Rent or Additional Rent payment is for a partial calendar month, then the Base Rent or Additional Rent payment for any such partial month shall be prorated based on the number of days in such partial month.

2. **Operating Expenses** . The parties intend that, subject only to the specific exceptions set forth in this Lease, this Lease be absolutely net to Landlord. Accordingly, in addition to Base Rent, Tenant shall pay, as Additional Rent, Tenant's Share of Operating Expenses (as defined in Section 4.2(e)(iii) and 4.2(e)(i), respectively), for each calendar year of the Term, pursuant to the following terms and conditions:

(a) As soon as reasonably practicable after the Commencement Date and the commencement of each subsequent calendar year during the Term, Landlord shall provide to Tenant a good faith estimate of Tenant's Share of Operating Expenses with respect to the calendar year in question (the " **Estimated Amount** ").

(b) Tenant shall pay the Estimated Amount to Landlord in equal monthly installments with each monthly payment of Base Rent. If the Estimated Amount has not yet been determined for any calendar year, Tenant shall pay the monthly installment of the Estimated Amount for the preceding calendar year until the Estimated Amount for the current calendar year has been provided to Tenant, and thereafter make each monthly installment payment in accordance with the current Estimated Amount.

(c) Within sixty (60) days following the end of each calendar year of the Term (or within sixty (60) days following the Expiration Date, with respect to the year in which this Lease expires), Landlord shall determine, and provide to Tenant a reasonably detailed statement (the " **Statement** ") setting forth, the actual amount of Operating Expenses for such calendar year (or portion thereof, with respect to the final calendar year, if the Expiration Date is other than December 31). If Tenant's Share of actual Operating Expenses exceeds the sum of Tenant's monthly estimated payments for such calendar year, Tenant shall pay the difference to Landlord, within thirty (30) days following receipt of such Statement. If the sum of such monthly estimated payments paid by Tenant exceeds Tenant's Share of actual Operating Expenses, the difference shall be applied as a credit to future monthly estimated payments of Tenant's Share of Operating Expenses, except that any such credit due to Tenant after the Expiration Date shall be delivered to Tenant along with such Statement. The failure of Landlord to timely furnish the Statement or any statement required under Section 4.2(b) for any calendar year shall not prejudice Landlord from enforcing its rights under this Section 4.2., unless Landlord has not delivered the Statement within twelve (12) months after the expiration of any calendar year; provided, however, Landlord shall have the right to amend any Statement after Landlord's delivery thereof, regardless of such twelve (12) month period, if Landlord receives additional tax bills relating to such calendar year after Landlord's delivery of the Statement, provided Landlord amends the Statement within three (3) months of Landlord's receipt of the additional tax bills. The provisions of this Section 4.2 shall survive the expiration or earlier termination of this Lease.

(d) Landlord shall keep at its home office in the County of San Diego, full, accurate and separate books of account with back up documentation of Operating Expenses for a period of three (3) years after the end of each calendar year. Within ninety (90) days after Tenant's receipt of a Statement (the " **Review Period** "), if Tenant disputes the amount set forth in the Statement, Tenant's employees or an independent certified public accountant (which accountant is a member of a nationally or regionally recognized accounting firm and is not compensated on a contingency fee basis) designated by Tenant and reasonably approved by Landlord (" **Approved Auditor** "), may, after fifteen (15) days written notice to Landlord and at reasonable times, inspect Landlord's records pertaining to Landlord's calculation of Tenant's Share of Operating Expenses at Landlord's offices in San Diego County, provided that Tenant is not then in Default (as defined in Section 15.1) and provided further that Tenant and such employees or accountant shall execute a commercially reasonable confidentiality agreement agreeing to keep all

information contained in Landlord's records, as well as the results of Tenant's review and the certification described below, in strict confidence. Notwithstanding the foregoing, Tenant shall only have the right to review Landlord's records one (1) time during any twelve (12) month period. Tenant's failure to audit Landlord's records with respect to the amounts set forth in any Statement within the Review Period shall be deemed to be Tenant's approval of such Statement and waiver of the right or ability to dispute the amounts set forth in such Statement. If an Approved Auditor finds that the Operating Expenses for the calendar year are less than reported, Landlord shall reimburse Tenant the amount of the overpayment within thirty (30) days of such determination by the Approved Auditor. If Landlord has overbilled Tenant by more than five percent (5%), Landlord shall also reimburse Tenant for its reasonable, out-of-pocket audit expenses in an amount not to exceed $2,500.00. Likewise, if Landlord and Tenant determine that Operating Expenses for the calendar year are greater than reported, Tenant shall pay Landlord the amount of any underpayment within thirty (30) days following such determination.

(e) **Definitions** .

(i) " **Operating Expenses** " shall mean all costs reasonably incurred by Landlord in connection with the management, maintenance, repair, restoration or operation of the Project, including, without limitation, costs incurred for:

(A) The operation, repair and maintenance of (i) the Common Areas; and (ii) the electrical, gas, plumbing, water, sewer, sprinkler, communications, alarm, security or fire/life safety systems or equipment, or any other mechanical, electrical, electronic, computer or other systems or equipment which serve the Project (the " **Systems and Equipment** ").

(B) Trash disposal, janitorial service, security services, window washing, signage and equipment rental expenses, and any other service to be provided by Landlord under this Lease.

(C) The cost of insurance carried by Landlord pursuant to Section 10 below, including any deductibles thereunder, but expressly excluding the cost of any earthquake insurance that Landlord may elect to carry.

(D) Real Property Taxes (as defined in Section 4.2(e)(ii)).

(E) Utilities not separately metered to Tenant or other tenants of the Project.

(F) Compensation (including employment taxes and fringe benefits) of all persons who perform regular and recurring duties connected with day-to-day operation, maintenance and repair of the Project, provided such compensation is commercially reasonable and if such persons provide services to the Project in addition to other building(s), such compensation shall be equitably allocated based on the amount of time such persons spend providing services to the Project and the other building(s).

(G) Maintenance and repair of roofs, building walls, foundations and other structural elements of the Project, subject to the exclusion of capital improvements, repairs and replacements from Operating Expenses as provided below.

(H) A property management fee in the amount of fifteen percent (15%) of all other Operating Expenses.

(I) Dues and assessments payable under the Declaration (if any).

(J) Any costs expressly included in Operating Expenses elsewhere in this Lease.

(K) The cost of any improvements (i) which are intended to reduce other Operating Expenses, and/or (ii) made to the Project after the Commencement Date that are required under any Law first applicable to the Project after the Commencement Date; provided, however, that if any such cost is a capital expenditure, such cost shall be amortized (including interest on the unamortized cost) over its useful life as Landlord shall reasonably determine in accordance with generally accepted accounting principles consistently applied (" **GAAP** ") and/or conforming to sound real estate management principles to the extent inconsistent with GAAP.

(L) Any costs incurred by Landlord for compliance with Laws pursuant to Section 6.2 below, but expressly excluding any costs to correct any non-compliance with Laws existing as of the Commencement Date.

Notwithstanding anything to the contrary contained in this Section 4.2(e)(i), the following items shall be excluded from the term "Operating Expenses": (i) expenditures or reserves for capital improvements, repairs or replacements, as defined by generally accepted accounting principles (GAAP), made to the Premises, the Building or Project, except as provided in subsection (K) above; (ii) repairs or other work occasioned by fire, windstorm or other casualty for which Landlord is obligated to maintain insurance or as to which Landlord receives reimbursement from third parties (in each case to the extent of the reimbursed amounts actually received by Landlord pursuant to its diligent efforts to obtain reimbursement to which Landlord is contractually entitled); (iii) any expense for any other building or property owned by Landlord; (iv) costs incurred in renovating or otherwise improving or decorating or redecorating space for tenants in, or other occupants of, the Project, except as such relates to reasonable improvements, repair and/or maintenance of the Common Areas; (v) depreciation of any kind; (vi) except as otherwise provided in this Lease, costs incurred due to the violation by Landlord or any tenant of the terms and conditions of any lease pertaining to the Project or of any valid and applicable building code, regulation or law or incurred due to the Premises or any part of the Project being in violation of any such code, regulation or law (subject to the provisions of Section 6.2 of this Lease); (vii) except for the property management fee described in subsection (H) above, overhead and profit increments paid to subsidiaries or Affiliates (as defined below) of Landlord for services rendered with respect to the Project to the extent that the costs of such services materially exceed competitive costs for similar services rendered by persons or entities of similar skill, competence and experience, other than a subsidiary or Affiliate of Landlord (as used herein " **Affiliate** " means a person or entity controlling, controlled by, or under common control with Landlord, and "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such controlled person or entity); (viii) interest on debt (except as provided in subsection (K) above) or amortization payments on any Mortgage to which Landlord is a party which affects the Project, and rental under any ground or underlying lease or leases (except to the extent the same may be made to pay or reimburse, or may be measured by, Real Property Taxes), and Landlord's points, fees and legal costs and expenses associated with any such Mortgage or underlying lease; (ix) costs of Landlord's or its agent's general corporate or partnership overhead and general administrative expenses which are generally not chargeable as Operating Expenses by owners of similar properties located in the Carlsbad industrial submarket under comparable leases to similar tenants; (x) any compensation paid to clerks, attendants or other persons in commercial concessions, if any, operated by Landlord at the Project; (xi) without limiting anything contained in clause (i) above, rentals and other related expenses, if any, incurred in leasing air conditioning systems, elevators or other equipment ordinarily considered to be of a capital nature, except equipment which is used in providing janitorial, repair or maintenance services which is not affixed to the Project; (xii) expenses legal or otherwise, incident to enforcement by Landlord of the terms of any other lease or occupancy agreement for the Project or in performing the obligation of any other tenant under its lease in the Project; (xiii) to the extent Landlord is actually reimbursed (but subject to Landlord's diligent efforts to obtain reimbursement to which Landlord is contractually entitled at Landlord's sole cost and expense), any expense for which Landlord is otherwise entitled to be or is actually reimbursed or indemnified (including reimbursement or indemnification by an insurer, warrantor or condemner); (xiv) any costs or expenses that are expressly designated as a Landlord's cost or Landlord's expense elsewhere in this Lease, including without limitation, the cost of earthquake insurance if carried by Landlord; (xv) any costs, expenses, fees or penalties relating to Landlord's compliance or noncompliance with any Hazardous Materials Laws, rules, ordinances or regulations, now or hereinafter in force or effect, including but not limited to any laws, rules, ordinances or regulations relating to the disposal, handling or clean-up of Hazardous Materials or remedial or restoration work.; and (xvi) costs incurred in advertising, promotional and leasing activities for the Project, and costs and expenses incurred pursuant to any lease, sublease, sale or other conveyance of any interest of Landlord in the Project. Landlord shall use commercially reasonable efforts to make payments for goods and services in a timely manner to obtain the maximum possible discount. In the calculation of items constituting Operating Expenses, it is understood that no item shall be charged more than once.

(ii) " **Real Property Taxes** " shall mean all federal, state, county, or local governmental or municipal taxes, fees, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary including, without limitation, real estate taxes, general and special assessments, transit taxes, leasehold taxes or taxes based upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent, unless required to be paid by Tenant, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used in connection with the Project, which Landlord shall pay during the Term because of or in connection with the ownership, leasing and operation of the Project or Landlord's interest therein. Real Property Taxes shall also include any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included in Real Property Taxes. With respect to Real Property Taxes that may be paid in annual installments without penalty to Landlord, only installments thereof due during the Term of this Lease may be included in Real Property Taxes. Notwithstanding anything to the contrary set forth in this Lease, Real Property Taxes shall not include (i) any excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance or succession taxes, estate taxes, federal and state income taxes, and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents or gross receipts), (ii) taxes on tenant improvements in any space in the Project based upon an assessed level in excess of the assessed level for which Tenant is directly responsible under this Lease, or (iii) penalties incurred as a result of Landlord's negligence, inability or unwillingness to make payments of, and/or to file any tax or informational returns with respect to, any real property taxes, when due. In the event Landlord receives a refund or other return of Real Property Taxes (including any award received as a result of Landlord's or Tenant's successful protest of the amount of Real Property Taxes) for which Tenant previously paid, then such refunded amount (plus any interest corresponding to such amount to the extent received from the taxing authority, less Landlord's costs incurred in procuring such refund) shall be applied to reduce the amount of Real Property Taxes for the Lease Year in which such refunded amount is received prior to calculating the actual Real Property Taxes for such Lease Year, or if received after the expiration or earlier termination of this Lease shall be refunded to Tenant within thirty (30) days following receipt of such refund from the taxing authority.

(iii) " **Tenant's Share** " shall mean the percentage(s) set forth in Section 1.12 above.

3. **Late Charges** . If any payment of Base Rent or Additional Rent is not paid within five (5) days after the date due, Tenant shall pay to Landlord ten percent (10%) of the amount due or Two Hundred Fifty Dollars ($250.00), whichever is greater; provided that upon the first such failure in any Lease Year such late charge shall not accrue until five (5) days after Tenant's receipt of notice that the overdue payment was not received when due and a statement that a late charge will be due five (5) days from the delivery of such notice if the overdue amount is not paid. The parties agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment by Tenant. The late charge shall be deemed Additional Rent and shall be in addition to all of Landlord's other rights and remedies under this Lease, at law or in equity.

5. **SECURITY DEPOSIT** . Tenant shall pay to Landlord, on or before the Commencement Date, a security deposit in the amount set forth in Section 1.10 (" **Security Deposit** "). The Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants and conditions of this Lease to be kept and performed by Tenant. If Tenant is in Default under this Lease, Landlord may (but shall not be required to) use all or any part of the Security Deposit for the payment of any amount in Default and/or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of such Default. If any portion of the Security Deposit is so used, Tenant shall, within five (5) business days of Landlord's written demand therefor, deposit with Landlord an amount sufficient to restore the Security Deposit to its original

amount, and Tenant's failure to do so shall be a Default under this Lease. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest thereon. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any unused or unapplied balance thereof shall be returned to Tenant within thirty (30) days of the expiration or earlier termination of this Lease. Tenant hereby waives the provisions of §1950.7 of the California Civil Code and all other provisions of law, now or hereafter in force, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums specified in this Section 5 above, and all of Landlord's damages under this Lease and California law including, but not limited to, any damages accruing upon or after termination of this Lease under §1951.2 of the California Civil Code and/or those sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the acts or omissions of Tenant or any officer, employee, agent, contractor or invitee of Tenant.

6. **USE.**

1. **Permitted Use** . The Premises shall be used and occupied only for the purposes set forth in Section 1.13 above (the " **Permitted Use** "), and for no other uses or purposes whatsoever. If any governmental license or permit shall be required for the proper and lawful conduct of the Permitted Use, or if a failure to procure such a license or permit could potentially adversely affect Landlord or the Project in any manner, then Tenant, at Tenant's expense, shall (i) promptly procure and maintain such license or permit and submit the same to Landlord, and (ii) at all times, comply with the requirements of each such license or permit. Tenant warrants that it has investigated whether the Permitted Use and Tenant's contemplated manner of operation will comply with, and Tenant assumes the risk that the same are and will continue to be in compliance with, all applicable Laws (as defined in Section 6.2 below). Tenant agrees that under no circumstances shall Tenant be released in whole or in part from any of its obligations under this Lease as a result of any governmental authority's disallowing or limiting the Permitted Use or Tenant's manner of operation.

2. **Compliance With Requirements** . Tenant shall, at Tenant's expense, promptly comply with (i) all applicable federal, state, county or municipal laws, statutes, ordinances, rules, regulations, requirements, orders and directions now or hereafter in effect, including zoning laws, land use approvals, ordinances and building codes, all stormwater laws and regulations and Title III of the Americans With Disabilities Act (" **ADA** ") and other applicable laws and regulations that relate to access by the disabled or handicapped (collectively, " **Laws** "), (ii) all applicable covenants and restrictions of record (including any Declaration), and (iii) requirements of any fire insurance underwriters or rating bureaus, now in effect or which may hereafter come into effect during the Term, for each of (i), (ii) and (iii) relating to the Premises and/or Tenant's use thereof; however, Tenant shall not be required to make any structural alterations to the Premises and/or any alterations to the Common Areas in order to comply with applicable Laws, except to the extent that such compliance is triggered by Tenant's use of the Premises, the construction of the Improvements pursuant to Exhibit B or any Alterations (as defined in Section 7.6), in which case such changes will be made by Landlord and Tenant shall reimburse Landlord for the cost thereof within thirty (30) days following receipt of an invoice therefor. Landlord shall, at Landlord's sole cost and expense (subject to including in Operating Expenses to the extent permitted under Section 2.16), be responsible for compliance with all Laws pertaining to the Project and the Common Areas, other than compliance for which Tenant is responsible as described above. Within fifteen (15) days of Landlord's written request, Tenant agrees to deliver to Landlord such information and/or documents as Landlord requires in order for Landlord to comply with California Public Resources Code Section 25402.10, or successor statute(s), and related California Code of Regulation, relating to commercial building energy ratings. Tenant shall not use or permit the use of the Premises in any manner that will create waste or a nuisance or disturb other occupants of the Project. Without limiting the generality of the foregoing, Tenant shall, at its sole cost and expense, comply promptly with all Hazardous Materials Laws (as defined in Section 18.5) applicable to the Permitted Use and the conduct of Tenant's business, as set forth in Section 18 below. If at any time it reasonably appears to Landlord that Tenant is not fulfilling its obligations under this Section, Landlord may perform, at Tenant's sole cost, an audit or inspection of the Premises to evaluate Tenant's compliance herewith.

To Landlord's actual knowledge, as of the date of this Lease, the Premises has not been inspected by a Certified Access Specialist (CASp).

3. **Rules and Regulations** . Tenant shall at all times comply with the rules and regulations for the Project (the " **Rules and Regulations** "). A copy of the Rules and Regulations in existence on the date of this Lease is attached hereto as Exhibit C; however, Landlord reserves the right to reasonably amend the Rules and Regulations at any time by giving written notice of such amendment to Tenant, so long as such amendments do not materially decrease Tenant's rights, or materially increase Tenant's obligations, under this Lease. Landlord shall enforce the Rules and Regulations in a non-discriminatory manner; provided, however, that Landlord shall not be liable to Tenant for Landlord's failure to enforce the Rules and Regulations against any other tenants of the Project.

7. **MAINTENANCE, REPAIRS AND ALTERATIONS.**

1. **Tenant's Obligations.**

(a) Except as provided in Section 7.4 below, Tenant shall, at Tenant's sole cost and expense, keep and maintain in good, sanitary order, condition, and repair the non-structural portions of the Premises and every part thereof, including, without limitation, all improvements (including any Alterations, fixtures, interior surfaces of the exterior walls, interior walls, floors, ceilings, doors, door frames, door checks, windows, plate glass), all plumbing and sewage facilities within and exclusively serving the Premises (including free flow up to the main sewer line), fixtures, electrical systems (exclusively serving the Premises, whether or not located in the Premises), and fire sprinkler systems. Any glass broken during the Term shall promptly be replaced by Tenant with glass of the same quality, size and kind.

(b) Landlord shall maintain, repair and replace the HVAC system serving the Premises (" **HVAC** ") and, during the Term, Tenant shall reimburse Landlord, within thirty (30) days following Landlord written request and an invoice providing reasonable detail of cost incurred, as Additional Rent, for Landlord's costs for (i) a preventative maintenance contract covering the HVAC (which may be a part of a larger maintenance contract covering other tenants' HVAC systems, in which case Tenant shall be responsible only for Tenant's equitable share of the cost of such contract), which contract shall be subject to (i.e. not duplicative of) the manufacturer's standard warranty for the HVAC, and (ii) any repair or replacement of the HVAC.

2. **Condition on Termination** . Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord in the same condition as on the Commencement Date (with all tenant improvements existing as of the Commencement Date), subject to ordinary wear and tear, damage due to casualty, loss or alteration due to casualty, and any alterations to the Premises made by Landlord pursuant to its rights under Section 2.2 above, or alterations made as part of Tenant's Work, as required to comply with applicable laws or otherwise not required to be removed by Landlord in accordance with Section 7.6 below, "warehouse clean" and free of debris. Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if the same could have been prevented by good maintenance practices. Upon such expiration or termination, Tenant shall, at its sole cost and expense, remove from the Premises all debris and rubbish, all of Tenant's Property (as defined in Section 8.2), any Alterations or Improvements required to be removed pursuant to Section 7.6(c) and any cabling installed by or at the request of Tenant and/or any security systems installed by or at the request of Tenant. Tenant's machinery and equipment (other than Utility Installations, as defined in Section 7.6(a)), unless affixed to the Premises so that it cannot be removed without material damage to the Premises or the Building, shall remain the property of Tenant and shall be removed by Tenant; provided, however, the parties acknowledge and agree that the following items, though affixed to the Premises, shall remain Tenant's property: any video screens mounted to walls in the Premises, the NuBoom fixtures in the Medical Education Lab portion of the Premises, the hydraulic benches in the Mechanical Test Lab portion of the Premises and the air compressors used by Tenant's Advanced Manufacturing Group **.** Tenant shall repair any damage to the Premises, Building and/or Project occasioned by such removal. If Tenant fails to complete such removal and/or repair, Landlord may do so and Tenant shall reimburse Landlord for all costs

incurred therefor. Tenant's obligations pursuant to the immediately preceding sentence shall survive the expiration or earlier termination of this Lease.

3. **Landlord's Rights** . If Tenant fails to perform Tenant's obligations under Section 7.1 or 7.2, then the provisions of Section 15.3(c) shall apply.

4. **Landlord's Obligations** . Except for Landlord's obligation to construct any Landlord's Work, Landlord's obligations with respect to the HVAC system and as set forth in Sections 12 and 13 of this Lease, the parties intend that Landlord shall have no obligation whatsoever to repair and maintain the non-structural portions of the Premises or any Alterations or equipment therein, including without limitation, any improvements installed as part of any Landlord's Work. Notwithstanding the foregoing, Landlord shall keep in good condition and repair the foundations, exterior walls, structural condition of interior bearing walls, and roof of the Building (and keep all of the foregoing watertight at all times) and other buildings in the Project, as well as operate, maintain and repair all Common Areas of the Project in a first class manner comparable to other Class A industrial/office projects in the Carlsbad market, and all costs and expenses incurred by Landlord in connection therewith shall be included within Operating Expenses, subject to the exclusions set forth in Section 4.2(e)(i) above. Landlord shall have no obligation to make repairs under this Section until a reasonable time after receipt of written notice from Tenant of the need for such repairs.

5. **Waiver; Self Help** . Subject to Tenant's self help rights expressly provided in this Section 7.5, Tenant expressly waives all rights to make repairs at the expense of Landlord or deduct any amounts from rent as provided in any statute or law in effect during the Term of this Lease, including its rights under the provisions of §1941 and §1942 of the Civil Code of the State of California. Notwithstanding any provision in this Lease to the contrary, if Landlord shall fail to commence any repair obligations required under Section 7.4 above within thirty (30) days following Tenant's written request for such repairs and thereafter complete such repairs with commercially reasonable due diligence, then Tenant may elect to make such repairs by complying with the following provisions of this 7.5. Before making any such repair, and following the expiration of the applicable period set forth above, Tenant shall deliver to Landlord a notice for the need for such repair (" **Self Help Notice** "), which notice shall specifically advise Landlord that Tenant intends to exercise its self-help rights hereunder. Should Landlord fail, within five (5) business days following receipt of the Self-Help Notice (or within two (2) business days following written notice in the event of necessary emergency repairs), to commence the necessary repair (or to make other reasonable arrangements), then Tenant shall have the right to make such repair on behalf of Landlord so long as such repair is performed in strict compliance with all applicable Laws and restrictions of record and the total cost of such repair does not exceed an amount equal to two (2) months of Tenant's then-current Base Rent. Any sums expended by Tenant pursuant to the provisions of this Paragraph 7.5 without Landlord's express written prior consent shall be at Tenant's risk. Landlord agrees that Tenant will have access to areas of the Building outside the Premises to the extent necessary to perform the work contemplated by this Section 7.5. In the event Tenant properly takes such action in accordance with this Section 7.5, Tenant may utilize the services of any qualified contractor which normally and regularly performs similar work in comparable buildings in the area of the Project. Tenant shall provide Landlord with a reasonably detailed invoice together with reasonable supporting evidence of the costs reasonably and actually incurred in performing such repairs. Landlord shall either reimburse Tenant for the reasonable costs of such repairs plus a fifteen percent (15%) administration fee within thirty (30) days following receipt of Tenant's invoice for such costs or deliver a written objection stating with specificity the reasons Landlord disputes Tenant's actions or the costs incurred. If Landlord delivers to Tenant, within such thirty (30) day period, a written objection to the payment of such invoice, setting forth Landlord's reasons for its claim that such action did not have to be taken by Landlord pursuant to the terms of this Lease or that the charges are excessive (in which case Landlord shall pay the amount it contends would not have been excessive if the only objection is to the costs incurred), then Tenant shall not be entitled to offset any amount from rent, but as Tenant's sole remedy, the dispute shall be resolved by arbitration in accordance with Section 21.26 of this Lease. Tenant shall be responsible for obtaining any necessary governmental permits before commencing the repair work. Tenant shall be liable for any damage, loss or injury resulting from said work.

6. **Alterations and Additions.**

(a) Except as provided in Section 7.6(d) below, Tenant shall not make any alterations, improvements, additions, or Utility Installations in, to or about the Premises (collectively, " **Alterations** "), without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed (except with respect to Alterations to the exterior or structural portions of the Building, in which case Landlord may withhold consent in its sole discretion). Such consent shall be requested by Tenant at least thirty (30) days prior to Tenant's commencement of any Alterations. As used in this Section, the term " **Utility Installations** " shall mean air lines, power panels, electrical distribution systems, lighting fixtures, air conditioning, plumbing and fencing. With the exception of Pre-Approved Alterations (as defined in Section 7.6(d) below), should Tenant make any Alterations without the prior consent of Landlord, Landlord may, at any time during the Term, require that Tenant remove any or all of the same.

Tenant shall obtain Landlord's approval of all plans and specifications, contractors and subcontractors prior to the commencement of Tenant's construction of the Alterations; provided, however, a contractor of Landlord's selection shall perform all work affecting the Building's roof, the Systems and Equipment or the HVAC at Tenant's cost. Landlord's approval of the plans and specifications for the Alterations shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency, or compliance with all Laws. Tenant shall construct all Alterations in conformance with all applicable Laws, pursuant to a valid building permit (if applicable), in conformance with Landlord's construction rules and regulations and in a diligent, good and workmanlike manner. Upon completion of any Alterations, Tenant shall cause a Notice of Completion to be recorded in the San Diego County Recorder's Office in accordance with §3093 of the California Civil Code or any successor statute, and Tenant shall deliver a reproducible copy of the "as built" drawings of the Alterations to Landlord.

(i) Tenant shall cause all architects and contractors engaged by Tenant in connection with any Alterations to agree, in their contract with Tenant, to carry (a) worker's compensation insurance covering all of their respective employees, and (b) commercial general liability insurance, all with limits, in form and with companies as are required to be carried by Tenant as set forth in Section 10.1 of this Lease, including naming Landlord as an additional insured. Additionally, Tenant (or its contractor) shall carry "Builder's All Risk" insurance in an amount reasonably approved by Landlord covering the construction of the Alterations, and such other insurance as Landlord may reasonably require. Tenant shall also require any architects and engineers to agree, in their contract with Tenant, to carry professional liability insurance or errors and omissions insurance (as applicable), which insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord. Certificates for all insurance required pursuant to this Section 7.6(a)(i) shall be delivered to Landlord before commencement of construction of the Alterations and before any equipment or materials are moved onto the Premises or Project. In addition, Landlord may require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of the Alterations and naming Landlord as a co-obligee; provided, however, Landlord acknowledges and agrees that a lien and completion bond or alternative security shall not be required in connection with the Improvements constructed pursuant to Exhibit B.

(b) Tenant covenants and agrees not to suffer or permit any lien of mechanics or materialmen to be placed against the Project, the Building or the Premises. If any such lien is filed, Tenant shall immediately satisfy and release such lien of record. Notwithstanding anything to the contrary set forth in this Lease, if such lien is not satisfied and released of record within ten (10) days after the date notice of such lien is delivered by Landlord to Tenant, Landlord, at its sole option, may immediately take all action necessary to satisfy and release such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by Landlord in connection with such lien shall be immediately be due and payable by Tenant as Additional Rent. Notwithstanding the foregoing, Tenant shall have the right to contest any such lien claim diligently and in good faith, and during such contest shall not be obligated to pay such lien claim, provided that Tenant is not in Default under this Lease and provided, Tenant, at its sole cost and expense and in compliance with all applicable Laws, transfers the lien from the Project, the Building or the Premises to a bond, thereby freeing the Project, the Building or the Premises from any claim of lien.

(c) All Alterations shall be at the sole cost of Tenant and shall remain upon and be surrendered with the Premises at the expiration of the Lease term; however, Landlord may require at the time of giving its consent to any Alterations requested by Tenant that Tenant remove, prior to the expiration of the Term, any or all of such requested Alterations (provided that Tenant shall not be required to remove any of the Improvements constructed pursuant to Exhibit B of this Lease), and following such removal Tenant shall repair any damage to the Premises or the Common Areas caused by such removal.

(d) Notwithstanding anything to the contrary contained herein, Tenant may make changes to the Premises (the " **Pre-Approved Alterations** ") without Landlord's consent, provided that the aggregate cost of any such Pre-Approved Alterations does not exceed (i) Twenty-Five Thousand and No/100 Dollars ($25,000.00) per work of alteration, or (ii) Seventy-Five Thousand and No/100 Dollars ($75,000.00) in the aggregate in any twelve (12) month period, and further provided that such Pre-Approved Alterations do not (i) require any structural or other substantial modifications to the Premises, (ii) require any changes to, nor adversely affect, the systems and equipment of the Building, and (iii) affect the exterior appearance of the Building. Tenant shall give Landlord at least ten (10) business days prior notice of such Pre-Approved Alterations, which notice shall be accompanied by reasonably adequate evidence that such changes meet the criteria contained in this Section 7.6(d). Unless Tenant requests Landlord's determination of whether such Pre-Approved Alterations be removed upon Tenant's surrender of the Premises at the time such alterations are made, and Landlord waives the requirement for their removal at the time such request is made, such Pre-Approved Alterations shall be removed as part of Tenant's surrender obligations.

8. **TAXES .**

1. **Real Property Taxes** . Landlord shall pay all Real Property Taxes prior to delinquency. If the Premises are separately assessed, or included within an assessor's parcel that does not encompass the entire Project, Landlord shall adjust Tenant's Share of Operating Expenses as it relates to Real Property Taxes only, based upon the RSF of the Premises and the total RSF of the portion of the Project that is the subject of such parcel. Tenant may, upon the receipt of prior written approval of Landlord, such approval not to be unreasonably withheld, contest any Real Estate Taxes against the Project and attempt to obtain a reduction in the assessed valuation of the Project for the purpose of reducing any such tax assessment. In the event Landlord approves, and upon the request of Tenant, but without expense or liability to Landlord, Landlord shall cooperate with Tenant and execute any document which may be reasonably necessary and proper for any proceeding. If a tax reduction is obtained, there shall be a subsequent reduction in Real Property Taxes as set forth in Section 4.2(e) (ii) above. In the event Landlord desires to contest any Real Property Taxes, Tenant agrees to cooperate with Landlord and execute any document which may be reasonably necessary and proper for any proceeding, at no cost to Tenant. Tenant shall not be liable for increases in Real Property Taxes attributable to additional improvements to expand the rentable area of the Project.

2. **Personal Property Taxes** . Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises (" **Tenant's Property** "). When possible, Tenant shall cause Tenant's Property to be assessed and billed separately from the real property of Landlord. If any of Tenant's Property shall be assessed with Landlord's real property, Tenant shall pay to Landlord the taxes attributable to Tenant's Property within ten (10) days after receipt of Landlord's invoice therefor.

9. **UTILITIES** . Tenant shall be solely responsible for, and shall arrange for, any costs associated with Tenant's required upgrades to the existing utilities systems of the Premises and Tenant shall promptly pay all charges for any utility used upon or furnished to the Premises. However, if any of such utilities are not separately metered from Common Area utilities and the Premises is submetered or jointly metered, then Tenant shall pay, within ten (10) days of Tenant's receipt of Landlord's invoice therefor, the amount reasonably determined by Landlord to be Tenant's equitable share of the monthly charge for any such utilities (which shall take into account any disproportionately heavy use of any such utilities). Additionally, if Tenant is a disproportionately heavy user of trash disposal services (as reasonably determined by Landlord), Landlord shall have the right to charge Tenant for additional trash disposal services and/or to require that Tenant contract directly for additional trash disposal services

at Tenant's sole cost and expense. Tenant agrees that Landlord shall not be liable for any damages incurred by Tenant, by abatement of Rent (except as provided below) or otherwise, for failure to furnish or delay in furnishing any utility or service, or for any diminution in the quality or quantity thereof; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying rent or performing any of its obligations under this Lease.

An " **Abatement Event** " shall be defined as an event that prevents Tenant from or occupying using the Premises, or any portion thereof, as a result of any failure to provide, an interruption in, or a diminution in the quality or quantity of, utilities, access or services to the Premises, where (i) Tenant does not actually use the Premises or such portion thereof, and (ii) such event is caused by or arises out of (A) the negligence or willful misconduct of Landlord, its agents, employees or contractors, or (B) Landlord's exercise of its rights, or the performance of its obligations, under this Lease. Tenant shall give Landlord notice (" **Abatement Notice** ") of any such Abatement Event, and if such Abatement Event continues beyond the "Eligibility Period" (as that term is defined below), then the Base Rent shall be abated entirely or reduced, as the case may be, after expiration of the Eligibility Period for such time that Tenant continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rsf of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rsf of the Premises; provided, however, in the event that Tenant is prevented from using, and does not use, a portion of the Premises for a period of time in excess of the Eligibility Period and the remaining portion of the Premises is (in Tenant's reasonable determination) not sufficient to allow Tenant to effectively conduct its business therein, and if Tenant does not conduct its business from such remaining portion, then for such time after expiration of the Eligibility Period during which Tenant is so prevented from effectively conducting its business therein, the Base Rent for the entire Premises shall be abated entirely for such time as Tenant continues to be so prevented from using, and does not use, the Premises. If, however, Tenant reoccupies any portion of the Premises during such period, the Base Rent allocable to such reoccupied portion, based on the proportion that the rsf of such reoccupied portion of the Premises bears to the total rsf of the Premises, shall be payable by Tenant from the date Tenant reoccupies such portion of the Premises. Notwithstanding anything to the contrary contained herein, if Landlord is diligently pursuing the restoration of such utilities or services and Landlord provides substitute services reasonably suitable for Tenant's purposes as reasonably determined by Tenant, for example bringing in portable air conditioning or heating equipment, then there shall be no abatement of Base Rent. The term " **Eligibility Period** " shall mean a period of three (3) consecutive business days after Landlord's receipt of the applicable Abatement Notice. Such right to abate Base Rent shall be Tenant's sole remedy for an Abatement Event. This paragraph shall not apply in case of damage to, or destruction of, the Premises or the Building, or any eminent domain proceedings which shall be governed by separate provisions of this Lease.

10. **INSURANCE.**

1. **Liability Insurance-Tenant** . Prior to the earlier of the Commencement Date or Tenant's occupancy of the Premises (the " **Insurance Start Date** "), Tenant, at Tenant's expense, shall obtain and keep in force during the Term, commercial general liability insurance applying to the use and occupancy of the Premises (including Tenant's repair and maintenance obligations hereunder) and the business operated by Tenant on the Premises. Such insurance shall (a) be with an insurance company authorized to do business in the State of California, having a minimum rating of A:X in Best's Insurance Guide (an " **Acceptable Insurance Company** "); (b) include broad form contractual liability coverage; (c) have a minimum of at least $1,000,000 for any one occurrence and $2,000,000 aggregate; (d) be written on an occurrence form to apply to all bodily injury, property damage, personal injury and other covered loss occurring during the policy term; (e) contain a severability of interests provision or endorsement without a cross-suit exclusion; (f) be endorsed to (i) name Landlord as additional insured, and (ii) provide that coverage is primary and non-contributing with any insurance carried by Landlord; (g) be endorsed to delete any liquor liability exclusion if Tenant will use or keep liquor on the Premises; and (h) be endorsed to provide that it shall not be canceled without thirty (30) days (ten (10) days for nonpayment) prior written notice to Landlord.

In addition, Tenant shall maintain automobile liability insurance with limits of not less than $1,000,000 per occurrence for any owned, non-owned or hired automobile exposures of Tenant, if applicable.

Such insurance may be furnished by Tenant under a blanket policy, provided that such blanket policy references the Premises and contains a "per location" endorsement that guarantees that a minimum limit equal to the insurance amounts required by this Lease will be available specifically for the Premises. Deductible amounts under Tenant's insurance policies shall be and remain the obligation of the Tenant, and Tenant agrees to use commercially reasonable efforts to ensure that no policy of insurance under this Section 10.1 shall provide for a deductible in excess of Ten Thousand Dollars ($10,000). The policy limits herein specified shall be increased from time to time upon written demand from Landlord, if circumstances reasonably justify such increases. Tenant shall furnish Landlord with a certificate of such insurance and required endorsements in a form reasonably acceptable to Landlord prior to the Insurance Start Date and not less than thirty (30) days before the expiration of the term of such coverage and, whenever requested, shall satisfy Landlord that such policy is in full force and effect.

2. **Liability Insurance-Landlord** . Landlord shall maintain during the Term commercial general liability insurance, insuring against liability for injury to or death of persons and loss of or damage to property occurring in or on the Common Areas, the cost of which shall be included in Operating Expenses. Landlord's liability insurance shall be in amount of not less than $2,000,000 combined single limit per occurrence for bodily and personal injury and property damage.

3. **Property Insurance-Landlord.**

(a) As a cost to be included in Operating Expenses, Landlord shall maintain during the Term a standard policy or policies insuring against "all risk" perils (also known as "special perils") covering the Building and the Project, which insurance shall include (i) at Landlord's sole option, coverage for flood or earthquake or both (provided, however, any costs associated with earthquake insurance shall not be included in Operating Expenses); (ii) rental income insurance equal to Base Rent and Operating Expenses for up to one year, and (iii) at Landlord's option, such other insurance as Landlord deems advisable.

(b) Tenant shall not do or permit to be done anything which shall invalidate Landlord's insurance policies referred to in this Section 10. Additionally, Tenant shall pay for any increase in the property insurance of the Building or Project if the increase is caused by Tenant's acts, omissions, use or occupancy of the Premises within thirty (30) days after Landlord's demand therefor.

4. **Property Insurance-Tenant** . Prior to the Insurance Start Date, Tenant, at Tenant's expense, shall obtain and keep in force during the Term from an Acceptable Insurance Company, (i) a standard policy insuring against "all risk" perils (also known as "special perils"), covering all exterior glass, whether plate or otherwise, and all interior glass, stock in trade, merchandise, trade fixtures, equipment and other personal property located in the Premises and used by Tenant in connection with its business, (ii) business interruption, loss of income and extra expense insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises or to the Building as a result of such perils, and (iii) worker's compensation insurance providing statutory benefits to Tenant's employees, with a waiver of subrogation in favor of Landlord, and employer's liability insurance with limits of not less than $1,000,000. Tenant shall furnish Landlord with a certificate evidencing such coverage in a form reasonably acceptable to Landlord prior to the Insurance Start Date and not less than thirty (30) days before the expiration of the term of such coverage and, whenever requested, shall satisfy Landlord that such policies are in full force and effect.

5. **Additional Insurance Obligations** . Tenant shall obtain and keep in force during the Term, at Tenant's expense, such other reasonable types of insurance coverage and in such reasonable amounts as may be requested by Landlord, provided such other types of insurance are also being required by the majority of institutional landlords of buildings similar to the Building in the Carlsbad area. Tenant shall have no right to self-insure for any of the insurance required under this Section 10 without Landlord’s consent, which may be withheld in Landlord’s sole discretion.

6. **Waiver of Subrogation** . Landlord and Tenant each hereby waive any and all rights of recovery against the other party for any loss or damage arising from any event that (i) would be insured against under the terms of

the "all risk" and/or the business interruption, loss of income and extra expenses/rental interruption insurance policy(ies) required to be carried by such party hereunder; or (ii) is insured against under the terms of any such insurance actually carried by such party, regardless of whether the same is required hereunder, provided that such waiver shall apply only to the extent of any recovery by the injured party under such insurance (or to the extent of any recovery that the injured party would have received had they carried the "all risk" and/or the business interruption, loss of income and extra expenses/rental interruption insurance policy(ies) required to be carried hereunder). Each party hereto, on behalf of its respective insurance companies hereby waives, up to and only to the extent of any recovery under any such insurance policies, any right of subrogation that one may have against the other. Each party hereto shall cause its respective insurance policies to contain endorsements evidencing such waivers of subrogation. The provisions of this Section shall not apply in those instances in which a waiver of subrogation is not obtainable in the current industry insurance market.

11. **WAIVER AND INDEMNITY.**

1. **Waiver and Exemption of Landlord From Liability** . Tenant hereby agrees that except for damage or injury resulting from Landlord's sole active negligence or willful misconduct (subject to the provisions of Section 10.6 above), Landlord and Landlord's Representatives (as defined in Section 11.2 below) shall not be liable for any damage to property or injury to persons in, on or about the Premises, the Building or the Project, regardless of whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or from any other cause, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant, occupant or use of the Project or from the failure of Landlord to enforce the provisions of any other lease in the Project. Except for damage or injury resulting from Landlord's sole active negligence or willful misconduct (subject to the provisions of Section 10.6 above), Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Premises, the Building or the Project arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord.

2. **Tenant's Indemnity** . Except to the extent caused by Landlord's or Landlord's Representative's negligence or willful misconduct or except as covered by the waivers in Section 10.6, Tenant shall indemnify, protect, defend, and hold Landlord and Landlord's officers, directors, shareholders, members, partners, employees, agents and contractors (collectively, " **Landlord's Representatives** ") harmless from and against any and all claims, actions, demands, proceedings, losses, damages, costs of any kind or character (including reasonable attorneys' fees and court costs), expenses, liabilities, judgments, fines, penalties, or interest (collectively, " **Losses** "), arising from or out of (i) any occurrence in the Premises, (ii) Tenant's or Tenant's Representatives' (as defined in Section 11.3 below) use of the Premises, the conduct of Tenant's business or any activity, work or things done, permitted or suffered by Tenant in or about the Premises, Building or Project, (iii) any Default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or (iv) any other act or omission of Tenant, or any of Tenant's Representatives, including Tenant's failure to comply with applicable Laws (including stormwater regulations). Tenant shall defend any such action or proceeding brought against Landlord and/or any of Landlord's Representatives against any such Losses, upon notice from Landlord and at Tenant's expense, with counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. The provisions of this Section 11.2 shall survive the expiration or earlier termination of this Lease.

3. **Landlord's Indemnity** . Except for injury or damage (i) of a type that is covered by the waivers described in Section 10.6, or (ii) arising from the negligence or willful misconduct of Tenant or any of Tenant's officers, directors, shareholders, members, partners, employees, agents, contractors, subtenants and invitees (collectively, " **Tenant's Representatives** "), Landlord shall defend, indemnify and hold Tenant and Tenant's Representatives harmless from and against any and all Losses arising in any way from (a) the sole active negligence or willful misconduct of Landlord; or (b) any Default in the performance of any obligation on Landlord's part to be performed under this Lease. Landlord shall defend any such action or proceeding brought

against Tenant or Tenant's Representatives against any such Losses upon notice from Tenant at Landlord's expense with counsel reasonably satisfactory to Tenant and Tenant shall cooperate with Landlord in such defense. The provisions of this Section 11.3 shall survive the expiration or earlier termination of this Lease.

12. **DAMAGE AND DESTRUCTION.**

1. **Repair of Damage by Landlord** . If the Premises, Building and/or the Common Areas shall be materially damaged by fire or other casualty, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control, and subject to all other terms of this Section 12, restore the Premises, Building and/or such Common Areas to substantially the same condition as existed prior to the damage, except for (i) modifications required by Law, any Mortgagee (as defined in Section 17.1), or the lessor of a ground or underlying lease, or (ii) any other modifications to the Common Areas deemed desirable by Landlord. In the event any damage (including, but not limited to, by fire or other casualty) to the Premises, Building and/or Common Area occurs as a result of the acts or omissions of Tenant and/or Tenant's Representatives, Tenant shall reimburse Landlord, promptly on demand, for the cost incurred by Landlord in repairing the damage and the provisions of Section 10.6 shall not apply to such reimbursement obligation.

2. **Landlord's Option to Terminate** . Notwithstanding the terms of Section 12.1 of this Lease, Landlord may elect not to restore the Premises, Building and/or Common Areas and instead terminate this Lease if one or more of the following conditions is present: (i) repairs cannot reasonably be completed within two hundred ten (210) days after the date of such damage (when such repairs are made without the payment of overtime or other premiums); (ii) any Mortgagee or ground or underlying lessor with respect to the Project shall require that the insurance proceeds or any portion thereof be used to retire the Mortgage debt, or shall terminate the ground or underlying lease, as the case may be; (iii) such damage is not fully covered, except for deductible amounts, by Landlord's insurance policies; or (iv) such damage occurs during the last twelve (12) months of the Lease Term. Landlord shall notify Tenant in writing of any such termination within sixty (60) days after the date of the casualty, which termination shall be effective sixty (60) days after the date of such notice.

3. **Abatement of Rent** . In the event Landlord restores the Premises pursuant to the provisions of this Section 12, the Base Rent and Tenant's Share of Operating Expenses payable hereunder from the date of such damage and continuing until such restoration is complete shall be abated in proportion to the degree to which Tenant's normal and customary use of the Premises is impaired; however, if the damage is the result of the acts or omissions of Tenant and/or Tenant's Representatives, then Tenant shall not be entitled to such abatement. Except for abatement of rent, if any, Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration (except to the extent caused by Landlord's sole active negligence or willful misconduct, but subject to the provisions of Section 10.6 above).

4. **Tenant's Termination Option** . Within sixty (60) days after the date of damage, Landlord shall notify Tenant (" **Damage Repair Estimate** ") of Landlord's estimated assessment of the period of time in which such damage can be repaired, which assessment shall be based upon the opinion of a contractor reasonably selected by Landlord and experienced in comparable repairs of comparable buildings. If Landlord does not elect to terminate this Lease pursuant to Landlord's termination right as provided in this Section 12, and (A) the Damage Repair Estimate indicates that repairs cannot be completed within one hundred eighty (180) days after being commenced, or (B) the damage occurs during the last twelve (12) months of the Term, Tenant may elect, not later than thirty (30) days after Tenant's receipt of the Damage Repair Estimate, to terminate this Lease by written notice to Landlord effective as of the date Landlord receives such notice.

Furthermore, if neither Landlord nor Tenant have terminated this Lease, and the repairs are not actually completed as of the later to occur of (i) the last day of such one hundred eighty (180) day period, or (ii) the last day of the time period specified for the completion of such repairs in the Damage Repair Estimate, Tenant shall have the right to terminate this Lease within five (5) business days of the end of such period and thereafter during the first five (5) business days of each calendar month following the end of such period until such time

as the repairs are complete, by notice to Landlord (the " **Damage Termination Notice** "), effective as of a date set forth in the Damage Termination Notice (the " **Damage Termination Date** "), which Damage Termination Date shall not be less than five (5) business days following the end of such period or each such month, as the case may be. Notwithstanding the foregoing, if Tenant delivers a Damage Termination Notice to Landlord, then Landlord shall have the right to suspend the occurrence of the Damage Termination Date for a period ending thirty (30) days after the Damage Termination Date set forth in the Damage Termination Notice by delivering to Tenant, within five (5) business days of Landlord's receipt of the Damage Termination Notice, a certificate of Landlord's contractor responsible for the repair of the damage certifying that it is such contractor's good faith judgment that the repairs shall be substantially completed within thirty (30) days after the Damage Termination Date. If repairs shall be substantially completed prior to the expiration of such thirty (30) day period, then the Damage Termination Notice shall be of no force or effect, but if the repairs shall not be substantially completed within such thirty (30) day period, then this Lease shall terminate upon the expiration of such thirty (30) day period.

5. **Waiver** . The provisions of this Section 12, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, the Building and/or the Common Areas, and any statute, regulation or case law of the State of California, including without limitation, §§1932(2) and 1933(4) of the California Civil Code, with respect to termination rights arising from damage or destruction shall have no application to this Lease or any damage or destruction to all or any part of the Premises, the Building and/or the Common Areas.

13. **CONDEMNATION** .

1. **Taking** . If the whole or any part of the Premises, Building or Project shall be taken by the power of eminent domain or by a sale in lieu thereof (collectively, " **taking** " or " **taken** " as the case may be), Landlord shall have the option to terminate this Lease upon ninety (90) days' written notice, provided such notice is given no later than one hundred eighty (180) days after the date of such taking. If more than twenty-five percent (25%) of the RSF of the Premises is taken, or if access to the Premises is substantially impaired or if the parking ratio at the Project is materially reduced, Tenant shall have the option to terminate this Lease upon ninety (90) days' notice, provided such notice is given no later than one hundred eighty (180) days after the date of such taking. Landlord shall be entitled to receive the entire award or payment in connection with such taking. Without limiting the foregoing, so long as such award does not diminish the award available to Landlord or its Mortgagee, and such award is payable separately to Tenant, Tenant shall have the right to any award which compensates Tenant for (i) Tenant's personal property, tenant fixtures or tenant improvements so taken, (ii) Tenant's status as a "displaced person" pursuant to California Government Code §7262, including without limitation, any moving costs or relocation benefits, or (iii) any loss of goodwill as the owner of a business pursuant to California Code of Civil Procedure and §1265.510. If any part of the Premises shall be taken, and this Lease is not terminated, then Base Rent and any other amount due hereunder based upon the RSF of the Premises, the Building or the Project shall be proportionately reduced, effective as of the date of such taking.

2. **Waiver** . This Section 13 is in lieu of, and Tenant hereby expressly waives any rights it may have under, any statute governing the condemnation of the Premises, including §1932 and §1933 of the California Civil Code, §1265.130 of the California Code of Civil Procedure, and/or any successor laws.

14. **ASSIGNMENT AND SUBLETTING .**

1. **Landlord's Consent Required** . Except for a Permitted Transfer (as defined below), Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Premises, without Landlord's prior written consent, which shall not be unreasonably withheld. Any attempted assignment, transfer, mortgage, encumbrance or sublease without such consent shall be void, and shall constitute a Default under this Lease without the need for notice to Tenant. A change of more than 25% of the ownership of Tenant (unless Tenant is a publicly traded corporation)

shall be deemed an assignment for purposes of this provision. None of the foregoing shall be interpreted to preclude Tenant permitting the use or occupancy of the Premises by representatives or employees of any entity which is then performing services related to Tenant's business as long as the use or occupancy of the Premises by such representatives or employees is not otherwise a subterfuge to avoid Tenant's assignment and subletting obligations under this Section 14, including, but not limited to vendors providing outsourced services, such as warehouse management services on or at the Premises.

2. **Procedure** . If Tenant desires Landlord's consent to an assignment of this Lease or a sublet of all or any portion of the Premises (other than pursuant to a Permitted Transfer), Tenant shall notify Landlord in writing (the " **Transfer Notice** "), which notice shall include (i) the name of the proposed sublessee or assignee, (ii) the nature of the business of the proposed sublessee or assignee, (iii) a copy of the proposed sublease or assignment, including all terms and conditions thereof, (iv) Landlord's lease application form, completed by the proposed assignee or sublessee, including an Environmental Questionnaire in the form of Exhibit E or Landlord's then standard form, (v) financial statements for the proposed assignee or sublessee, which shall include, at a minimum, prior year and year to date (current to within six months) balance sheets, income and expense statements and sources and uses of cash statements, and (vi) such other financial information regarding such sublessee or assignee as Landlord shall reasonably request. Concurrent with the Transfer Notice, Tenant shall also submit an application fee of $500.00 for reviewing and processing the requested transfer (the " **Review Fee** "). Within fifteen (15) days after receipt of the Review Fee and Transfer Notice with all of the foregoing information, Landlord shall respond by granting or refusing its consent to the proposed assignment or sublease. Landlord shall grant or deny consent to any proposed assignment or sublease within fifteen (15) days of receipt of all of the items set forth in this Section 14.2 above. Landlord's failure to respond within such fifteen (15) day period shall be deemed Landlord's consent hereunder.

3. **General Provisions Applicable to Both Assignment and Subletting.**

(a) No sublessee or assignee shall further assign or sublet all or any part of the Premises without Landlord's prior written consent.

(b) The consent by Landlord to any assignment or sublease shall not constitute a consent to any subsequent assignment or sublease by Tenant or to any assignment or sublease by the sublessee or assignee.

(c) If Tenant subleases the Premises or any part thereof or assigns this Lease, fifty percent (50%) of all amounts paid by the sublessee or assignee (including any amounts paid to Tenant as consideration in connection with such sublease or assignment) which are in excess of (i) the amount of Base Rent and Additional Rent then payable by Tenant under this Lease, plus (ii) any reasonable costs actually incurred by Tenant to sublease the Premises or assign this Lease, including without limitation any reasonable brokerage commissions, attorneys' fees, tenant improvement allowances and moving costs actually paid by Tenant in connection with such assignment or subletting shall be the property of and shall be paid to Landlord. Tenant shall not be required to share any compensation received from the assignee or sublessee attributable solely the value of personal property or improvements owned by Tenant provided such value assigned is consistent with the fair market value for such items. The parties acknowledge that the provisions of this Section 14.3(c) are a material inducement for Landlord's execution of this Lease and Tenant hereby represents and warrants that its sole purpose for entering into this Lease is to obtain possession of the Premises and not to generate revenues from the subleasing of any portion of the Premises or the assigning of this Lease.

(d) Each and every consent required of Tenant under a sublease or assignment shall also require the consent of Landlord.

4. **Attorneys' Fees** . If Tenant shall request the consent of Landlord to any assignment or sublease, then, in addition to the Review Fee, Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection therewith, such attorneys' fees not to exceed $500.00 for each such request.

5. **Continuing Liability of Tenant** . No transfer permitted by this Section shall release Tenant from Tenant's primary liability to pay the rent and to perform all other obligations of Tenant under this Lease, except to the

extent that Landlord exercises its recapture right as set forth above and terminates the Lease with respect to all or a portion of the Premises. Landlord's acceptance of rent from any other person is not a waiver of any provision of this Section.

6. **Default by Assignee** . If Tenant's assignee Defaults under this Lease, Landlord may proceed directly against Tenant without pursuing remedies against the assignee. Landlord may consent to subsequent modifications of this Lease without notifying Tenant or obtaining its consent and the same shall not relieve Tenant of its liability under this Lease.

7. **Effect of Termination** . In the event of Tenant's surrender of this Lease or the termination of this Lease in any other manner, Landlord may, at its option, either terminate any or all subtenancies or succeed to the interest of Tenant as sublessor thereunder. No merger shall result from Tenant's sublease of the Premises under this Section, Tenant's surrender of this Lease or the termination of this Lease in any other manner.

8. **Permitted Transfers** . Notwithstanding anything to the contrary in this Section 14, Tenant may assign this Lease or sublet the Premises, or any portion thereof (each, a "Permitted Transfer"), without Landlord's consent, to any corporation which controls, is controlled by or is under common control with Tenant, or to any corporation resulting from a merger or consolidation with Tenant, or to any person or entity which acquires all or substantially all of the assets of Tenant's business (or all or substantially all of the equity interests in Tenant) as a going concern (each, a "Permitted Transferee"). "Control," as used in this Section 14.8, shall mean the possession of the power to direct or cause the direction of the management or policies of an entity, whether through ownership or voting securities, or by contract or otherwise. For purposes hereof, Landlord and Tenant acknowledge and agree that the raising of additional capital or a so-called IPO event shall not be deemed to be a transfer of control hereunder. With regard to any Permitted Transfer hereunder, such transfer shall not result in the forfeiture of any rights personal to the Tenant hereunder, including without limitation, any Extension Option granted pursuant to Section 23 of this Lease.

9. **Tenant’s Lenders.** Tenant shall have the right from time to time to grant and assign a mortgage or other security interest in all of Tenant’s furnishings, furniture, equipment, machinery, and other personal property located in or at the Premises, and Landlord agrees to promptly execute, at Tenant's sole cost and expense, a landlord consent in substantially the form attached hereto as Exhibit F, for the Premises releasing liens in favor of any line of credit lienholder, or any purchase money seller, lessor or lender who has financed or may finance in the future such items and allowing access to the Premises by Tenant’s lender.

15. **DEFAULT BY TENANT; REMEDIES.**

1. **Events of Default** . A “ **Default** ” shall mean the occurrence of any of the following:

(a) Failure by Tenant to pay rent when due if the failure continues for three (3) days after written notice to Tenant that the rent is delinquent.

(b) Failure by Tenant to perform any provision of this Lease required of it other than clause (a) above, or any failure by Tenant to comply with the Rules and Regulations, if the failure is not cured within ten (10) business days after notice has been given to Tenant. If, however, the failure cannot reasonably be cured within such ten (10) business day period, Tenant shall not be in Default if Tenant commences to cure the failure within such ten (10) business day period and diligently and in good faith prosecutes the cure to completion.

(c) To the extent permitted by law, a general assignment by Tenant or any guarantor of this Lease (the “ **Guarantor** ”) for the benefit of creditors, or the filing by or against Tenant or any Guarantor of any proceeding under any insolvency or bankruptcy law, unless in the case of a proceeding filed against Tenant or any Guarantor the same is dismissed within sixty (60) days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant or any Guarantor, unless possession is restored to Tenant or such Guarantor within thirty (30) days, or any execution or other judicially authorized seizure of all or substantially all of Tenant's assets located upon the Premises or of Tenant's interest in this Lease, unless such seizure is discharged within thirty days.

2. **Default Notices** . Notices given under this Section will specify the alleged failure and shall demand that Tenant perform the provisions of this Lease or pay the rent that is delinquent, as the case may be, within the applicable period of time or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless Landlord so elects in the notice. Any notice required under Section 15.1 shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 or any successor law.

3. **Landlord's Remedies** . Upon the occurrence of a Default, Landlord shall have, in addition to any remedies available to Landlord at law or in equity, the right to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, and without any additional notice or demand whatsoever.

(a) Landlord may terminate this Lease and Landlord shall have the right to recover from Tenant: (i) the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease; (ii) the worth at the time of the award of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; (iii) the worth at the time of the award of the amount by which unpaid rent for the balance of the Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and (iv) any other amount, including reasonable attorneys' fees and court costs, necessary to compensate Landlord for all detriment proximately caused by a Default or which in the ordinary course of things would be likely to result therefrom.

The phrase "worth at the time of the award" as used in clauses (i) and (ii) above is to be computed by allowing interest at the rate of twelve percent (12%) per annum, but not to exceed the then legal rate of interest. The same phrase as used in clause (iii) above is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Landlord may exercise the remedy provided in California Civil Code §1951.4, that is, Landlord may continue this Lease in full force and effect, and collect Base Rent and Additional Rent as they become due, so long as Landlord does not terminate this Lease pursuant to Section 15.3(a) above.

(c) Landlord may, after expiration of any applicable cure period, unless there is an emergency or unless Tenant has failed to perform under Section 7.2 above (and in either case Landlord need not give notice or wait), correct or remedy any failure of Tenant not timely cured. Landlord’s reasonable costs to correct or remedy any such Default will immediately become due and payable to Landlord. Tenant’s reimbursement obligations under this Section 15.3(c) shall survive the expiration or earlier termination of this Lease.

4. **Interest** . Any amount owed to Landlord under the terms and provisions of this Lease which is not paid when due shall bear interest at the highest rate allowed by applicable law from the date the same becomes due and payable by the terms and provisions of this Lease until paid, unless otherwise specifically provided in this Lease.

5. **Mitigation** . Any efforts by Landlord to mitigate damages caused by a Default shall not be construed as a waiver of Landlord's right to recover damages.

6. **Right of Landlord to Re-Enter** . In the event of any termination of this Lease, Landlord shall have the immediate right to enter upon and repossess the Premises, and all of Tenant’s Property may be removed from the Premises and stored in any public warehouse at the risk and expense of Tenant.

7. **Recapturable Expenses** . Tenant acknowledges that Landlord has undertaken or may undertake certain expenses in connection with the Lease, including the payment of brokerage commissions, the Improvement Allowance and abated Base Rent (" **Recapturable Expenses** "). Notwithstanding any provision or implication to the contrary in this Lease, in the event Landlord terminates this Lease pursuant to Section 15.3(a) above,

there shall be immediately due and payable from Tenant (as unpaid Additional Rent earned, but due at the time of such Default), the unamortized portion of the Recapturable Expenses actually incurred by Landlord, with amortization calculated on a straight line basis utilizing an amortization schedule equal to the number of months in the Term and commencing as of the Commencement Date. Any Recapturable Expenses due to Landlord pursuant to this Section shall be in addition to any sums otherwise recoverable pursuant to Section 15.3(a) of this Lease and Tenant's obligation to pay such Recapturable Expenses shall survive the termination of this Lease.

16. **DEFAULT BY LANDLORD.**

1. **Landlord's Default** . Landlord shall be in default if Landlord fails to perform any provision of this Lease required of it and the failure is not cured within thirty (30) days after written notice has been given to Landlord. If, however, the failure cannot reasonably be cured within such thirty (30) day period, Landlord shall not be in default of this Lease if Landlord commences to cure the failure within such thirty (30) day period and diligently and in good faith pursues the cure to completion. Notices given under this Section shall specify the alleged failure and the applicable Lease provisions. If Landlord shall at any time be in default beyond the applicable notice and cure period, Tenant may exercise any of its rights provided in law or at equity; provided, however: (i) except as otherwise expressly provided in this Lease, Tenant shall have no right to offset or abate rent in the event of any default by Landlord under this Lease; (ii) Tenant shall have no right to terminate this Lease; (iii) Tenant's rights and remedies hereunder shall be limited to the extent (a) Tenant has expressly waived in this Lease any of such rights or remedies and/or (b) this Lease otherwise expressly limits Tenant's rights or remedies; and (iv) Landlord will not be liable for any consequential damages or lost profits suffered by Tenant as a result of such default.

Notwithstanding the foregoing, if Landlord is in default beyond the foregoing notice and cure period and the nature of such default materially and adversely affects Tenant's ability to operate its business from the Premises, then provided that Tenant's cure of such default will not void any applicable warranties covering such repair or maintenance, Tenant may proceed to cure such default upon delivery of an additional five (5) business days notice to Landlord and any mortgagee of Landlord (of whom Tenant is notified) (which additional notice must clearly specify that Tenant is curing such default), and if such default is not cured within such five (5) business day period (or is not commenced within such five (5) business day period, if the same is not capable of being cured within such five (5) business day period), then Tenant shall be entitled to prompt reimbursement by Landlord of Tenant's actual reasonable costs in curing such default. In the event Tenant cures such default, and the work will affect the Building systems or the structural integrity of the Building, Tenant shall use only qualified contractors that normally and regularly performs similar work in buildings similar to the Building in the Carlsbad area. Within thirty (30) days after receipt of a reasonably particularized invoice from Tenant of its costs of curing such default, Landlord shall reimburse Tenant the amount set forth in such invoice. If, however, Landlord delivers to Tenant within thirty (30) days after receipt of Tenant's invoice, a written objection to the payment of such invoice, setting forth with reasonable particularity Landlord's reasons for its claim that Landlord was not in default hereunder or that the charges are excessive (in which case Landlord shall pay the amount it contends would not have been excessive), then Landlord shall not be required to make such reimbursement, but as Tenant's sole remedy, Tenant may proceed to claim a monetary default by Landlord under this Lease pursuant to Section 21.26 hereof. If Landlord does not reimburse Tenant as required by this paragraph (and does not deliver a written objection as provided in the preceding sentence), then Tenant upon an additional five (5) days written notice to Landlord, after which Landlord again fails to so reimburse Tenant, may offset such amount against Base Rent due hereunder until such amount has been fully recouped; provided, however, in no event shall Tenant offset more than fifty percent (50%) of the Base Rent due hereunder for any given month.

2. **Notice to Mortgagee(s)** . Whenever Tenant serves notice on Landlord of Landlord's default, written notice shall also be served at the same time upon any Mortgagee, the name and address of whom Tenant has received in writing. Such Mortgagee shall have the periods of time within which to cure Landlord's defaults as are provided in Section 16.1, which periods shall commence to run thirty (30) days after the commencement of the periods within which Landlord must cure its defaults under Section 16.1. If the nature of the default is such that

the Mortgagee's possession is required to cure the default, then Tenant will not have the right to exercise any of the remedies set forth in Section 16.1 so long as such Mortgagee commences proceedings to obtain possession of the Premises within the period of time afforded to the Mortgagee to cure such default, and once the Mortgagee has obtained possession, diligently proceeds to cure the default. Nothing contained in this Lease shall be construed to impose any obligation on any Mortgagee to cure any default by Landlord under this Lease.

17. **SUBORDINATION AND ESTOPPEL.**

1. **Subordination** . Subject to the provisions of this Section 17, this Lease shall be subject, subordinate and inferior to the lien and charge of any mortgage, trust deed or other encumbrance, and all renewals, extensions or replacements thereof, now or hereafter imposed by Landlord upon the Building or Project (each, a " **Mortgage** "); provided, however, that this Lease shall not be subordinate to any Mortgage first arising after the date of this Lease, unless and until Landlord provides Tenant with an agreement from the holder of the Mortgage (the " **Mortgagee** ") of the type normally provided by commercial lenders in southern California (" **Non-Disturbance Agreement** "), setting forth that so long as Tenant is not in Default hereunder, Landlord's and Tenant's rights and obligations hereunder shall remain in force and Tenant's right to possession shall be upheld. Notwithstanding the foregoing, should any Mortgagee require that this Lease be prior rather than subordinate to its Mortgage, then in such event, this Lease shall become prior and superior to such Mortgage, upon notice to that effect to Tenant from such Mortgagee. Tenant shall, following a request by Landlord and after receipt of the Non-Disturbance Agreement (if applicable), execute and acknowledge any instruments or documents required to establish of record the priority of any such Mortgage over this Lease, so long as such agreement does not otherwise increase Tenant's obligations or diminish Tenant's rights hereunder.

2. **Attornment** . In the event of foreclosure of any Mortgage, whether superior or subordinate to this Lease, then, if so requested by the Mortgagee or the purchaser at any foreclosure sale, (i) this Lease shall continue in force; (ii) Tenant's quiet possession shall not be disturbed if Tenant is not in Default hereunder; (iii) Tenant shall, without any deductions or set-offs whatsoever, attorn to and recognize the Mortgagee or such purchaser (" **New Owner** ") as Tenant's landlord for the remaining term of this Lease; and (iv) the New Owner shall not be bound by (a) any payment of rent for more than one month in advance, (b) any amendment, modification or ending of this Lease without the New Owner's consent after the New Owner's name is given to Tenant, unless the amendment, modification or ending is specifically authorized by this Lease (or any pre-existing amendment thereof) and does not require Landlord's prior agreement or consent, or (c) any liability for any act or omission of a prior Landlord. At the request of the New Owner, Tenant shall execute a new lease for the Premises, setting forth all of the provisions of this Lease except that the term of the new lease shall be for the balance of the Term, provided that the New Owner shall reimburse the legal fees and costs incurred by Tenant in confirming the contents of the proposed new lease.

3. **Estoppel Certificate** . Tenant shall execute and deliver to Landlord or Landlord's designee, within ten (10) business days after receipt of Landlord's request, a written statement certifying: (i) that the Lease is in effect (or is in effect as modified and stating the modifications); (ii) the amount of Base Rent and the date to which Base Rent and Additional Rent have been paid in advance; (iii) the amount of any Security Deposit; (iv) that Landlord is not in default hereunder or, if Landlord is claimed to be in default, stating the nature of any claimed default; and (v) such other matters as may be reasonably requested. Landlord and, any purchaser, assignee or Mortgagee may rely upon any such statement.

4. **Remedies** . If Tenant fails to sign and deliver any statement or instrument delivered to Tenant to effectuate the provisions of this Section 17 within ten (10) business days after request to do so by Landlord, and Tenant again fails to sign and deliver any such statement or instrument within five (5) business days after Tenant's receipt of written notice that Tenant failed to deliver such statement or instrument within the foregoing ten (10) business day period, then such failure shall constitute a Default under this Lease pursuant to which the terms of Section 15.3 above shall apply.

18. **HAZARDOUS MATERIALS.**

1. **Tenant's Environmental Questionnaire** . Concurrent with Tenant's execution and delivery of this Lease, Tenant shall deliver a completed environmental questionnaire, in the form attached hereto as Exhibit E. Tenant warrants and represents, and acknowledges that this Lease was entered into by Landlord in material reliance upon, the information set forth in such completed environmental questionnaire. If requested by Landlord during the Term, Tenant shall, within ten (10) business days of such request, deliver an updated, completed environmental questionnaire, in the form attached hereto as Exhibit E.

2. **Tenant's Obligations.**

(a) Except for supplies typically used in the ordinary course of the Permitted Use (including but not limited to cleaning solvents) in quantities that are typically used in the ordinary course of the Permitted Use and used in compliance with all Hazardous Materials Laws (as defined in Section 18.5), Tenant shall not cause or permit any Hazardous Materials (as defined in Section 18.4) to be brought, kept or used in or about the Project by Tenant and/or Tenant's Representatives. Tenant shall at all times comply with all Hazardous Materials Laws and prudent industry practices regarding management of all Hazardous Materials, and shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required for Tenant's use of the Premises, including, without limitation, discharge of (appropriately treated) Hazardous Materials into or through any sanitary sewer serving the Premises. Except as discharged into the sanitary sewer in strict conformity with all applicable Hazardous Materials Laws, Tenant shall cause all Hazardous Materials removed from the Premises to be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposal thereof and upon Landlord's request Tenant shall promptly deliver to Landlord copies of manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Premises.

(b) Upon the expiration or earlier termination of this Lease, Tenant shall cause all Hazardous Materials brought, kept or used in or about the Premises by Tenant and/or Tenant's Representatives to be removed from the Premises in compliance with all applicable Hazardous Materials Laws. During the Term, if the presence of any Hazardous Materials at, in, on or under the Premises caused or permitted by Tenant results in any contamination of the Premises, Tenant shall promptly take all actions at its sole expense in accordance with all Hazardous Materials Laws to return the Premises to the condition existing prior to the time of such contamination, subject to Landlord's approval as set forth in Section 18.2(d) below.

(c) Tenant shall immediately notify Landlord in writing of: (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Hazardous Materials Laws; (ii) any claim made or threatened by any person against Tenant or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iii) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in or removed from the Premises, including any complaints, notices, warnings or asserted violations in connection therewith. Tenant shall also supply to Landlord, within five (5) business days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations, relating in any way to Hazardous Materials in the Premises or Tenant's use thereof. Upon the reasonable written request of Landlord, Tenant shall, using appropriately qualified and licensed professionals and at Tenant's cost, thoroughly investigate any suspected Hazardous Materials contamination of the Premises or the Project by Tenant and/or Tenant's Representatives.

(d) Tenant shall not take any remedial action in response to the presence of any Hazardous Materials in or about the Premises in violation of applicable Hazardous Materials Laws, nor enter into any settlement agreement, consent decree or other compromise with respect to any violation of Hazardous Materials Laws, without first providing the notice required in Section 18.2(c) above and affording Landlord at least thirty (30) days to appear, intervene or otherwise appropriately assert and protect Landlord's interests with respect thereto.

(e) Tenant acknowledges that the Premises, the Building and/or the Project may contain asbestos-containing materials (" **ACM** ").

3. **Indemnity** . With respect to Tenant's use and occupancy of the Premises and Project (including the Common Areas), Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect, and hold Landlord and each of Landlord's Representatives, free and harmless from and against any and all Losses for death of or injury to any person or damage to any property whatsoev-er (including, without limitation, diminution in value), related to, arising from or caused in whole or in part, directly or indi-rectly, by (i) the presence in, on, under or about the Premises, or discharge in or from the Premises, of any Hazard-ous Mate-rials during the Term of this Lease by Tenant or Tenant's Representative, expressly excluding Hazardous Materials used, released or discharged by Landlord, any Landlord Representatives, any previous tenant of the Premises and/or any adjacent landowner or easement holder (except as otherwise described below regarding any ACM in, on, under or about the Premises); (ii) the use, analysis, generation, manufacture, production, storage, release, transpor-ta-tion, dispos-al, release, threatened release, dis-charge or generation of Hazardous Materials to, in, on, under, about or from the Premises or Project caused or contributed to by Tenant; or (iii) Tenant's failure to comply with any Hazardous Materials Law. Tenant's obligations here-under shall include, without limitation, and whether foreseeable or unfore-seeable (a) all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises and/or Project, (b) the preparation and imple-mentation of any closure, remedial action or other required plans in connection therewith, and (c) any claims, liabili-ties, penalties, forfei-tures, losses or expenses (includ-ing attorneys' fees and costs), however described, to the extent related to, arising from or caused in whole or in part, directly or indi-rectly, by any operations, work, or other acts or omissions of Tenant, including any Alterations, which damages, disturbs, makes friable, or otherwise adversely affects any ACM located in, on, under or about the Premises, and all such obligations shall sur-vive the expiration or earlier termination of the this Lease. For purposes of the release and indemnity provisions hereof, any acts or omissions of Tenant and/or Tenant's Representatives or others acting for or on behalf of Tenant (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Tenant.

4. " **Hazardous Materials** " shall mean any and all materials or substances which have been determined to be a nuisance or dangerous, toxic or hazardous or a pollutant or contaminant, including but not limited to any petroleum, including, without limitation, crude oil or any fraction thereof, hydrocarbon material, flammable explosives, asbestos, urea formaldehyde, mold, radioactive materials or waste, or other hazardous, toxic, contaminating or polluting materials, substances or wastes, including, without limitation, any "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" under any Hazardous Materials Laws.

5. " **Hazardous Materials Laws** " shall mean all federal, state and local laws, ordinances and regulations relating to Hazardous Materials, including, but not limited to, the Federal Water Pollution Control Act (33 U.S.C. §1251, et seq.), Resource Conservation & Recovery Act (42 U.S.C. §6901, et seq.), Safe Drinking Water Act (42 U.S.C. §3000f, et seq.), Toxic Substances Control Act (15 U.S.C. §2601, et seq.), the Clean Air Act (42 U.S.C. §7401, et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601, et seq.), California Health & Safety Code (§25100, et seq., §39000, et seq.), California Safe Drinking Water & Toxic Enforcement Act of 1986 (California Health & Safety Code §25249.5, et seq.), California Water Code (§13000, et seq.) and all air quality and air pollution regulations of the regional air pollution control district.

19. **NOTICE** . All notices, demands or requests required under, or related to, this Lease from one party to the other shall be in writing. Notices may be personally delivered, sent by Federal Express or other reputable express delivery service, sent by facsimile with a copy sent by any other method set forth in this Section, or sent by certified mail, return receipt requested, postage prepaid, to the addresses set forth at Section 1.17 or 1.18, as applicable. Notices shall be deemed received upon actual delivery to or refusal by the addressee. Each party shall have the right, from time to time, to designate a different address by notice given in conformity with this Section to the other party.

20. **OTHER TERMS AND CONDITIONS.**

1. **Signage** . Tenant shall have the exclusive right to all exterior signage on the Building, subject to Landlord's right of prior approval that such exterior signage is in compliance with the Landlord's signage plan attached as Exhibit D. Tenant shall have the right to install (a) Building top signage on the exterior of the Premises in a location selected by Tenant and subject to reasonable approval by Landlord, (b) signage on the exterior of the Premises adjacent to the Tenant Building main entrance, and (c) monument signage in the Common Areas at the driveway serving the Building, all at Tenant's sole cost and expense and in compliance with applicable laws. Tenant shall not otherwise place or permit to be placed, any sign, advertisement, notice or other similar matter on the doors, windows, exterior walls, roof or other areas of the Premises which are open to the view of persons outside the Premises, except in accordance with Landlord's signage plan which is attached as Exhibit D.

2. **Parking** . In connection with its use and occupancy of the Premises, Tenant shall have the non-exclusive right to park in the parking area of the Project, at no additional charge and on a non-reserved basis and subject to compliance with Landlord's rules and regulations therefor (including those set forth in Exhibit C), no more than the number of vehicles set forth in Section 1.16. Subject to Landlord's prior approval not to be unreasonably withheld, conditioned or delayed, Tenant shall have the right to designate parking spaces for Tenant's visitors, carpools, loading, company meetings and other of Tenant's needs. The parking authorized by this Section shall be for personal transportation to and from the Premises, and not for long-term storage of automobiles or for short- or long-term storage of boats, trailers or recreational vehicles; provided, however, that Tenant shall have the right to park trucks and trailers within the designated shipping areas and at any loading docks of the Premises. Landlord reserves the right to designate certain parking areas in the Project as being for the exclusive use of other tenants of the Project as long as such exclusive spaces do not result in any reduction of Tenant's parking rights under this Lease.

3. **Easements** . Landlord reserves the right, from time to time, to grant such easements, rights and dedications as Landlord deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not (a) unreasonably interfere with Tenant's normal conduct of its business on the Premises, (b) materially increase the costs associated with Tenant's occupancy of the Premises, or (c) materially alter any rights of Tenant set forth elsewhere in this Lease. Tenant shall sign any of the aforementioned documents upon request of Landlord and failure to do so shall constitute a Default of this Lease by Tenant without the need for further notice to Tenant.

4. **No Light, Air or View Easements** . No diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Building shall in any way affect this Lease or impose any liability on Landlord.

5. **Security Measures** . Tenant acknowledges that Landlord does not intend to provide guard service or other security measures at the Project. Tenant assumes all responsibility for the protection of Tenant, Tenant's Representatives and Tenant's Property, and the property of Tenant's Representatives from acts of third parties, assumes all risk in connection therewith and waives any and all claims for damages to persons or property sustained by Tenant, or by any other person or entity, arising from, out of or in connection therewith. Nothing herein contained shall prevent Landlord, at Landlord's sole option, from providing security services at the Project, in which event the costs thereof shall be included within Operating Expenses.

6. **Holding Over By Tenant** . Tenant agrees upon the expiration or termination of this Lease, immediately and peace-ably to yield up and surrender the Premises in the condition required under Section 7.2 without any notice or demand and any requirement for any such notice to quit or vacate is hereby expressly waived. Tenant shall be liable to Landlord for any and all damages incurred by Landlord as the result of any failure by Tenant to timely surrender posses-sion of the Premises as required herein. If Tenant shall hold over after the expiration of this Lease for any cause, such holding over shall be deemed a tenancy at suffer-ance or, at the sole discretion of Landlord, a tenancy from month-to-month, in which event such month-to-month tenancy shall be upon the same terms, conditions and provi-sions set forth in this Lease, except that the monthly Base Rent payable during such tenancy shall be increased to an amount equal to one hundred twenty-five percent (125%) of the

monthly Base Rent payable during the last full month immediately preceding such holding over for the first three (3) months of such holdover, and thereafter to an amount equal to one hundred fifty percent (150%) of the monthly Base Rent payable during the last full month preceding such holding over.

7. **Landlord's Right of Entry** . Subject to Tenant's reasonable security and safety requirements (except in case of an emergency), Landlord, the Mortgagee and/or Landlord's Representatives may enter upon the Premises at any reasonable time and upon at least 24 hours' prior notice (which may be telephonic notice) to make such repairs, additions or improvements as Landlord shall deem necessary; to post default notices and notices of nonresponsibility; to inspect and examine the Premises; and/or to exhibit the Premises to prospective tenants (during the last twelve (12) months of the Term only), lenders or purchasers. Notwithstanding the foregoing, no notice shall be required for any entry in the event of an emergency or for Landlord to cure any Default by Tenant or to take possession due to a Default in the manner provided in Section 15 of this Lease. Any such entries shall be without the abatement of rent, shall not be deemed an unlawful entry, or an actual or constructive eviction, and shall include the right to take such reasonable steps as required to accomplish the stated purposes. Except for damage to Tenant's personal property, furniture and equipment or injury to persons caused by the negligence or willful misconduct of Landlord or Landlord's Representatives while exercising its rights under this Section 20.7, but subject to the waivers set forth in Section 10.6, Tenant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Tenant's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby.

8. **Relocation** . **[INTENTIONALLY OMITTED]** .

9. **Furnishing of Financial Statements** . If requested by Landlord, a current or prospective Mortgagee or a prospective purchaser of the Project, Tenant shall deliver to Landlord, within ten (10) business days after request therefor, Tenant's current financial statements and financial statements for each of the two (2) preceding years. Such statements shall be prepared in accordance with GAAP and certified by an officer or owner of Tenant, or, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant, provided that as long as Tenant is publicly-traded, and Tenant's quarterly financial statements are available to the public at Tenant's web-site, or at the SEC's Edgar website, the availability of such public reports via internet shall satisfy the foregoing delivery requirements. Landlord shall keep all such financial statements and the information contained therein confidential, except that Landlord may disclose the same to Landlord's legal and accounting consultants, property and asset managers, any current or prospective Mortgagee, any prospective purchaser of the Project or as required by Law or as may reasonably required in the course of any judicial or governmental proceeding (including in response to a subpoena).

10. **Auctions** . No auction shall be conducted on the Premises or the Project, without first having obtained Landlord's prior written consent, which may be withheld in Landlord's sole discretion.

11. **Keys** . Landlord shall be supplied with keys to each lock of the Premises. Tenant agrees, at the termination of the tenancy, to return all keys to all doors of the Premises.

12. **Other Tenancies** . Landlord reserves the absolute right to effect such other tenancies in the Project as Landlord shall determine, in the exercise of its sole business judgment. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenants will or will not, during the Term of this Lease, occupy any space in the Project.

13. **Brokers' Fees** . Landlord has agreed to pay a fee for brokerage services rendered in connection with this Lease to the broker(s) identified in Section 1.15 (the " **Brokers** "), payable in accordance with the separate written agreement between Landlord and Landlord's broker, which alone shall govern the Brokers' entitlement to any commission. Landlord and Tenant each represent and warrant to the other that no broker, agent or finder, licensed or otherwise, has been engaged by it, respectively, in connection with this Lease, other than the Brokers. Each party agrees to indemnify and defend the other party against and hold the other party harmless

for, from and against any and all Losses with respect to any fee or commission alleged to be owing on account of the indemnifying party's dealings with any broker other than the Brokers.

21. **GENERAL PROVISIONS.**

1. **Exculpation** . The obligations of Landlord under this Lease do not constitute personal obligations of Landlord's Representatives, and Tenant shall look solely to Landlord's interest in the Project for satisfaction of any liability with respect to this Lease, and agrees not to seek recourse against (i) any other property of Landlord, (ii) Landlord's Representatives, or (iii) any of Landlord's Representatives' personal assets, for such satisfaction. Further, in no event shall Landlord be liable to Tenant for any indirect, consequential, or punitive damages, including, without limitation, any damages based on lost profits.

2. **Conveyance By Landlord** . Landlord shall be free at all times, without need of consent or approval by Tenant, to transfer all or any portion of its interest in Project or Building and in this Lease and, in the event of such transfer, Landlord shall automatically be released from all remaining liability under this Lease first arising from and after the date of this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder from and after the date of transfer, provided that such transferee has assumed such obligations. The term "Landlord" as used in this Lease, shall mean only the owner of the Project or Building at the time in question.

3. **Quiet Enjoyment** . Landlord agrees that, so long as Tenant is not in Default hereunder, Tenant shall have the quiet enjoyment of the Premises without hindrance on the part of Landlord, subject to the terms and conditions of this Lease and without interference by persons claiming by, through or under Landlord.

4. **No Accord and Satisfaction** . No payment by Tenant or receipt by Landlord of a lesser amount than the rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction. Pursuant to California Code of Civil Procedure §1161.1, Landlord reserves the right to accept partial payments of rent and the acceptance of any rent or other charges hereunder shall not be deemed a waiver of any Default hereunder other than the payment of the amount accepted by Landlord.

5. **Waiver** . No delay or omission in the exercise of any right or remedy of one party for any failure to perform by the other party hereunder shall impair such right or remedy or be construed as a waiver thereof. One or more waivers of any covenant or condition by a party shall not be construed as a waiver of a subsequent violation of the same covenant or condition, and the consent or approval by a party to or of any act by the other party requiring such party's consent or approval shall not be deemed to render unnecessary such party's consent or approval to or of any subsequent similar act by the other party. No violation of a covenant or condition of this Lease shall be deemed to have been waived by a party unless such waiver is in writing signed by such party.

6. **Independent Covenants** . This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent, and Tenant hereby expressly waives the benefit of any statute to the contrary. All conditions contained herein shall be deemed covenants.

7. **Relationship of the Parties** . Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

8. **Force Majeure** . If either party is delayed in the performance of any covenant of this Lease because of any of the following causes, then such performance shall be excused for the period of the delay and the period for such performance shall be extended for a period equivalent to the period of such delay: action of the elements;

war, riot or civil insurrection; acts of terrorism; building moratoria, trip generation restrictions or other similar action by the City of Carlsbad or other governmental agency or entity; labor disputes; inability to procure or a general shortage of labor or materials in the normal channels of trade; delay in transportation; delay in inspections; or any other cause beyond the reasonable control of the party so obligated, whether similar or dissimilar to the foregoing, financial inability excepted; provided, however, that except as specifically set forth elsewhere in this Lease, no such events shall affect Tenant's obligation to pay Base Rent, Additional Rent or any other amount payable under this Lease, nor shall such events affect the length of the Term.

9. **Consents** . With respect to any provision of this Lease which either provides or is held to provide that Landlord shall not unreasonably withhold or unreasonably delay any consent or approval, Tenant shall not be entitled to make any claim for, and Tenant hereby expressly waives, any claim for damages, it being understood and agreed that Tenant's sole remedy therefor shall be an action for injunctive relief, declaratory relief or specific performance.

10. **Counterparts** . This Lease may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

11. **Authority** . Landlord and Tenant each represent and warrant to one another that the individuals executing this Lease on their behalf are duly authorized to execute and deliver this Lease on behalf of the Landlord and Tenant, respectively. Upon the request of the other party, any such party shall, at the time of the execution of this Lease, deliver to the other party evidence of such authority satisfactory to the other party.

12. **Recording** . Tenant shall not record this Lease or any short form or memorandum version hereof without the prior written consent of Landlord, which may be withheld at Landlord's sole discretion.

13. **Interpretation and Use of Pronouns** . Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and the neuter genders.

14. **Captions and Interpretations** . Section titles or captions contained in this Lease are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Lease or any provision hereof. No provision in this Lease is to be interpreted for or against either party because that party or its legal representative drafted such provision. Any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language.

15. **Severability** . If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

16. **Applicable Law** . This Lease shall be governed by the laws of the State of California. Any action brought to enforce, interpret or nullify this Lease or the provisions hereof shall be brought in San Diego County, California, and in no other forum.

17. **Waiver of Right of Redemption** . Tenant hereby waives for Tenant and for all those claiming under Tenant all right now or hereafter existing to redeem, by statute or by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease. Tenant hereby waives its rights under California Code of Civil Procedure §1179.

18. **Attorneys' Fees** . If either party commences litigation against the other for the specific performance of this Lease, for damages or otherwise for the enforcement of any remedy hereunder, the prevailing party shall recover from the non-prevailing party all costs and expenses incurred therein, including reasonable attorneys' fees and expenses incurred in enforcing any judgment. If Landlord, through no fault of its own, is made a party

to any litigation relating to this Lease or the Premises instituted by or against Tenant, then Tenant shall defend, indemnify and hold Landlord harmless from and against all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in connection therewith. In addition thereto, Tenant agrees to pay Landlord's costs, expenses and reasonable attorneys' fees with respect to: (i) each notice of default sent to Tenant; and (ii) any request by Tenant which causes Landlord to actually incur attorney fees, provided that prior to such fees being incurred pursuant to this subsection (ii), Landlord shall notify the Tenant of the need to reimburse such fees. Landlord shall notify Tenant of the amount of such attorneys' fees, and Tenant shall pay the same, as Additional Rent, within fifteen (15) days after such notice.

19. **Joint and Several Obligations** . If more than one person or entity executes this Lease as Tenant: (i) each of them is and shall be jointly and severally liable for the covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant; and (ii) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of the persons and entities executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or signed, or given or received such notice and, in the event more than one person or entity comprising Tenant so acts, signs or gives or receives such notice, Landlord shall be entitled to rely on the first such act, signature, or giving or receiving of notice and any subsequent act, signature or giving or receiving of notice by any additional Tenant entity(ies) shall be null and void.

20. **Successors and Assigns** . The covenants and conditions herein contained shall, subject to the provisions of Section 14, apply to and bind the heirs, successors, executors, administrators and assigns of the respective parties hereof.

21. **Time of the Essence; Business Days** . Time is expressly declared to be of the essence of this Lease, and of all covenants and conditions herein contained. Any reference in this Lease to " **business days** " shall mean any weekday, Monday through Friday, except holidays on which United States post offices are closed.

22. **No Third-Party Beneficiaries** . The provisions of this Lease are solely for the benefit of the parties hereto, and no broker or other third party shall be entitled to any benefits hereof or hereunder.

23. **Entire Agreement** . This Lease sets forth all the terms, provisions, covenants, conditions, promises, agreements and understandings between Landlord and Tenant concerning the Premises. There are no warranties, representations, covenants, promises, agreements, conditions or understandings, either oral or written, between them other than set forth herein. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party.

24. **No Option By Landlord** . The submission and negotiation of this Lease shall not be deemed an offer to enter the same by Landlord but the solicitation of such an offer by Tenant. The receipt (which shall include the cashing, deposit or other negotiation of checks, money orders and the like) of any moneys by Landlord which are tendered by Tenant along with a Tenant-executed copy of this Lease, or at any time prior to Landlord's delivery of a fully executed copy of this Lease to Tenant, shall not constitute an acceptance of Tenant's offer to lease as contained herein. Notwithstanding the foregoing, delivery of this Lease by Tenant to Landlord after signature by Tenant shall constitute an option which can be accepted by Landlord at any time until two (2) weeks after delivery of the signed Lease by Tenant. During such period and in reliance on the foregoing, Landlord may, at Landlord's option, proceed with any plans, specifications, alterations, or improvements, and permit Tenant to enter the Premises; but such acts shall not be deemed an acceptance of Tenant's offer to enter this Lease, and such acceptance shall be evidenced only by Landlord's signing and delivering this Lease to Tenant.

25. **Federal Contractor/Subcontractor** . To the extent Tenant is a federal contractor or subcontractor, then The Equal Opportunity Clause, 41 CFR 60-1.4, contained in § 202 of E.O. 11246; the Affirmative Action Clause, 41 CFR 60-250.4, contained in § 402 of the VEVRA of 1974; and the Affirmative Action Clause, 41 CFR 60-741.4, contained in § 503 of the Rehabilitation Act of 1973; are herein incorporated by reference.

26. **Arbitration of Disputes** . Except as otherwise provided in this Section 21.26 and except in connection with any determination of "market rent" pursuant to any provision of this Lease, any controversy (whether in tort or contract or other) arising under or relating to this Lease, the subject matter of this Lease, and/or the transactions contemplated herein or related thereto (including but not limited to the parties' rights to any monies due hereunder or otherwise), the parties hereto agree that such controversy shall be settled by final, binding arbitration in San Diego, California, administered by and in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties hereto agree that the provisions of California Code of Civil Procedure §1283.05, as it may be amended from time to time, shall be incorporated into, made a part of, and made applicable to this arbitration agreement, except to the extent in conflict with any provision of this Section. The arbitrators shall have the authority to award compensatory damages only and shall have no authority to award punitive, exemplary or similar type damages or any form of equitable relief. Only a practicing attorney-at-law licensed to practice in the State of California, with at least 10 years experience in commercial landlord-tenant or other commercial real estate matters, or a judge retired from the bench of either the State or federal courts in California, may be appointed to serve as an arbitrator. The award shall be in writing, signed by the arbitrator (or a majority of the panel of arbitrators), and shall include findings of fact and conclusions of law. The arbitrator(s) shall award to the prevailing party, if any, as determined by the arbitrators, its reasonable fees and costs, including but not limited to arbitrator and administrative fees, in accordance with Section 21.18 of this Lease.

Notwithstanding anything in this Section to the contrary, in the event of a Default, Landlord shall be entitled to commence and maintain a civil action in accordance with the unlawful detainer statutes to recover possession of the Premises and damages arising from the Default, and to recover possession of the Premises and all amounts awarded pursuant to the judgment.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Initials_____ Initials_____

Initials_____ Initials_____

27. **Exhibits** . All exhibits attached hereto shall be part of this Lease and by this reference are expressly incorporated herein. This Lease contains the following Exhibits:

Exhibit A	Project Site Plan
Exhibit B	Tenant Work Letter
Exhibit C	Rules and Regulations
Exhibit D	Signage Criteria
Exhibit E	Environmental Questionnaire
Exhibit F	Form of Landlord's Consent

28. **Addendum** . The Addendum attached hereto and specified in Section 1.19, if any, shall be part of this Lease and by this reference is expressly incorporated herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date(s) set forth by their respective signatures.

H. G. FENTON PROPERTY COMPANY, a California corporation

By:H. G. FENTON COMPANY, a California corporation
Authorized Agent

By
Kevin D. Hill, Vice President
Leasing and Commercial Acquisitions

Landlord:

Date: _____

By
Michael P. Neal, President & CEO

ALPHATEC HOLDINGS, INC., a Delaware corporation

Tenant:

By

Date: _____

By

ADDENDUM TO LEASE

The following additional provisions are a part of, and incorporated in, the Lease to which this Addendum is attached. In the event of any conflict between the provisions of this Addendum and the body of the Lease, this Addendum shall control.

22. **CONDITIONAL ABATEMENT OF BASE RENT** .

Subject to the satisfaction of the conditions precedent set forth below, the obligation of Tenant to pay monthly Base Rent pursuant to Section 4.1 of the Lease, shall be conditionally abated for the second (2 nd) full calendar month of the Term in the amount of $105,069.00 and for the thirteenth (13 th) full calendar month of the Term in the amount of $108,221.00 on the terms and conditions set forth below. The conditional abatement of Base Rent shall not include abatement of any Additional Rent, as such term is defined in Section 4.1 of the Lease.

(a) The Lease shall be in effect and Tenant shall not be in Default of any material provision thereof; and

(b) In the event that Landlord elects to terminate this Lease pursuant to Section 15 following Tenant's Default, the unamortized portion of the monthly Base Rent so abated shall be deemed an element of Recapturable Expenses for purposes of Section 15.7 of the Lease, with amortization calculated on a straight line basis utilizing a sixty-six (66) month amortization schedule commencing as of the Commencement Date.

23. **OPTION TO EXTEND** .

Subject to satisfaction of the conditions precedent set forth below, Tenant shall have two options to extend the Term (each, an **"Extension Option"**) for sixty (60) full calendar months (**"Extension Term"**) each time, on the following terms and conditions:

23.1 Tenant's Extension Option shall be subject to satisfaction of each of the following conditions precedent, which are solely for the benefit of, and may be waived unilaterally by, Landlord:

(a) The Extension Option shall be exercised by written notice delivered by Tenant to Landlord not later than eight (8) months prior to the end of the Term or the prior Extension Term, as applicable; and

(b) The Lease shall be in effect and Tenant shall not be in Default of any material provision thereof both on the day such written notice is delivered to Landlord and on the last day of the Term.

23.2 In the event the Term shall be extended following exercise by Tenant of the Extension Option, then all of the terms, covenants and conditions of this Lease shall remain in full force and effect during the Extension Term, except that the initial monthly Base Rent (including subsequent annual increases in Base Rent) during the Extension Term shall be adjusted to the then effective market rate for new leases to tenants having a credit history and net worth similar to that of Tenant at the time of exercising such option for comparable space in the Carlsbad market, taking into account all relevant factors for such comparable space including without limitation, the size of the Premises, the value of any tenant concessions, tenant improvement allowances or alterations to be provided by a landlord for such comparable space, and the broker commissions payable in connection with such comparable space (" **Fair Market Rental Value** ").

23.3 Landlord shall notify Tenant in writing regarding the determination made pursuant to Section 23.2 within ten (10) Business Days after Landlord's receipt of Tenant's election to exercise the Extension Option. In the event Tenant rejects Landlord's determination, Tenant shall give Landlord written notice of such rejection (" **Rejection Notice** ") within ten (10) Business Days after receipt of the determination. Tenant's failure to timely deliver the Rejection Notice shall be deemed Tenant's approval of the Landlord-determined Fair Market Rental

Value. The Rejection Notice shall state whether Tenant shall rescind its exercise of the Extension Option or if Tenant seeks to have a third-party evaluation of the Fair Market Value. If Tenant timely delivers the Rejection Notice, and such Rejection Notice states that the Tenant is rescinding the Extension Option, the Extension Option shall become null and void. If Tenant timely delivers the Rejection Notice, and such Rejection Notice states that Tenant seeks to have a third-party evaluation of the Fair Market Value, then the following terms and conditions shall apply:

(a) Within fifteen (15) days after Tenant's delivery of the Rejection Notice, each party, at its own cost and by giving written notice to the other party, shall appoint a MAI real estate appraiser, with at least ten (10) years' full-time commercial appraisal experience in the area where the Premises are located, to appraise and determine the Fair Market Rental Value. If, in the time provided, only one (1) party shall give written notice of appointment of an appraiser, then the single appraiser appointed shall determine the Fair Market Rental Value. If two (2) appraisers are appointed by the parties, then the two (2) appraisers shall each independently, and without consultation, prepare an appraisal of the Fair Market Rental Value within thirty (30) days after their appointment. Each appraiser shall seal its respective appraisal after completion. After both appraisals are completed, the resulting appraisals of the Fair Market Rental Value shall be opened and compared. If the values of the appraisals differ by no more than ten percent (10%) of the value of the higher appraisal, then the Fair Market Rental Value shall be the average of the two (2) appraisals.

(b) If the values of the appraisals differ by more than ten percent (10%) of the value of the higher appraisal, then within ten (10) days after the date the appraisals are compared, the two (2) appraisers selected by the parties shall appoint a third similarly qualified appraiser. If the two (2) appraisers fail to so select a third appraiser, then a third similarly qualified appraiser shall be appointed at the request of either Landlord or Tenant by the then Presiding Judge of the Superior Court of the State of California for the County of San Diego. The two (2) appraisers shall each then submit his or her independent appraisal in simple letter form to the third appraiser stating his or her determination of the Fair Market Rental Value (which determination may not be changed from that which was set forth in such appraiser's sealed appraisal). The sole responsibility of the third appraiser shall be to determine which of the determinations made by the first two (2) appraisers is most accurate. The third appraiser shall have no right to propose a middle ground or any modification of either of the determinations made by the first two (2) appraisers. The third appraiser's choice shall be submitted to Landlord and Tenant within fifteen (15) days after the third appraiser has received the written determination from each of the first two (2) appraisers. The Fair Market Rental Value shall be determined by the selection made by the third appraiser from the determinations submitted by the first two (2) appraisers.

(c) Each party shall pay the fees and expenses of its own appraiser, and fifty percent (50%) of the fees and expenses of, and the cost of appointing, the third appraiser.

(d) The appraisers shall use their best efforts to fairly and reasonably appraise and determine the Fair Market Rental Value in accordance with the terms of this Lease, and shall not act as advocates for either Landlord or Tenant.

(e) The appraisers shall have no power to modify the provisions of this Lease, and their sole function shall be to determine the Fair Market Rental Value in accordance with the definition thereof set forth in Section 23.2 and the provisions of this Section 23.3.

24. **NONDISCLOSURE OF TERMS** .

The parties acknowledge and agree that the terms of this Lease and any financial statements delivered by Tenant are confidential and constitute proprietary information. Disclosure of the terms of this Lease or any confidential information provided in connection with this Lease could adversely affect the both Landlord and Tenant. Accordingly, each party agrees that it, and its partners, officers, directors, employees, agents and attorneys, shall not

intentionally and voluntarily disclose the terms and conditions of this Lease to any newspaper or other publication or any other tenant or apparent prospective tenant of the Building or other portion of the Project, or real estate agent, either directly or indirectly, without the prior written consent of the other party, provided, however, that (i) Tenant may disclose the terms to prospective subtenants or assignees under this Lease and/or professionals working with Tenant and Landlord may disclose the terms to prospective purchasers and/or professionals working Landlord, (ii) Landlord may disclose such confidential information to Landlord's legal, accounting and space planning consultants, Landlord's current and prospective clients and/or investors, Landlord's property and asset managers or any prospective purchasers or lenders of the Project, and (iii) either party may disclose such confidential information as required by Law or as may reasonably be required in the course of any judicial or governmental proceeding (including in response to a subpoena). Any breach of the provisions of this Section by one party shall entitle the other party to enforce all rights and remedies it has under the Lease, at law or in equity for such breach.

[SIGNATURES FOLLOW ON NEXT PAGE]

Landlord:

Date: 1/12/16 H. G. FENTON PROPERTY COMPANY, a California corporation

By: H. G. FENTON COMPANY, a California corporation,
Authorized Agent

/S/ Kevin D. Hill
By
Kevin D. Hill, Vice President,
Leasing and Commercial Acquisitions

By /S/ Michael P. Neal
Michael P. Neal, President & CEO

Tenant:

Date: ALPHATEC HOLDINGS, INC., a Delaware corporation

By /S/ Michael O'Neill VP and CFO

By /S/ Ebun Garner General Counsel and SVP

Exhibit 10.24

EXHIBIT A

SITE PLAN

EXHIBIT B

TENANT WORK LETTER

(Tenant Constructs)

This Tenant Work Letter shall set forth the terms and conditions relating to the construction of tenant improvements in the Premises. This Tenant Work Letter is essentially organized chronologically and addresses the issues of the construction of the Premises, in sequence, as such issues will arise during the actual construction of the Premises. All capitalized terms used but not defined herein shall have the meanings given such terms in this Lease. All references in this Tenant Work Letter to Articles or Sections of "this Lease" shall mean the relevant portion of the Lease to which this Tenant Work Letter is attached as Exhibit B and of which this Tenant Work Letter forms a part, and all references in this Tenant Work Letter to Sections of "this Tenant Work Letter" shall mean the relevant portion of this Tenant Work Letter.

SECTION 1 - LANDLORD'S INITIAL CONSTRUCTION IN THE PREMISES

Landlord has provided, at its sole cost and expense, the base, shell and core of the Premises and the existing leasehold improvements in the Premises (the " **Base, Shell and Core** "). Tenant has inspected and hereby approves the condition of the Premises and the Base, Shell and Core, and agrees that the Premises and the Base, Shell and Core shall be delivered to Tenant in their current "as-is" condition.

SECTION 2 - IMPROVEMENTS

2.1 Improvement Allowance . Tenant shall be entitled to a one-time tenant improvement allowance (" **Improvement Allowance** ") up to the amount set forth in Section 1.11 of this Lease for the costs relating to the initial design and construction of tenant improvements that are permanently affixed to the Premises (" **Improvements** "), which Improvements may include (i) expansion of the exterior patio portion of the Premises, (ii) the installation of a shade trellis or other covering over such patio, (iii) repainting and recarpeting and (iv) other modifications as depicted on the attached Exhibit 1 to this Exhibit B, which improvements are herein approved by Landlord. Tenant must request the Improvement Allowance, provide all documentation required under Section 2.2 below and satisfy all conditions set forth in Section 2.2 below on or before July 31, 2017 or the Improvement Allowance shall be deemed forfeited with no further obligation by Landlord with respect thereto. In no event shall Landlord be obligated to make disbursements pursuant to this Tenant Work Letter in a total amount which exceeds the Improvement Allowance nor shall Tenant be entitled to any credit for any unused portion of the Improvement Allowance. The Improvements shall be deemed Landlord’s property under this Lease.

2.2 Disbursement of the Improvement Allowance . Except as otherwise set forth in this Tenant Work Letter, the Improvement Allowance shall be disbursed by Landlord as provided below for costs related to the construction of the Improvements and for the following items and costs (collectively, the " **Improvement Allowance Items** "): (a) payment of the fees of the Architect and the Engineers, as those terms are defined in Section 3.1 of this Tenant Work Letter, and payment of the fees incurred by, and the cost of documents and materials supplied by, Landlord and/or Landlord's consultants in connection with the review of the Construction Drawings, as that term is defined in Section 3.1 of this Tenant Work Letter; (b) the payment of plan check, permit and license fees relating to construction of the Improvements; (c) the cost of any changes in the Base, Shell and Core when such changes are required by the Construction Drawings or are otherwise required by law as a result of the construction of the Improvements, such cost to include all direct architectural and/or engineering fees and expenses incurred in connection therewith; (d) the cost of any changes to the Construction Drawings or Improvements required by applicable building code or any other governmental law or regulation (collectively, " **Code** "); and (e) sales and use taxes and Title 24 fees.

Subject to the provisions of this Tenant Work Letter, Landlord will disburse to Tenant, within ten (10) business days following satisfaction of the conditions below, a check in an amount equal to the lesser of (i) the actual cost of the Improvement Allowance Items and (ii) the Improvement Allowance, following the completion of construction of the Improvements, provided that (a) Tenant delivers to Landlord evidence, reasonably acceptable to

Landlord, of the lien-free completion of the Improvements and a copy of Tenant's recorded, valid "Notice of Completion," together with evidence that Tenant has delivered written notice, in accordance with California Civil Code Section 3259.5, of the recordation of the Notice of Completion to Tenant's general contractor and any other person or entity that provided Landlord or Tenant with a preliminary 20-day notice, (b) Landlord has determined that no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building, the structure or exterior appearance of the Building, or any other tenant's use of such other tenant's leased premises in the Building, (c) the Architect delivers to Landlord a certificate, in a form reasonably acceptable to Landlord, certifying that the construction of the Improvements in the Premises has been substantially completed in accordance with the Approved Working Drawings, (d) Tenant delivers to Landlord "as-built" drawings for the Improvements, and (e) Tenant is not then in Default under this Lease and there exists no circumstance that with the passage of time, or notice from Landlord, would constitute a Default under this Lease. In addition to the provisions contained herein, Landlord shall have no obligation to disburse to Tenant any portion of the Improvement Allowance until such time that Tenant has published its annual Form10- K filing which (1) indicates Tenant has refinanced its current debt liability and has reclassified such debt as a long term liability, and (2) contains an auditor's opinion that Tenant is a going concern.

2.3 Standard Improvement Package . Landlord may establish specifications (" **Specifications** ") for the Building standard components to be used in the construction of the Improvements in the Premises (collectively, " **Standard Improvement Package** "), which shall be available to Tenant upon request.

SECTION 3 - CONSTRUCTION DRAWINGS

3.1 Selection of Architect/Construction Drawings . Tenant shall retain an architect/space planner (the " **Architect** ") which will be either (i) Landlord's designated architect/space planner, or (ii) an architect/space planner approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed by Landlord, to prepare the Construction Drawings, as that term is defined in this Section 3.1. Tenant shall retain engineering consultants (" **Engineers** ") approved by Landlord (which approval shall not be unreasonably withheld, conditioned or delayed by Landlord) to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, lifesafety, and sprinkler work in the Premises. The plans and drawings to be prepared by the Architect and the Engineers hereunder shall be known collectively as the " **Construction Drawings** ." Landlord's review of the Construction Drawings as set forth in this Section 3, shall not imply Landlord's review of the same, nor obligate Landlord to review the same, for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings.

3.2 Final Space Plan . Tenant and the Architect shall prepare the final space plan for Improvements in the Premises (the " **Final Space Plan** ") and shall deliver the Final Space Plan to Landlord for Landlord's approval, such approval not to be unreasonably withheld, conditioned or delayed. Landlord acknowledges and agrees that the space plan attached to this Exhibit B as Exhibit "1" (" **Working Plan** ") is generally acceptable and it shall be unreasonable for Landlord to withhold its consent to the Final Space Plan if the Final Space Plan is generally consistent with the Working Plan.

3.3 Final Working Drawings . Tenant, the Architect and/or the Engineers shall compile a fully coordinated set of architectural, mechanical, electrical and structural drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the " **Final Working Drawings** ") and shall submit the same to Landlord for Landlord's approval, such approval not to be unreasonably withheld, conditioned or delayed.

3.4 Permits . The Final Working Drawings shall be approved by Landlord (" **Approved Working Drawings** ") prior to the commencement of the construction of the Improvements, such approval not be unreasonably withheld, conditioned or delayed. Tenant shall cause the Architect to immediately submit the

Approved Working Drawings to the appropriate municipal authorities for all applicable building permits necessary to allow Contractor, as that term is defined in Section 4.1, below, to commence and fully complete the construction of the Improvements (the " **Permits** "). No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

SECTION 4 - CONSTRUCTION OF THE IMPROVEMENTS

4.1 Contractor . A general contractor shall be retained by Tenant to construct the Improvements. Such general contractor (" **Contractor** ") shall be selected by Tenant and approved by Landlord (and Tenant shall have the right to select such contractor using a competitive bidding process among general contractors reasonably approved by Landlord). Tenant shall engage Hughes Marino as Tenant's construction manager with respect to the construction of the Improvements (however, any fees charged to Tenant by Hughes Marino for such construction management shall not be included in the Improvement Allowance Items and Tenant shall be solely responsible therefor).

4.2 Tenant's Agents . All subcontractors, laborers, materialmen, and suppliers used by Tenant (such subcontractors, laborers, materialmen, and suppliers, and the Contractor to be known collectively as " **Tenant's Agents** ") must be approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Landlord shall have the right to designate the subcontractors to be utilized by Tenant for any mechanical, electrical, plumbing, life-safety, sprinkler, structural and air-balancing work.

4.3 Construction of Improvements by Contractor . Tenant shall independently retain, in accordance with Section 4.1 above, the Contractor to construct the Improvements in accordance with the Approved Working Drawings.

4.4 Indemnification & Insurance .

4.4.1 Indemnity . Tenant's indemnity of Landlord as set forth in Section 11.2 of this Lease shall also apply with respect to any and all Losses caused by any act or omission of Tenant or Tenant's Agents.

4.4.2 Requirements of Tenant's Agents . Each of Tenant's Agents shall guarantee to Tenant and for the benefit of Landlord that the portion of the Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. All such warranties or guarantees as to materials or workmanship of or with respect to the Improvements shall be contained in the contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances which may be necessary to effect such right of direct enforcement.

4.4.3 Insurance Requirements .

4.4.3.1 General Coverages . Tenant shall cause all of Tenant's Agents to agree in their contract with Tenant to carry (i) worker's compensation insurance covering all of their respective employees, and (ii) commercial general liability insurance, all with limits, in form and with companies as are required to be carried by Tenant as set forth in Section 11.1 of this Lease, including naming Landlord as an additional insured.

4.4.3.2 Special Coverages . Tenant (or the Contractor) shall carry "Builder's All Risk" insurance in an amount reasonably approved by Landlord covering the construction of the Improvements, and such other insurance as Landlord may reasonably require. Tenant shall also require the Architect and the Engineers to agree in their contract with Tenant to carry professional liability insurance or errors and omissions insurance (as applicable). Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord.

4.4.3.3 General Terms . Certificates for all insurance carried pursuant to this Section 4.4.3 shall be delivered to Landlord before the commencement of construction of the Improvements and before the Contractor's equipment is moved onto the site. In the event that the Improvements are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. Landlord may, in its discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of the Improvements and naming Landlord as a co-obligee.

4.5 Construction of Improvements During the Term . Tenant hereby agrees and acknowledges that Tenant will be constructing the Improvements in the Premises during the Term of this Lease and that the construction of the Improvements shall not be deemed a constructive eviction nor shall Tenant be entitled to any abatement of Rent (except as provided in Section 22 of this Lease) or change in the Commencement Date in connection with the construction of the Improvements.

4.6 Fees to Landlord . Notwithstanding any terms to the contrary in Section 7.6 of this Lease or elsewhere, Landlord acknowledges and agrees that Landlord shall not be entitled to any fees or compensation related to its review and approval of the Construction Drawings, Final Space Plan, Final Working Drawings, or Approved Working Drawings or with respect to any other management or involvement with the construction of the Improvements.

4.7 Removal of Improvements . Notwithstanding the foregoing, Tenant shall have no obligation to remove the Improvements constructed pursuant to this Tenant Work Letter upon the expiration or earlier termination of this Lease, other than (A) any element of the Improvements shown in the Final Space Plans or the Final Working Drawings for which Landlord's written approval thereof is expressly conditioned upon Tenant's removal of the same upon the expiration or earlier termination of this Lease, and (B) telecommunications cabling and wiring, which shall be removed in accordance with Section 7.2 of this Lease.

EXHIBIT 1 TO EXHIBIT B

WORKING PLAN

EXHIBIT C

RULES AND REGULATIONS

In the event of any conflict between the provisions of this Lease and the Rules and Regulations, the provisions of this Lease will govern.

A. The plumbing facilities shall not be used for any purpose other than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by Tenant who shall, or whose Tenant's Representatives shall, have caused it.

B. Except for Tenant's customary wall hangings, Tenant shall not deface wall, ceilings, glass, partitions, floors, doors, wood, paint, stone or metal work of the Premises or the Project by marking, nailing, drilling or otherwise defacing.

C. Tenant shall not use, keep or permit to be used or kept, any foul or obnoxious gas or substance in the Premises or permit or suffer the Premises to be used or occupied in any manner offensive or objectionable to Landlord or other occupants of the Building or Project by reason of any noise, odors and/or vibrations.

D. Tenant, or Tenant's Representatives, shall not play any musical instrument or make or permit any improper noises in the Project.

E. Tenant and Tenant's Representatives shall not bring into nor keep within the Premises any animal or bird, however; this rule does not apply to dogs trained to assist individuals with a disability. In certain circumstances, Landlord may permit Tenant to bring Tenant's dog to the Premises provided however, Landlord shall have the absolute right to ask Tenant to cease doing so, for any reason, including, but not limited to, Tenant's dog is creating a nuisance, interfering with other tenants, causing damage to the Property or common areas, creating safety issues, or in any such other circumstances as Landlord deems reasonable.

F. Tenant, or Tenant's Representatives, shall not loiter in the entrance or corridors of the Building or Project, or in any way obstruct the sidewalks, hallways and stairways and shall use the same only as a means of access to and from the Premises.

G. Landlord may limit weight, size and position of all safes, fixtures and other equipment used in the Premises. In the event Tenant shall require extra heavy equipment, Tenant shall notify Landlord of such fact and shall pay the cost of structural bracing to accommodate same. All damage done to the Premises or the Project by putting in, or taking out, or maintaining extra heavy equipment shall be repaired at the expense of Tenant.

H. Tenant shall not use any machinery therein, even though its installation may have been permitted, which may cause any unreasonable noise, or jar or tremor to the floor or walls, or which by its weight might injure the floors of the Premises.

I. No personnel shall enter or remain in the Project while intoxicated or under the influence of liquor or drugs. Landlord shall have the right to exclude or expel any person who, in the absolute discretion of Landlord, is under the influence of liquor or drugs.

J. Tenant and Tenant's Representatives shall not throw refuse or other substances or litter of any kind in or about the Project, except in receptacles placed therein for such purposes by Landlord or governmental authorities.

K. Tenant shall not install any form of window covering or ventilators or similar devices visible from the outside of the Premises without the prior written consent of Landlord.

L. All freight must be moved into, within and out of the premises only during such hours and according to such regulations as may be posted from time to time by Landlord.

M. No aerial, antenna or dish shall be erected on the roof or exterior walls of the Premises or on the grounds, without in each instance the written consent of Landlord. Any aerial, antenna or dish so installed without such written consent shall be subject to removal without notice at any time.

N. Tenant shall use, at its cost, such pest extermination at such intervals as Landlord may require.

O. No waiver of any rule or regulation by Landlord shall be effective unless expressed in writing and signed by Landlord or its authorized agent.

P. Tenant shall abide by any additional rules or regulations which are ordered or requested by any governmental or military authority.

Q. Tenant shall not clean, wash, repair or otherwise perform any maintenance or service on any vehicle owned or utilized by Tenant in any of the Common Areas of the Project or any other area in plain view of the public.

EXHIBIT D

SIGNAGE CRITERIA

A. Interior Signs . Tenant shall not affix or maintain upon the glass panes and supports of the storefront windows and doors, or within 18" of the storefront windows and doors, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items, except such as have first received the written approval of Landlord (which shall not be unreasonably withheld or delayed) as to size, type, color, location, copy, nature and display qualities.

B. Exterior Signs . Tenant shall be entitled to Building-exterior signage and signage on the Project's monument. All signage shall be designed and installed, at Tenant's sole cost and expense, in locations mutually agreed by Landlord and Tenant. Any Building-exterior signage shall have first received the written approval of Landlord (which shall not be unreasonably withheld or delayed) as to size, type, color, location, copy, nature and display qualities.

C. Tenant shall not erect, place, paint or maintain in or on the Premises any sign, exterior advertising medium or any other object of any kind whatsoever, whether an advertising device or not, visible or audible from outside the Premises. Nor shall Tenant change the color, size, location, composition, wording or design of any sign or advertisement on the Premises that may have been theretofore approved by Landlord and governmental authorities without the prior written approval of Landlord and said authorities. Tenant shall, at its own expense, maintain and keep in good repair all installations, signs and advertising devices which it is permitted by Landlord to maintain, and shall pay all charges required to keep them in good repair.

D. Upon termination or expiration of this Lease or of Tenant’s right to possession of the Premises, then Tenant shall at Tenant’s sole cost and expense, remove such signage and restore and repair all parts of the Building and Building monument sign affected by the installation or removal of said signage to the condition existing prior to its installation or to a condition reasonably acceptable to Landlord.

EXHIBIT E

ENVIRONMENTAL QUESTIONNAIRE

EXHIBIT F

FORM OF LANDLORD'S CONSENT

LANDLORD SUBORDINATION AND AGREEMENT

THIS LANDLORD WAIVER AND AGREEMENT (" **Agreement** "), dated as of _____, 201_, is between _____, a _____ corporation (the " **Lender** ") and [FENTON ENTITY], a California _____ (" **Landlord** "), with reference to the following:

R E C I T A L S:

A. Landlord and _____, a _____ (" **Tenant** "), are parties to that lease agreement dated _____ (" **Lease** "), relating to the improved real property located _____, as more particularly described in the Lease (" **Premises** ").

B. Lender has agreed to make a loan to Tenant pursuant to a loan agreement dated _____, 2015 and related documents and instruments (collectively, " **Loan Documents** "), which loan is secured by, among other things, that certain personal property owned by Tenant which is described on Schedule A attached hereto (collectively, " **Collateral** ").

C. The parties wish by means of this Agreement to establish certain rights, safeguards, obligations and priorities with regard to their respec-tive interests.

Terms of the Agreement

IN CONSIDERATION of the mutual covenants of the parties and other good and valuable consideration, Lender and Landlord agree as follows:

1. Lender's Security Interest in Fixtures . Landlord acknowledges that pursuant to a Security Agreement which is one of the Loan Documents, Tenant is granting Lender a security interest in the Collateral identified on Schedule A. Landlord consents to the grant of such a security interest, subordinates any and all rights in the Collateral which Landlord may have under statute, case law or by contract, and agrees that the Collateral shall remain personal property of Tenant at all times, notwithstanding that the Collateral, or any part thereof, may now be or hereafter become in any manner affixed or attached to, or embedded in, or permanently resting on, real property or any building thereon, or may otherwise be characterized under applicable law as fixtures; provided, however, that the foregoing shall apply only as between Landlord and Lender and shall not affect Landlord's rights to characterize the Collateral as real property or fixtures following the termination of Lender's security interest therein.

2. Access to Premises . Landlord shall, subject to the rights of Tenant under the Lease and subject to Landlord's right to enter the Premises to prepare the same for the next tenant, permit Lender and its agents and representatives to come on to the Premises for a period of up to thirty (30) days to dispose of or remove the Collateral. Landlord agrees that if it shall commence any action to regain possession of the Premises or to terminate the Lease, Landlord will endeavor to notify Lender of such action and will permit Lender and its agents and representatives to come on the Premises, after Landlord has regained possession of the Premises, to dispose of or remove the Collateral, subject to the time limitations and other provisions of Paragraph 5 below. Lender shall use due care during any such period in which it is on the Premises and shall promptly repair any damage caused to the Premises by Lender's removal of the Collateral from the Premises.

3. No Effect on Tenant's Lease Obligations . Nothing contained herein shall: (i) operate as a consent to or approval or ratification by Landlord of any of the provisions of the Loan Documents, nor shall Landlord be bound in any way by the provisions of the Loan Documents; (ii) be construed to modify, waive or affect any of the provisions, covenants or conditions in the Lease, any of Tenant's obligations or Landlord's rights or remedies under

the Lease, or otherwise or to enlarge or increase Landlord's obligations or Tenant's rights under the Lease or otherwise; or (iii) be construed to waive any present or future breach or default on the part of the Tenant under the Lease.

4. Notices . All notices, demands or requests from one party to another may be personally delivered, sent by overnight express delivery service, sent by facsimile with first-class mail backup sent the same day, or sent by certified mail, postage prepaid with return receipt requested, to the addresses stated in this Paragraph. Notices shall be deemed received upon actual delivery to the addressee with respect to personal or express service delivery or facsimile, and three (3) days after deposit in the mails with respect to mailing. Each party shall have the right, from time to time, to designate a different address by notice given in conformity with this Paragraph to the other party; provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests shall be addressed as follows:

To Landlord: H. G. FENTON COMPANY
7577 Mission Valley Road, Suite 200
San Diego, CA 92108
Facsimile: (619) 400-0111
Attention: Property Manager

To Lender: _____
_____
_____
Attention:_____

5. Other Matters of Agreement . Notwithstanding anything in the foregoing to the contrary, Landlord and Lender agree, and Landlord has signed this Agreement in material reliance thereon:

(a) Notwithstanding anything to the contrary herein, the term "Collateral" shall not include, and Lender shall have no security interest or other interest in, (i) any of the tenant improvements constructed or installed pursuant to the Lease between Landlord and Tenant, or (ii) any furniture, fixtures or equipment purchased with the proceeds of any tenant improvement or other allowance provided for in the Lease.

(b) No sale or auction of the Collateral shall be conducted in or from the Premises or the building or project in which the Premises are located ("Project").

(c) In the event of a default by Tenant under the Loan Documents, Lender shall use its best efforts in good faith to notify Landlord in writing concurrently with any notice of default delivered to Tenant.

(d) Lender shall remove the Collateral from the Premises within thirty (30) days after Lender is notified in writing that Tenant's possession of the Premises (or right to possession of the Premises) is, has been or will be terminated. If the Collateral or any portion thereof remains on the Premises for more than thirty (30) days after Lender is so notified, then Lender shall be deemed to have waived and quitclaimed any further interest therein to Landlord.

(e) If Lender enters the Premises to remove the Collateral (or any portion thereof), Lender shall not remove any Collateral in such a way that damages either the Premises or the Project, and Lender shall, within ten (10) days after receiving a bill from Landlord, reimburse Landlord for the cost of repairing any damage to the Premises or the Project resulting from Lender's removing the Collateral (or any portion thereof).

(f) Lender shall pay to Landlord rent at the rental rate last in effect under the Lease, together with all other pass-through charges payable by Tenant pursuant to the Lease, for any period following termination

of Tenant's right to possession and occupancy of the Premises, until such time as all of the Collateral has been removed from the Premises and Lender has repaired any damage caused by its presence in the Premises.

(g) [ALTERNATIVE IF LENDER WON'T AGREE TO INDEMNITY: Prior to entering upon the Premises, Lender shall provide Landlord evidence that it carries commercial general liability insurance in commercially reasonable amounts naming Landlord as an additional insured.] Lender shall indemnify, protect, defend and hold Landlord harmless from and against any and all liabilities, claims, causes of actions, losses, damages and costs or expenses, including reasonable attorneys' fees and costs (including such fees and costs arising out of Landlord's enforcing this indemnity provision), arising out of or in connection with Lender's failing to perform any of its obligations or exercising any of its rights under this Agreement, including without limitation, removing the Collateral from the Premises.

6. Other Provisions .

(a) This Agreement shall be binding upon and shall inure to the benefit of the successors, assignees and trans-ferees of the parties hereto whether by license, sale, gift, operation of law or other-wise.

(b) This Agreement contains the entire agreement between the parties relating to the subject matter hereof. None of the parties shall have the right to rely upon any repre-sentation or warranty not expressly set forth herein. No provi-sion of this Agreement may be amended or added to except by an agreement in writing signed by each of the parties hereto.

(c) Time is of the essence of each and every one of the provisions herein contained.

(d) Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

(e) This Agreement may be executed in any number of counterparts, each of which shall be deemed an origi-nal, but all of which when taken together shall constitute one and the same instrument.

(f) This Agreement shall be construed in accordance with the laws of the State of California.

(g) No provision of this Agreement shall be construed or interpreted against any party because that party, or its legal representative, drafted the provision. Captions and organizations are for convenience and shall not be used in con-struing meaning.

(h) This Agreement shall not be binding in any respect against Landlord unless and until Lender delivers a fully signed counterpart to Landlord.

To indicate their agreement to the above, the parties or their authorized representatives or officers have signed this document.

[SIGNATURES FOLLOW ON NEXT PAGE]

Lender:

_____,
a _____

By

Its

Date

By

Its

Date

Landlord:

[FENTON ENTITY],
a _____

By: H.G. FENTON COMPANY
Authorized Agent

By

Its _____

Date_____
_____

By

Its _____

Date

Exhibit 10.24

SCHEDULE A

List of Collateral

Exhibit 10.24

FIRST AMENDMENT TO COLLABORATION AGREEMENT

This First Amendment to the Collaboration Agreement (the "Amendment") is entered into as of November 3, 2015 (the "Amendment Effective Date"), ") is by and among Alphatec Spine, Inc., a California corporation ("Company"), a wholly-owned subsidiary of Alphatec Holdings, Inc., a Delaware corporation ("Holdings"), Elite Medical Holdings, LLC a Nevada limited liability company ("Elite") and Pac 3 Surgical Products, LLC ("Pac 3"), a Nevada limited liability company (collectively, Elite and Pac 3 shall be referred to as the "Consultant").

WHEREAS, Company, Holdings and Consultant are parties to that certain Collaboration Agreement, effective as of October 22, 2013 (the "Original Agreement"); and

WHEREAS, the Parties wish to amend the Original Agreement as set forth herein.

Now, therefore, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I-- AMENDMENTS

1.1 Amendment and Restatement of Section 5.1.2 and 5.1.3 . Sections 5.1.2 and 5.1.3 of the Original Agreement are deleted in their entirety and replaced by the following:

"5.1.2 On the one-year anniversary of the Effective Date, up to $2,583,266.66 of Consultant Shares (the "One-Year Anniversary Shares");

5.1.3 On the two-year anniversary of the Effective Date, up to $2,583,266.66 of Consultant Shares (the "Two-Year Anniversary Shares")"

1.2 Addition of Sections 5.4, 5.5, 5.6 and 5.7 . The following is added to the Agreement as Sections 5.4, 5.5, 5.6 and 5.7:

" 5.4 Valuation of the One-Year Anniversary Shares . If at any point during the 30 trading days after January 1, 2017 (the "First Valuation Period") (with the last such day being the "First Valuation Date"), the valuation of the Consultant Shares that make up the One-Year Anniversary Shares is not at least $2,583,266, as measured on the highest valuation point during the First Valuation Period, Company will pay the Consultant an amount equal to $2,583,266, less the value of the One-Year Anniversary Shares, as measured on the highest valuation point during the First Valuation Period, with such amount payable within 60 days of the First Valuation Date. If at any point during the First Valuation Period, the One-Year Anniversary Shares are worth more than $3,974,256, as measured on the highest valuation point during the First Valuation Period, Consultant will return to Holdings within 60 days of the First Valuation Date, a number of Consultant Shares sufficient to yield an overall value retained by Consultant with respect to the One-Year Anniversary Shares of $3,974,256, as measured on the highest valuation point during the First Valuation Period. The value to be assessed and realized hereunder shall be measured as gross value based on the closing price of Holdings' common stock during the First Valuation Period. The foregoing Section 5.4 shall be null and void in the event that: (i) more than twenty percent (20%) of the One-

Year Anniversary Shares; or (ii) any of the Two-year Anniversary Shares or Final Shares are sold, transferred or pledged prior to the First Valuation Date. In addition, the foregoing Section 5.4 shall be null and void with respect to any Consultant Shares that are held by a person or entity that sells, transfers or pledges any of such person's or entity's One-Year Anniversary Shares prior to the First Valuation Date (the "First Valuation Date Excluded Shares"). In the event that there are any First Valuation Date Excluded Shares, all of the valuation numbers to be used in the calculations required by this Section 5.4 shall be reduced on a pro rata basis in the same proportion that the First Valuation Date Excluded Shares that were part of the One-Year Anniversary Shares are of the One-Year Anniversary Shares as a whole.

5.5 Valuation of the Two-Year Anniversary Shares . If at any point during the 30 trading days after January 1, 2018 (the "Second Valuation Period") (with the last such day being the "Second Valuation Date"), the valuation of the Consultant Shares that make up the Two-Year Anniversary Shares is not at least $2,583,266, , as measured on the highest valuation point during the First Valuation Period, Company will pay the Consultant an amount equal to $2,593,266, less the value of the Two-Year Anniversary Shares, as measured on the highest valuation point during the First Valuation Period, with such amount payable within 60 days of the Second Valuation Date. If at any point during the Second Valuation Period, the Two-Year Anniversary Shares are worth more than $5,299,008, as measured on the highest valuation point during the First Valuation Period, Consultant will return to Holdings within 60 days of the Second Valuation Date, a number of Consultant Shares sufficient to yield an overall value retained by Consultant with respect to the Two-Year Anniversary Shares of $5,299,008, as measured on the highest valuation point during the First Valuation Period. The value to be assessed and realized hereunder shall be measured as gross value based on the closing price of the Holdings' common stock during the Second Valuation Period. The foregoing Section 5.5 shall be null and void with respect to any Consultant Shares that are held by a person or entity that sells, transfers or pledges: (i) any of such person's or entity's One-Year Anniversary Shares prior to the First Valuation Date; (ii) any of such person's or entity's Two-Year Anniversary Shares prior to the Second Valuation Date; or (iii) any of such person's or entity's Final Shares prior to the Second Valuation Date (the "Second Valuation Date Excluded Shares"). In the event that there are any Second Valuation Date Excluded Shares, all of the valuation numbers to be used in the calculations required by this Section 5.5 shall be reduced on a pro rata basis in the same proportion that the Second Valuation Date Excluded Shares that were part of the Two-Year Anniversary Shares are of the Two-Year Anniversary Shares as a whole. To the extent that the number of Consultant Shares initially issued as part of the Two-Year Anniversary Shares is less than 1,324,752, the calculations set forth above shall be reduced on a pro-rata basis.

5.6 Valuation of the Final Shares . If at any point during the 30 trading days after January 1, 2019 (the "Final Valuation Period") (with the last such day being the "Final Valuation Date"), the valuation of the Consultant Shares that make up the Final Shares is not at least $2,583,266, as measured on the highest valuation point during the Final Valuation Period, Company will pay the Consultant an amount equal to $2,593,266, less the value of the Final Shares, as measured on the highest valuation point during the Final Valuation Period, with such amount payable within 60 days of the Final Valuation Date. If at any point during the Final Valuation Period, the Final Shares are worth more than $5,299,008, as measured on the highest valuation point during the Final Valuation Period, Consultant will return to Holdings within 60 days of the Third Valuation Date, a number of Consultant Shares sufficient to yield an overall value retained by Consultant with respect to the Final Shares of $5,299,008, as measured on the highest valuation point during the Final Valuation Period. The value to be assessed and realized hereunder shall be based on the closing price of Holdings' common stock during the Final Valuation Period. The foregoing Section 5.6 shall be null and void with respect to any Consultant Shares that are held by a person or entity that sells, transfers or pledges: (i) any of such person's or entity's One-Year Anniversary Shares prior to the First Valuation Date; (ii) any of such person's or entity's Two-Year Anniversary Shares prior to the Second Valuation Date; or (iii) any of such person's or entity's Final Shares prior to the Final Valuation Date (the "Final Valuation Date Excluded Shares"). In the event that there are any Final Valuation Date Excluded Shares, all of the valuation numbers to be used in the calculations required by this Section 5.6 shall be reduced on a pro rata basis in the same proportion that the Final Valuation Date Excluded Shares that were part of the Final Shares are of the Final Shares as a whole. To the extent that the number of Consultant Shares initially issued as part of the Final Shares is less than 1,324,752, the calculations set forth above shall be reduced on a pro-rata basis.

5.7 Treatment of the Consultant Shares following a Change of Control and Valuation of Non-Publicly Traded Common Stock .

5.7.1 For purposes of this Section 5.7, a "Change of Control" shall mean (i) any consolidation or merger of Holdings with or into any corporation or other entity or person, or any other reorganization, other than any such consolidation, merger or reorganization in which the stockholders of Holdings, immediately prior to such consolidation, merger or reorganization, continue to hold at least a majority of the voting power of the surviving entity (or, if the surviving entity is a wholly-owned subsidiary, its parent) immediately after such consolidation, merger or reorganization in substantially the same proportion as their voting power of Holdings immediately prior to such consolidation, merger or reorganization; (ii) any transaction or series of related transactions to which Holdings is a party in which in excess of seventy percent (70%) of Holdings' voting power is transferred; or (iii) a sale, lease, exclusive license or other disposition of all or substantially all of the assets of Holdings. In the event of a Change of Control, the surviving entity (the "Successor") will assume and/or honor this agreement and all the terms agreed herein.

5.7.2 Upon the closing of a Change of Control, the holders of any issued and outstanding Consultant Shares shall be entitled to receive the consideration (whether stock, cash, other securities or property or a combination thereof) to which a holder of a share of Holdings common stock on the effective date of the Change in Control was entitled (the "Successor Consideration"). In addition, the rights and obligations set forth in Sections 5.4, 5.5 and 5.6 shall remain in full force and effect, provided that: (i) the applicable valuation shall be performed on the Successor Consideration rather than the Consultant Shares; and (ii) any restrictions on sales, transfers and pledges shall apply to the Successor Consideration, other than that portion of the Successor Consideration that is comprised of cash.

5.7.3 If during any applicable valuation period: (i) the common stock of Holdings is not publicly traded, or (ii) the Successor Consideration consists of a security that is not publicly traded, the value of the Consultant Shares being evaluated during such valuation period shall be (x) the price of the common stock of Holdings (or the Successor Consideration) during the most recent round of financing completed by Holdings, Spine or the Successor (as the case may be), provided the financing shall have been completed not more than nine months prior to the applicable valuation period, or (y) if there has not been a financing in the nine months prior to the applicable valuation date, then the valuation shall be determined by a single independent appraisal of an appraiser chosen by Holdings or the Successor (as the case may be) and approved by Consultant, such approval not unreasonably withheld, conditioned or delayed."

ARTICLE II -- MISCELLANEOUS

Except for the amendments set forth herein, the Original Agreement shall remain unchanged and in full force and effect. The Original Agreement and this Amendment shall be construed together as a single instrument. Miscellaneous. Capitalized terms not defined in this Amendment shall have the meaning ascribed to such terms in the Agreement. In the event of any conflict between the terms of this Amendment and the Original Agreement, this Agreement shall govern.

[*Signatures Follow*]

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the Amendment Effective Date.

ALPHATEC HOLDINGS, INC.

By:_/S/ James Corbett_____

Name: James M. Corbett

Title: President and CEO

ALPHATEC SPINE, INC.

By:_/S/ James Corbett_____

Name: James M. Corbett

Title: President and CEO

ELITE MEDICAL HOLDINGS, LLC

By:_/S/ Aaron Brown_____

Name: Aaron Brown

Title: President

PAC 3 SURGICAL PRODUCTS, LLC

By:_/S/ Aaron Brown_____

Name: Aaron Brown

Title: President

Exhibit 10.34

VESTING ACCELERATION AGREEMENT

THIS VESTING ACCELERATION AGREEMENT (this " ***Agreement*** "), dated as of October 31, 2015 (the " ***Effective Date*** "), is entered into by and between Alphatec Holdings, Inc. (the " ***Company*** "), and James R. Glynn (" ***Director*** ").

WHEREAS, the Company and Director are currently parties to the several agreements related to the Company's equity that are listed on Exhibit A . (the " ***Equity Agreements*** ").

WHEREAS, the Company has agreed to modify the Equity Agreements as set forth in this Agreement following the retirement of the Director from the Company's Board of Directors.

NOW THEREFORE, for consideration duly given, the undersigned agree to the following:

1. Accelerated Vesting of Equity Agreements . As of November 1, 2015 (the " ***Retirement Date*** "), all outstanding options to purchase Company common stock and any restricted stock (each separate award is an " ***Equity Interest*** ") held by Director as of the Effective Date shall become vested and exercisable on the Retirement Date.

2. Extension of Exercise Term . The term during which Director may exercise any Equity Interest consisting of a stock option or other exercisable Equity Interest shall be extended until the earlier of: (i) November 1, 2017 (or the following business day if such day is not a business day of the Company), or (ii) the expiration date that would apply to such stock option or other exercisable Equity Interest.

3. Miscellaneous .

(a) Effect on Existing Equity Agreements . This Agreement shall supersede the Equity Agreements with respect to the subject matter hereof. The Equity Agreements shall otherwise remain in full force and effect with respect to any subject matter not covered by this Agreement.

(b) Successors . This Agreement is personal to Director and, without the prior written consent of the Company, shall not be assignable by Director. Notwithstanding the foregoing, in the event of the Director's death following the Retirement Date, this Agreement shall remain in full force and effect and the personal representative of the Director's estate shall be entitled to exercise any Equity Interest consisting of a stock option or other exercisable Equity Interest in accordance with Section 2 of this Agreement. This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) Amendment; Waiver; Survival . No provisions of this Agreement may be amended, modified, or waived unless agreed to in writing and signed by Director and by a duly authorized officer of the Company. No waiver by either party of any breach by the other party of any condition or provision of this Agreement shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

(d) Governing Law and Venue . The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California without regard to its conflicts of law principles. The sole and exclusive venue for any actions filed with a court shall be the state or Federal courts located in San Diego County, California.

(e) Validity . The invalidity or unenforceability of any provision or provisions of this Agreement will not affect the validity or enforceability of any other provision of this Agreement, which will remain in full force and effect.

(f) Counterparts . This Agreement may be executed in one or more counterparts, each of

which will be deemed to be an original but all of which together will constitute one and the same instrument.

(g) Entire Agreement . This Agreement sets forth the final and entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by the Company and Director, or any representative of the Company or Director, with respect to the subject matter hereof.

[*Signatures Follow*]

The undersigned do hereby agree to be bound by the terms and conditions of this Agreement.

JAMES R. GLYNN **ALPHATEC HOLDINGS, INC.**

_/S/ James R. Glynn_____ _/S/ James Corbett_____
James M. Corbett
President and CEO

Exhibit A

Equity Agreements

Agreement Date	**Agreement Type**	**Shares**	**Exercise Price**	**Vested Shares**	**Unvested Shares**
05/09/2007	NQ Option Agreement	15,000	$3.51000	15,000	0
07/26/2013	NQ Option Agreement	20,088	$2.37000	13,392	6,696
07/29/2014	NQ Option Agreement	38,265	$1.34000	12,755	25,510
07/31/2008	NQ Option Agreement	7,500	$4.78000	7,500	0
08/04/2009	NQ Option Agreement	7,500	$4.45000	7,500	0
11/04/2010	NQ Option Agreement	7,500	$2.31000	7,500	0
07/27/2011	NQ Option Agreement	25,000	$2.86000	25,000	0
07/25/2012	NQ Option Agreement	21,170	$1.69000	21,170	0
02/25/2015	NQ Option Agreement	40,816	$1.35000	0	40,816
07/25/2012	Restricted Stock Agreement	26,272	N/A	26,272	0
07/26/2013	Restricted Stock Agreement	18,987	N/A	18,987	0
07/29/2014	Restricted Stock Agreement	33,582	N/A	33,582	0
02/25/2015	Restricted Stock Agreement	33,334	N/A	0	33,334
Totals		295,014		188,658	106,356

Exhibit 21.1

Subsidiaries of the Registrant and Wholly Owned Subsidiaries of the Registrant's Subsidiaries

Name	Parent Company	Jurisdiction of Incorporation
Alphatec Spine, Inc.	Alphatec Holdings, Inc.	California
Alphatec Pacific, Inc.	Alphatec Spine, Inc.	Japan
Alphatec Spine GmbH	Alphatec Spine, Inc.	Germany
Milverton Ltd.	Alphatec Spine, Inc.	Hong Kong
Alphatec Medical Device (Shanghai) Co. Ltd.	Alphatec Spine, Inc.	People's Republic of China
Cibramed Produtos Medicos Ltda – EPP	Cooperative Alphatec Holdings Europa U.A.	Brazil
Alphatec Holdings International C.V.	Alphatec Holdings, Inc.	The Netherlands
Alphatec International LLC	Alphatec Holdings International C.V.	Delaware
Cooperative Alphatec Holdings Europa U.A.	Alphatec Holdings International C.V.	The Netherlands
Japan Ortho Medical, Inc.	Alphatec Pacific, Inc.	Japan
Scient’x S.A.S.	Cooperative Alphatec Holdings Europa U.A.	France
Surgiview S.A.S.	Scient’x S.A.S.	France
Scient’x Asia Pacific PTE. LTD.	Scient’x S.A.S.	Singapore
Scient’x Australia PTY. LTD.	Scient’x S.A.S.	Australia
Scient’x U.S.A., Inc.	Scient’x S.A.S.	Florida
Scient’x Italia S.R.L.	Scient’x S.A.S.	Italy
Scient’x (U.K.) Limited	Scient’x S.A.S.	United Kingdom

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-187190, 333-187189, 333-144293, 333-147212, 333-196616, 333-196617, 333-202504 and 333-202505) and Form S-3 (Nos. 333-200869 and 333-195604) of Alphatec Holdings, Inc., of our reports dated March 15, 2016, with respect to the consolidated financial statements and schedule of Alphatec Holdings, Inc., and the effectiveness of internal control over financial reporting of Alphatec Holdings, Inc., included in this Annual Report (Form 10-K) for the year ended December 31, 2015.

/s/ Ernst & Young LLP

San Diego, California
March 15, 2016

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, James M. Corbett, certify that:

1. I have reviewed this Annual Report on Form 10-K of Alphatec Holdings, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ James M. Corbett

James M. Corbett

President and Chief Executive Officer

(principal executive officer)
March 15, 2016

Exhibit 31.2

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Michael O'Neill, certify that:

1. I have reviewed this Annual Report on Form 10-K of Alphatec Holdings, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ Michael O'Neill

Michael O'Neill
Chief Financial Officer, Vice President and Treasurer
(principal financial officer)
March 15, 2016

Exhibit 32

CERTIFICATION UNDER
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Alphatec Holdings, Inc. (the "Company") on Form 10-K for the year ended December 31, 2015 , as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, James M. Corbett, President and Chief Executive Officer, certify, to my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

Dated: March 15, 2016

/s/ James M. Corbett

James M. Corbett
President and Chief Executive Officer
(principal executive officer of the Company)

In connection with the Annual Report of Alphatec Holdings, Inc. (the "Company") on Form 10-K for the year ended December 31, 2015 , as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael O'Neill, Chief Financial Officer, certify, to my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

Dated: March 15, 2016

/s/ Michael O'Neill

Michael O'Neill
Chief Financial Officer, Vice President and Treasurer
(principal financial and accounting officer of the Company)