

# ALPHATEC HOLDINGS, INC.

## FORM 10-K/A (Amended Annual Report)

Filed 07/07/09 for the Period Ending 12/31/08

Address	5818 EL CAMINO REAL CARLSBAD, CA 92008
Telephone	760-431-9286
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Industry	Medical Equipment & Supplies
Sector	Healthcare
Fiscal Year	12/31

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, DC 20549

**Form 10-K/A**  
**(Amendment No. 1)**

(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, 2008**

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

**20-2463898**  
(I.R.S. Employer  
Identification No.)

**5818 El Camino Real, Carlsbad,**  
**California**  
(Address of Principal Executive Offices)

**92008**  
(Zip Code)

**(760) 431-9286**

(Registrant's Telephone Number, Including Area Code)

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

Title of Each Class

Name of Each Exchange on Which Registered

Common Stock, par value \$0.0001 per share

The NASDAQ Stock Market LLC

**Securities registered pursuant to Section 12(g) of the Act:**

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 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 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 Securities Exchange Act of 1934). 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) based on the last reported sale price of the common stock on June 30, 2008 was approximately \$110.0 million.

The number of outstanding shares of the registrant's common stock, par value \$0.0001 per share, as of March 2, 2009 was 47,377,953.

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## EXPLANATORY NOTE

Alphatec Holdings, Inc. (the “Company”) is filing this Amendment No. 1 (the “Amendment”) to its Annual Report on Form 10-K for the fiscal year ended December 31, 2008 (the “Original Filing”), which was originally filed with the Securities and Exchange Commission (the “Commission”) on March 4, 2009, solely for the purpose of revising portions of Exhibits 10.18, 10.22 and 10.23 (the “Exhibits”), in order to disclose certain information for which confidential treatment had been requested, in response to comments made by the Commission on the Company’s request for confidential treatment with respect to the Exhibits. In addition, the Company is also including Exhibits 31.3 and 31.4, which are required by the filing of this Amendment. This Amendment amends and supplements Item 15 of the Original Filing by restating in its entirety Part (a)(3) of Item 15. This Amendment does not reflect events occurring after the date of the Original Filing or modify or update any of the other disclosure contained therein in any way.

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**PART IV**

**Item 15. Exhibits and Financial Statement Schedules**

Item 15 (a) *The following documents are included in Item 15 to this Annual Report on Form 10-K.*

(1) Financial Statements:

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Report of Independent Registered Public Accounting Firm	F-2
Consolidated Balance Sheets	F-3
Consolidated Statements of Operations	F-4
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(2) Financial Statement Schedules:

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All other financial statement schedules have been omitted because they are not applicable, not required or the information required is shown 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.

3.1(1)	Amended and Restated Certificate of Incorporation.
3.2(2)	Restated By-laws.
4.1(3)	Form of Common Stock Certificate.
4.2(4)	Stockholders' Agreement by and among the Registrant, HealthpointCapital Partners, L.P. and the stockholders of the Registrant, dated as of March 17, 2005.
4.3(33)	Warrant with Silicon Valley Bank as the Warranholder, dated as of December 5, 2008.
4.4(34)	Warrant with Oxford Finance Corporation as the Warranholder, dated as of December 5, 2008.
10.1(5)*	Amended and Restated 2005 Employee, Director and Consultant Stock Plan.
10.2(6)*	Form of Non-Qualified Stock Option Agreement issued under the Amended and Restated 2005 Stock Plan.
10.3(7)*	Form of Incentive Stock Option Agreement issued under the Amended and Restated 2005 Stock Plan.
10.4(8)*	Form of Restricted Stock Agreement issued under the Amended and Restated 2005 Stock Plan.
10.5(9)	Lease Agreement by and between Alphatec Holdings, Inc. and H.G. Fenton Property Company, dated as of March 4, 2008.
10.6(10)	Sublease Agreement by and between Alphatec Holdings, Inc. and K2, Inc., dated as of February 28, 2008.
10.7(11)†	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.
10.8(12)†	License Agreement by and between Alphatec Spine, Inc. and Cross Medical Products, Inc., dated as of April 24, 2003.
10.9(13)	Translation of Agreement for Transfer of Business Right by K.K. Mac and K.K. Alpha Tech Pacific, dated as of August 1, 2005.

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- 10.10(14)\* Employment Agreement by and among Alphatec Holdings, Inc., Alphatec Spine, Inc. and Dirk Kuyper, dated June 1, 2007.
- 10.11(15)\* Employment Agreement by and among Alphatec Holdings, Inc., Alphatec Spine, Inc. and Kermit Stott, dated August 2007.
- 10.12(16)\* Employment Agreement by and among Alphatec Holdings, Inc., Alphatec Spine, Inc. and Peter C. Wulff, dated as of June 13, 2008.
- 10.13(17)\* Employment Agreement by and among Alphatec Spine, Inc., Alphatec Holdings, Inc. and Steve Lubischer, dated November 10, 2006.
- 10.14(18)\* Employment Agreement by and among Alphatec Holdings, Inc., Alphatec Spine, Inc. and Ebun Garner, dated July 17, 2006.
- 10.15(35)\* Employment Agreement by and among Alphatec Spine, Inc., Alphatec Holdings, Inc. and JP Timm, dated January 28, 2008.
- 10.16(36)\* Employment Agreement by and among Alphatec Spine, Inc., Alphatec Holdings, Inc. and Mitsuo Asai, dated January 14, 2008.
- 10.17(19)\*† Consulting Agreement by and among Alphatec Spine, Inc., Alphatec Holdings, Inc. and Stephen J. Hochschuler, M.D., dated October 13, 2006.
- 10.18† Sales Agency Agreement by and between Alphatec Spine, Inc. and S. S. Fusion Medical, Inc., dated as of January 2, 2008.
- 10.19(20)† License Agreement by and between Alphatec Spine, Inc. and JGMG Bengochea, LLC, dated as of September 11, 2007.
- 10.20(21)† License Agreement by and between Alphatec Spine, Inc. and Stout Medical Group, LP, dated as of September 11, 2007.
- 10.21(22)† License Agreement by and between Alphatec Spine, Inc. and Progressive Spinal Technologies, LP, dated as of December 18, 2007, as amended on January 14, 2008 and on January 12, 2009.
- 10.22† First Amendment to the Exclusive License Agreement by and between Alphatec Spine, Inc. and Progressive Spinal Technologies, LP, dated as of January 14, 2008.
- 10.23† Second Amendment to Exclusive License Agreement by and between Alphatec Spine, Inc. and Progressive Spinal Technologies, LP, dated as of January 12, 2009.
- 10.24(23) † License Agreement by and between Alphatec Spine, Inc. and Stout Medical Group, LP, dated as of March 10, 2008.
- 10.25(24)† Developmental Consulting Agreement by and between Alphatec Spine, Inc. and Stout Medical Group LP, dated as of March 3, 2008, as amended on May 15, 2008 and December 17, 2008.
- 10.26(37) Loan and Security Agreement by and among Alphatec Holdings, Inc., Alphatec Spine, Inc., Silicon Valley Bank and Oxford Financial Corporation, dated as of December 5, 2008.
- 10.27(25)† Settlement and Release Agreement by and among Alphatec Spine, Inc., DePuy Spine, Inc. and Biedermann Motech GmbH, dated as of May 5, 2008.
- 10.28(26)† Patent License Agreement by and between Alphatec Spine, Inc., DePuy Spine, Inc. and Biedermann Motech GmbH, dated as of May 1, 2008.
- 10.29(27)\* Summary Description of the Alphatec Holdings, Inc. 2008 Bonus Plan.
- 10.30(28) Separation Agreement by and among Alphatec Spine, Inc., Alphatec Holdings, Inc. and Ronald Hiscock, dated June 14, 2007.
- 10.31(29) 10.23 Separation Agreement by and among Alphatec Spine, Inc., Alphatec Holdings, Inc. and Vicky Romanoski, dated June 14, 2007.

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- 10.32(30) Credit and Security Agreement, by and among, Alphatec holdings, Inc., Alphatec Spine, Inc., Nexmed, Inc. and Merrill Lynch Capital, a division of Merrill Lynch Business Financial Services Inc., dated as of October 2, 2007.
- 10.33(31) Patent License Agreement by and between Alphatec Spine, Inc. and Scient'x S.A. dated January 23, 2007.
- 21.1(32) List of subsidiaries of the Registrant.
- 23.1(38) Consent of Independent Registered Public Accounting Firm.
- 31.1 Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32(39) Certification pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

\* Management contract or compensatory plan or arrangement.

† Confidential treatment has been requested with respect to portions of this document.

- 1 Incorporated by reference from Exhibit 3.2 to the Registration Statement on Form S-1, as amended (Registration No. 333-131609), filed with the Securities and Exchange Commission on April 20, 2006.
- 2 Incorporated by reference from Exhibit 3.4 to the Registration Statement on Form S-1, as amended (Registration No. 333-131609), filed with the Securities and Exchange Commission on May 26, 2006.
- 3 Incorporated by reference from Exhibit 4.1 to the Registration Statement on Form S-1, as amended (Registration No. 333-131609), filed with the Securities and Exchange Commission on May 26, 2006.
- 4 Incorporated by reference from Exhibit 4.2 to the Registration Statement on Form S-1, as amended (Registration No. 333-131609), filed with the Securities and Exchange Commission on February 6, 2006.
- 5 Incorporated by reference from Exhibit 10.5 to the Registration Statement on Form S-1, as amended (Registration No. 333-131609), filed with the Securities and Exchange Commission on May 26, 2006.
- 6 Incorporated by reference from Exhibit 10.6 to the Registration Statement on Form S-1, as amended (Registration No. 333-131609), filed with the Securities and Exchange Commission on April 20, 2006.
- 7 Incorporated by reference from Exhibit 10.7 to the Registration Statement on Form S-1, as amended (Registration No. 333-131609), filed with the Securities and Exchange Commission on April 20, 2006.
- 8 Incorporated by reference from Exhibit 10.8 to the Registration Statement on Form S-1, as amended (Registration No. 333-131609), filed with the Securities and Exchange Commission on April 20, 2006.
- 9 Incorporated by reference from Exhibit 10.2 to the Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on May 12, 2008.
- 10 Incorporated by reference from Exhibit 10.1 to the Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on May 12, 2008.
- 11 Incorporated by reference from Exhibit 10.29 to the Registration Statement on Form S-1, as amended (Registration No. 333-131609), filed with the Securities and Exchange Commission on April 19, 2006.
- 12 Incorporated by reference from Exhibit 10.26 to the Registration Statement on Form S-1, as amended (Registration No. 333-131609), filed with the Securities and Exchange Commission on March 23, 2006.
- 13 Incorporated by reference from Exhibit 10.31 to the Registration Statement on Form S-1, as amended (Registration No. 333-131609), filed with the Securities and Exchange Commission on March 23, 2006.
- 14 Incorporated by reference from Exhibit 10.1 to the Current Annual Report on Form 8-K, filed with the Securities and Exchange Commission on June 6, 2007.
- 15 Incorporated by reference from Exhibit 10.17 to the Annual Report on Form 10-K, filed with the Securities and Exchange Commission on March 17, 2008.
- 16 Incorporated by reference from Exhibit 10.1 to the Current Report on Form 8-K, filed with the Securities and Exchange Commission on June 18, 2008.
- 17 Incorporated by reference from Exhibit 10.30 to the Annual Report on Form 10-K, filed with the Securities and Exchange Commission on April 2, 2007.
- 18 Incorporated by reference from Exhibit 10.20 to the Annual Report on Form 10-K, filed with the Securities and Exchange Commission on March 17, 2008.
- 19 Incorporated by reference from Exhibit 10.30 to the Annual Report on Form 10-K, filed with the Securities and Exchange Commission on April 2, 2007.
- 20 Incorporated by reference from Exhibit 10.1 to the Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on November 9, 2007.
- 21 Incorporated by reference from Exhibit 10.2 to the Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on November 9, 2007.

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- 22 Incorporated by reference from Exhibit 10.29 to the Annual Report on Form 10-K, filed with the Securities and Exchange Commission on March 17, 2008.
  - 23 Incorporated by reference from Exhibit 10.3 to the Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on May 12, 2008.
  - 24 Incorporated by reference from Exhibit 10.4 to the Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on May 12, 2008.
  - 25 Incorporated by reference from Exhibit 10.1 to the Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on August 6, 2008.
  - 26 Incorporated by reference from Exhibit 10.2 to the Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on August 6, 2008.
  - 27 Incorporated by reference from Exhibit 99.1 to the Current Report on Form 8-K, filed with the Securities and Exchange Commission on February 6, 2008.
  - 28 Incorporated by reference from Exhibit 10.22 to the Annual Report on Form 10-K, filed with the Securities and Exchange Commission on March 17, 2008.
  - 29 Incorporated by reference from Exhibit 10.23 to the Annual Report on Form 10-K, filed with the Securities and Exchange Commission on March 17, 2008.
  - 30 Incorporated by reference from Exhibit 10.3 to the Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on November 9, 2007.
  - 31 Incorporated by reference from Exhibit 10.21 to the Annual Report on Form 10-K, filed with the Securities and Exchange Commission on April 2, 2007.
  - 32 Incorporated by reference from Exhibit 21.1 to the Registration Statement on Form S-1, as amended (Registration No. 333-131609), filed with the Securities and Exchange Commission on February 6, 2006.
  - 33 Incorporated by reference from Exhibit 4.3 to the Annual Report on Form 10-K, filed with the Securities and Exchange Commission on March 4, 2009.
  - 34 Incorporated by reference from Exhibit 4.4 to the Annual Report on Form 10-K, filed with the Securities and Exchange Commission on March 4, 2009.
  - 35 Incorporated by reference from Exhibit 10.15 to the Annual Report on Form 10-K, filed with the Securities and Exchange Commission on March 4, 2009.
  - 36 Incorporated by reference from Exhibit 10.16 to the Annual Report on Form 10-K, filed with the Securities and Exchange Commission on March 4, 2009.
  - 37 Incorporated by reference from Exhibit 10.26 to the Annual Report on Form 10-K, filed with the Securities and Exchange Commission on March 4, 2009.
  - 38 Incorporated by reference from Exhibit 23.1 to the Annual Report on Form 10-K, filed with the Securities and Exchange Commission on March 4, 2009.
  - 39 Incorporated by reference from Exhibit 32 to the Annual Report on Form 10-K, filed with the Securities and Exchange Commission on March 4, 2009.

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**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Amendment No. 1 to this Annual Report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized.

**ALPHATEC HOLDINGS, INC.**

Dated: July 7, 2009

By: /s/ DIRK KUYPER

Name: Dirk Kuyper

Title: President and Chief Executive Officer  
(principal executive officer)

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## EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
10.18†	Sales Agency Agreement by and between Alphatec Spine, Inc. and S. S. Fusion Medical, Inc., dated as of January 2, 2008.
10.22†	First Amendment to the Exclusive License Agreement by and between Alphatec Spine, Inc. and Progressive Spinal Technologies, LP, dated as of January 14, 2008.
10.23†	Second Amendment to Exclusive License Agreement by and between Alphatec Spine, Inc. and Progressive Spinal Technologies, LP, dated as of January 12, 2009.
31.3	Certification of disclosure as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.4	Certification of disclosure as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

† Confidential treatment requested as to certain portions, which portions have been separately filed with the Securities and Exchange Commission.

**ALPHATEC SPINE, INC. SALES AGENCY AGREEMENT**

This Sales Agency Agreement (the "Agreement") is between Alphatec Spine, Inc., a California corporation (the "Company") and SS Fusion Medical, Inc. (Employer Identification Number # #20-8118794) (hereinafter referred to as "Sales Agent") is made as of January 2, 2008 (the "Effective Date").

WHEREAS Sales Agent has established and maintained a business office staffed with professional sales personnel in the Territory (as hereinafter defined); and

WHEREAS the Company wishes to retain Sales Agent to sell its Products (as hereinafter defined) and Sales Agent wishes to act as the Company's exclusive Sales Agent within the Territory.

NOW THEREFORE, in consideration of the mutual covenants and provisions herein contained, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto the parties agree as follows:

1. **APPOINTMENT OF SALES AGENT**

Subject to the provisions of the Agreement, the Company hereby appoints Sales Agent and Sales Agent hereby accepts appointment as the Sales Agent for the products described in Exhibit A (hereinafter the "Products") with exclusive responsibility for the geographical areas listed on Exhibit B (hereinafter the "Territory"). Sales Agent shall have the right to solicit orders for Products only from persons and entities having their places of business within the Territory that agree to use the Products so ordered within the Territory. Sales agent shall be the exclusive agent for the Company for sale of Products in the Territory for the term of this Agreement. Except as specifically provided herein to the contrary, any sale of Products in the Territory shall be credited as sales made by Sales Agent and Sales Agent shall be entitled to the commission provided herein.

2. **SALES AGENT'S OBLIGATIONS**

In addition to any and all covenants, duties and obligations of Sales Agent set forth elsewhere in this Agreement, Sales Agent agrees:

2.1. To use its best efforts to promote the sale of the Products throughout the Territory;

2.2. To use its best efforts to meet the sales quotas set forth on Exhibit D;

2.3. To bear all costs and liabilities relating to the conduct of its business, including but not limited to the cost and expense of providing and maintaining its place of business, the wages of its employees, the payment of commissions or other compensation to its agents or independent contractors, and its expenses incurred for or in connection with its performance under or breach of this Agreement;

**Portions of this Exhibit were omitted, as indicated by [\*\*\*], and have been filed separately with the Secretary of the Commission pursuant to the Registrant's application requesting confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

2.4. To refrain from making any representations or warranties in respect of the Products, except: (i) those representations and warranties authorized in writing by the Company, in the form of brochures, memorandums, press releases, advertisements, specification sheets, or correspondences, and (ii) verbal technical assistance that Sales Agent received from the Company which was subsequently confirmed in writing by Sales Agent;

2.5. To promote the Products in strict adherence to (i) regulatory and professional requirements, and all applicable laws, rules, guidelines and regulations including, but not limited to, the Federal Food, Drug and Cosmetic Act of 1938, as amended, and the regulations promulgated thereunder (the "Act"); and (ii) those portions of the Company's Code of Conduct that address interactions with healthcare professionals (available at <http://atec.client.shareholder.com/documentdisplay.cfm?DocumentID=900>) (the "Code of Conduct"), and to make such certifications in writing that may be reasonably requested by the Company as evidence of such compliance;

2.6. That it has read and understands the Code of Conduct; and that it acknowledges that any violation of the Code of Conduct by it or any of its officers, employees or agents shall constitute a material breach of this Agreement;

2.7. To render reasonable assistance to the Company, at the Company's request, in the defense of any and all Liabilities (as defined below);

2.8. To refrain from disparaging the Company and its subsidiaries or its Products, or from otherwise injuring the reputation and good standing of the Company and its subsidiaries;

2.9. To not, directly or indirectly, solicit any sale of the Products or establish any branch or distribution depot for the sale of the Products outside the Territory without the prior written approval of the Company;

2.10. Take full responsibility for the actions of any Sales Agent Indemnitee (as defined below);

2.11. To assist the Company, on request, in ascertaining the credit standing of and in collecting receivables from any customer;

2.12. To attend, at its own expense, all sales meetings, training sessions, seminars, trade shows and the like for which the Company reasonably requests attendance by Sales Agent;

2.13. To immediately notify the Company prior to any physician, hospital or any other health care supplier or provider who is in a position to refer or recommend patients to the Company (a "Health Care Provider") acquiring an equity interest in the Sales Agent, and upon such instance to provide in writing a listing, by percentage of equity interest owned, of all Health Care Providers that have an equity interest in the Sales Agent at the time of each disclosure. A breach of this Section 2.13 shall constitute a material breach of this Agreement;

2.14. To deliver all Products using documented procedures for handling, storage, packing, preservation, and delivery of such Products;

2.15. To promptly notify the Company in writing of the following: (i) any serious regulatory action relating to the Products; (ii) any material complaints regarding the Products or the related instrumentation; or (iii) any adverse incidents that may be subject to FDA's (as hereinafter defined) Medical Device Reporting regulation; and

2.16. To comply with recalls or general corrective actions initiated by the Company.

### 3. ALPHATEC'S DUTIES AND OBLIGATIONS

In order to assist Sales Agent in fostering the promotion and sale of the Company's Products, the Company agrees:

3.1. To reasonably assist Sales Agent with, and provide to Sales Agent reasonable quantities of, advertising material, sales promotion aids, displays, catalogues, literature and convention assistance;

3.2. To provide Sales Agent with new Product information and reasonably assist Sales Agent in promotional activities;

3.3. To provide Sales Agent with reasonable technical assistance, through sales seminars, meetings and training programs; and

3.4. To use commercially reasonable efforts to make Products available to the Sales Agent to be used by customers.

### 4. QUOTATIONS, ORDERS AND PAYMENT BY CUSTOMERS

4.1. Sales Agent will make quotations in respect to the sales of the Products only in accordance with the Company's then current policies and procedures and on prices established by the Company and the Company's terms and conditions of sale, including the terms of payment specified by the Company. The Sales Agent will assist the Company in obtaining the appropriate documentation needed for customers (credit reports, sales tax exemptions, etc.).

4.2. Sales orders generated by Sales Agent will be submitted directly to the Company by the customer and such sales orders shall be paid by Company if Sales Agent makes a sale and even if the Company unilaterally decides to reject the customer; provided that if the rejection of the customer occurs in accordance with this Agreement, the Company shall not be obligated to pay the Sales Agent for such sale. If Sales Agent receives any order for Products, it will promptly forward it to the Company. The Company will establish and promulgate the criteria for sales orders to be generated by Sales Agent and Sales Agent will use its best efforts to secure sales orders that meet the Company's criteria. The Company will have the right at any time to reject any order in whole or in part for good

cause. Good cause shall include the following: (i) the sales order fails to meet the Company's criteria, (ii) the customer fails to meet the Company's credit criteria, (iii) lack of Product availability due to no fault of the Company, or (iv) poor payment history by the customer. If the Company rejects a sales order generated by Sales Agent without good cause, then Company shall pay to Sales Agent full commission on such order. If the Company reasonably rejects any sales order generated by Sales Agent, then Sales Agent shall be notified and given the opportunity to inform its customer or potential customer of said rejection in an attempt to preserve Sales Agent's business goodwill. On request of the Company, Sales Agent will not supply Product to customers placed on credit hold until released by the Company.

4.3. The Company will bill the customer for the purchased Products. Sales Agent will not bill customers for the Product unless expressly requested to do so by the Company in writing. Payments against purchase orders are to be made directly to the Company, without intervention by Sales Agent unless expressly requested in writing by the Company in each instance. If Sales Agent receives any payment from a customer, then Sales Agent will immediately forward the entire amount of such payment to the Company.

4.4. The Company will have the right, in its sole discretion, to issue credits, make discounts and allowances, and/or accept returns of the Products. Sales Agent in an effort to be competitive with the orthopedic market or to develop new customers will have the right to request the Company to issue credits, make discounts and allowances and/or accept returns of the Products. The Company shall use its sole discretion in determining whether to grant Sales Agent's request. In the event that the Company issue credits, make discounts and allowances and/or accept returns of the Products, the Company shall be entitled to unilaterally reduce the commission rate paid to the Sales Agent with respect to all sales of Products that are subject to a credit, discount, allowance or return. The Company shall indicate such reduction in commission rate by sending written or electronic notice of such reduction to the Sales Agent. All reductions shall be effective as of the date that such notice of commission reduction was delivered to the Sales Agent.

## 5. COMMISSIONS

5.1. Except as set forth in this Agreement, during the term of this Agreement the Company will pay to Sales Agent a commission at the rate specified in Exhibit C on the Company's Net Sales (as defined below) of Products in the Territory that were generated by the Sales Agent in accordance with this Agreement. For purposes of this Agreement, the terms "Net Sales" shall mean, for any period, the gross amount properly set forth on a purchase order received by the Company from the customer in connection with such customer's purchase of Product, less deductions for: (i) normal and customary quantity and/or cash discounts, including, without limitation, those granted on account of price adjustments, rebates actually allowed and taken, administrative or other fees or reimbursements or similar payments to buying groups, pharmacy benefit management organizations, health care insurance carriers or other institutions, fees paid to other distributors and chargebacks; (ii) customs or excise duties or other duties directly imposed and related to the sales making up the gross purchase order amount; (iii) any rebates or similar payments made with respect to sales paid for by any governmental or regulatory authority such as, by way of illustration and not in limitation of the

**Portions of this Exhibit were omitted, as indicated by [\*\*\*], and have been filed separately with the Secretary of the Commission pursuant to the Registrant's application requesting confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

parties' rights hereunder, Federal or state Medicaid, Medicare or similar state program or equivalent foreign governmental program; (iv) sales and other taxes and duties directly related to the sale of Products, to the extent that such items are included in the gross purchase order price (but not including taxes assessed against the income derived from such sale); and (v) any such amounts included in the purchase order that are not collected by the Company which are over 90 days past due and are recorded on the books of the Company as bad debt in accordance with generally accepted accounting principles; provided, if the amount due from such purchase order is subsequently paid, then Sales Agent shall be paid commission on the amount ultimately received by the Company (less any expenses incurred by the Company in collecting such amount). For purposes of determining commissions, the Product shall be deemed to be sold when a properly executed purchase order is received by the Company from the customer in connection with such sale, and a "sale" shall not include transfers or dispositions for charitable, promotional, pre-clinical, clinical, regulatory, or governmental purposes.

5.2. All commission amounts payable to the Sales Agent shall be subject to the Company's then-current Distribution Shipping Policy, which policy shall set forth that certain shipping charges that are not paid by customer shall reduce the commissions paid to the Sales Agent.

5.3. If new product lines are added to the Product list the commission rate related to such new Product shall be set forth on Exhibit C attached hereto. The parties agree and acknowledge that the Company shall have sole decision-making authority in connection with establishing commission rates for product lines added to the Product list after the Effective Date.

5.4. The Sales Agent agrees to promptly submit an invoice to the Company in connection with each sale and that all such invoices for payment shall include a listing of all lot numbers of the Products that were sold in connection with such invoice.

5.5. Commissions will be released to the Sales Agent on the twenty-fifth (25<sup>th</sup>) day after the close of the month in which the applicable sales are made, or in the event that such day is not a business day, on the next business day. Any commissions paid on outstanding accounts receivable at the close of the month that exceed the payment terms of net ninety (90) days will be deducted from the Sales Agent's outstanding commission or invoiced to Sales Agent pursuant to Section 5.7. Upon collection of past due accounts commissions will be re-posted to the Sales Agent.

5.6. The Company will keep and maintain accurate, complete and current books and records relating to commissions earned by Sales Agent. Upon payment of commission to Sales Agent by the Company, the Company shall provide Sales Agent with a detailed breakdown of the customer sales used to calculate the commission as well as any credit, discount, allowance or set-off taken by the Company or applied against Sales Agent commission. Any discrepancies must be reported to the Company within thirty (30) days of the receipt of the detailed statement. Once per calendar year, upon written request from Sales Agent, the Company will permit an independent certified public accountant designated by and at the expense of Sales Agent to audit the Company's books and records pertaining to commissions earned by Sales Agent, such audit to be conducted on the Company's premises during normal business hours.

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5.7. In the event that the Company has previously paid Sales Agent commissions on sales to a customer whose account is subsequently entitled to a credit, for returns or otherwise, and sufficient commission is not available to deduct the credit within the period, the Company will submit an invoice and a written explanation containing the reasons why the Company is entitled to reimbursement by Sales Agent of any portion or all of the commission previously paid to Sales Agent. Sales Agent agrees to pay all properly invoiced amounts within thirty (30) days of receipt of said invoice.

5.8. The Company will have no liability whatsoever to Sales Agent for commission payments for the Company's rejection of all or part of any order.

6. SALES OBJECTIVE

6.1. The Company and Sales Agent will mutually establish sales objectives for Products to be sold by the Sales Agent within the Territory as measured in dollar volume. Such sales quotas shall be set forth on Exhibit D attached hereto.

6.2. The Company and Sales Agent may add new product lines to the Product list. If new product lines are added to the Product list the Company and Sales Agent shall establish an additional quota for such new Product and such quota shall be set forth on Exhibit D.

7. CONSIGNED INVENTORY AND SAMPLES; LOANER INVENTORY

7.1. From time to time the Company shall deliver to Sales Agent such items as samples, models, literature, promotional materials (the "Samples") for use in promoting and selling the Products. Except for items actually purchased by Sales Agent or delivered by Sales Agent as unrestricted no-charge samples according to the Company's specific instructions, the Company will retain all right, title and interest in and to the Samples and Sales Agent will hold them in a fiduciary capacity and only use such Samples as permitted in this Agreement. Upon the termination or expiration of this Agreement or upon the request of the Company, the Sales Agent shall return all Samples to the Company. If any Samples are lost, missing, stolen, or cannot be repaired, then the Company shall invoice Sales Agent for [\*\*\*] with respect to such Sample, and the Sales Agent agrees to pay such amount.

7.2. Sales Agent will prepare and maintain accurate, complete and current books and records pertaining to the Samples that are owned by the Company, including but not limited to type and quantity of each item and disposition thereof.

7.3. The Company shall establish for Sales Agent a Products inventory account. Except for the Products actually purchased by Sales Agent, the Company will retain all right, title and interest in and to such Products and related instrumentation (the "Consigned Inventory"). Sales Agent will hold said Products and related instrumentation in a fiduciary capacity under a separate account titled "Consigned Inventory".

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7.4. The Company may request a physical inventory of its property held as Consigned Inventory by Sales Agent. The Company, at its expense, may review books and records of Sales Agent as they relate to Consigned Inventory as well as to physically audit the Consigned Inventory, and Sales Agent agrees to cooperate with such review.

7.5. The level of Consigned Inventory for Sales Agent shall be established upon mutual agreement between the Company and Sales Agent.

7.6. The level of total Consigned Inventory for Sales Agent will be reviewed each quarter. Except to the extent that such Consigned Inventory has been consigned to a hospital in accordance with Section 7.7, if any Consigned Inventory is returned damaged, then the Company, to the extent possible, will repair or refurbish the Consigned Inventory and invoice Sales Agent for the cost of said repairs and handling. Except to the extent that such Consigned Inventory has been consigned to a hospital in accordance with Section 7.7, if any Consigned Inventory is lost, missing, stolen, or cannot be repaired, then the Company shall invoice Sales Agent for [\*\*\*] of such Consigned Inventory, less the amount of any commissions that would be paid for the Net Sale of such product.

7.7. Sales Agent will prepare and maintain complete and accurate books and records pertaining to all Consigned Inventory, including but not limited to the type and quantity of each Product as well as the disposition thereof. Sales Agent will promptly supply the Company with a copy of each agreement, the form of which is attached hereto as Exhibit E, where Consignment Inventory is held by a hospital or other mutually acceptable third party following the Company's request for such documentation.

7.8. Upon the termination or expiration of this Agreement, or upon the request of the Company, the Sales Agent shall immediately, and at its own expense, return all Consignment Inventory in its possession or control to the Company.

7.9. All Inventory not deemed by the Company in its sole discretion to be Consigned Inventory shall be deemed to be loaner inventory and shall be subject to the Company's then-current Loaner Inventory Policy.

## 8. SALES ACTIVITY BY ALPHATEC

8.1. The Company reserves the right, at any time and from time to time, throughout the term of this Agreement, to use its employees to engage in selling, promoting and/or other related activities concerning the Products in the Territory in the event that the Company reasonably determines that the Sales Agent is not actively pursuing sales activities in the Territory (notwithstanding the fact that Sales Agent may be achieving its sales quotas). Any such sales by the Company's employees will not be credited to Sales Agent's account for purposes of determining the achievement of sales quotas and calculating commissions. Prior to the commencement of any sales activity related to Products in the Territory by the Company's employees, the Company shall notify the Sales Agent of its intention to begin such activities and allow [\*\*\*] for the Sales Agent to begin sales activities. If the Sales Agent

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begins sales activities following receipt of such notice the Company shall not be entitled to commence any sales activities related to the Products in the region that was the subject of such notice.

8.2. The Company reserves the right to sell the Products within the Territory to any person or entity offering to purchase and resell the Products as private label products so long as such person or entity is not at such time a company or person to whom Sales Agent is actually selling the Products. In the event that private labeling occurs, if any, within the Territory, the Company may, but is not obligated to, modify Sales Agent's sales quotas to reflect the competitive impact of private labeling.

8.3. The Company also reserves the right to sell the Products within the Territory to any Company-designated national, regional, or government person or entity, and Sales Agent shall service such account within the Territory in return for the applicable commission set forth in Exhibit C. If Sales Agent declines to service any such account, the Company shall service such account itself and at its own expense, and Sales Agent shall receive no commission with respect to such account and such sales shall not be credited to the Sales Agent for purposes of determining the achievement of sales quotas.

8.4. The parties agree and acknowledge that under certain circumstances, the Company may find it necessary to establish certain customers as house accounts. Justification for designation of a customer as a house account shall solely consist of a written notice from a customer or Healthcare Provider that indicates an unwillingness to use the services of the Sales Agent. The Company reserves the right to service such house accounts as the Company sees fit in connection with the sale of the Products, and in such instances no commission shall be paid on sales to house accounts and such sales shall not be credited to the Sales Agent for purposes of determining the achievement of sales quotas. The Company shall pay Sales Agent such commissions as are agreed upon between the Company and the Sales Agent for the services, if any, rendered by Sales Agent at the request of the Company in connection with sales of the Products to such house accounts that are delivered within the Territory.

#### 9. RELATIONSHIP OF PARTIES

Sales Agent is an independent contractor having only such authority to act for the Company as is expressly set forth in this Agreement. Sales Agent is not authorized to enter into any commitment or contract of any kind on behalf of the Company. The Company will not incur any liability whatsoever to any third party by reason of Sales Agent having exceeded its authority under the appointment granted by the Company herein or by reason of any misrepresentation by Sales Agent of its relationship to the Company or of the Company's products, warranties, policies, practices or procedures. Nothing contained in this Agreement is intended to be construed as creating or implying a relationship of principal and agent or employer and employee between the Company and Sales Agent or between the Company and Sales Agent's employees or agents, or a joint venture or partnership between the Company and Sales Agent.

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## 10. COMPLIANCE WITH LAWS AND REGULATIONS; NO CONFLICTS; DUE AUTHORIZATION

10.1 Nothing in this Agreement shall require either party to take any action which would violate any governmental regulation or law to which either of them is subject. Sales Agent shall, at its sole cost and expense, obtain in the Territory such governmental approvals, licenses or permits as may be necessary to effectuate the purposes of this Agreement, and shall comply with all federal, state and local laws, regulations and rulings of governmental bodies having jurisdiction over Sales Agent's business, in respect of the sale of the Products, including, without limitation, the Act.

10.2 The Sales Agent certifies that during the term of this Agreement that (i) neither it nor any Sales Agent Indemnitees nor any immediate member of any Sales Agent Indemnitee shall have any financial relationship with any Healthcare Provider in any business or venture related to the provision of healthcare products or services. For purpose of this certification, "financial relationship" includes, but is not limited to, any cash or other benefit granted to any Health Care Provider including, but not limited to, an ownership interest in the Sales Agent, gifts that are not in compliance with the Code of Conduct, fee-sharing, loans or advances of any kind.

10.3 The Sales Agent hereby represents and warrants to the Company that neither the execution of this Agreement by the Sales Agent nor the performance of this Agreement by the Sales Agent or any Sales Agent Indemnitee (as defined below) will (i) violate any order, judgment or injunction applicable to the Sales Agent or any Sales Agent Indemnitee, or (ii) conflict with or breach any agreement to which the Sales Agent or any Sales Agent Indemnitee are a party or by which the Sales Agent or any Sales Agent Indemnitee are bound.

10.4 Each party represents and warrants to the other party: (i) that such party is duly organized and validly existing under the laws of the state of its organization and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof; (ii) such party is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder; (iii) the person executing this Agreement on such party's behalf has been duly authorized to do so by all requisite corporate action; and (iv) this Agreement is a legal and valid obligation binding upon the parties and enforceable in accordance with its terms.

## 11. REPORTS

Sales Agent may be requested from time to time to submit to the Company written reports of Sales Agent's activities performed under this Agreement. Such reports will include a listing, by name and location, of customers contacted by Sales Agent, major opportunities being pursued, inquiries and/or problems reported by customers, physicians and/or users of the Products, Sales Agent's recommendations respecting actions to be taken by the Company to secure sales, and any other pertinent matters requested by the Company to be included in such reports, for the relevant period to which the report applies.

## 12. INDEMNIFICATION AND INSURANCE

12.1. Sales Agent shall indemnify, defend and hold harmless the Company, and its officers,

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directors, employees, affiliates and agents (the "Company Indemnitees") from all claims, damages, losses, costs and expenses (including reasonable attorneys' fees) (the "Liabilities") which any Company Indemnitee may incur to the extent that such Liabilities arise out of or result from: (i) any representation or warranty given by Sales Agent with respect to the Products (other than the labeling of the Products as approved by the United States Food and Drug Administration (the "FDA")) or otherwise provided by the Company, either verbally or in writing, (ii) the manufacture, use or sale of any product which is not supplied by Company and which is sold or combined with a Product, (iii) the breach of any representation, warranty, or covenant of the Sales Agent contained in this Agreement; or (iv) the negligence, recklessness, gross negligence, or willful misconduct of Sales Agent or any Sales Agent Indemnitee.

12.2. Company shall indemnify and hold harmless Sales Agent and its officers, directors, employees, affiliates and agents (the "Sales Agent Indemnitees") from all Liabilities which any Sales Agent Indemnitee may incur by reason of any Products sold or furnished by Company which result in injury, illness or death to the extent that such Liabilities arise out of or result from the failure of the Products to meet the Product warranty set forth in Section 17 or the recklessness, gross negligence, or willful misconduct of any Company Indemnitee.

12.3. The party seeking indemnification hereunder (the "Indemnified Party") shall: (i) give the other party (the "Indemnifying Party") notice of the relevant claim, (ii) cooperate with the Indemnifying Party, at the Indemnifying Party's expense, in the defense of such claim and (iii) give the Indemnifying Party the right to control the defense and settlement of any such claim, except that the Indemnifying Party shall not enter into any settlement that affects the Indemnified Party's rights or interest without the Indemnified Party's prior written approval. The Indemnified Party shall have no authority to settle any claim on behalf of the Indemnifying Party.

12.4. During the term of this Agreement Sales Agent agrees to maintain such insurance as will fully cover any loss, theft or damage of the Consigned Inventory. Upon the request of the Company the Sales Agent shall provide the Company with certificates of insurance demonstrating that Sales Agent has the insurance described above.

### 13. CONFLICTS OF INTEREST

[\*\*\*], Sales Agent covenants that neither it nor any Sales Agent Indemnitee will engage directly or indirectly in any activity that materially conflicts with Sales Agent's faithful performance of the services, covenants, commitments and obligations undertaken to be performed pursuant to this Agreement. [\*\*\*]. The Sales Agent agrees and acknowledges that the restrictions set forth in this Section 13 apply to the activities of the Sales Agent both inside and outside of the Territory. The Parties agree and acknowledge that with respect to any Product that is not a Product as of the date of this Agreement, the restrictions set forth in this Section 13 shall become applicable on the [\*\*\*] after the Company's first commercial sale of such Product in the United States, either within the Territory or outside of the Territory. The Sales Agent shall be entitled to [\*\*\*]; provided that (1) the Sales Agent obtains written approval from an officer of the Company prior to engaging in such activities; and (2) the Sales Agent continues to satisfy its obligations under this Agreement, including without limitation

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Section 2. Sales Agent agrees and acknowledges the [\*\*\*], and that without limiting any other rights the Company has at either law or equity, upon the Sales Agent's breach of this Section 13, the Company shall be entitled to [\*\*\*]. The Company acknowledges that [\*\*\*]. The Company does not intend for the provisions of this Section to [\*\*\*] from pursuing [\*\*\*].

#### 14. CONFIDENTIAL INFORMATION

14.1. Sales Agent acknowledges that it will have access to certain Confidential Information (as defined below) relating to the Company or its affiliates (the "Company Group"). For purposes of this Agreement, "Confidential Information" shall mean confidential and proprietary information of the Company Group, whether in written, oral, electronic or other form, including but not limited to the internal organization of the Company Group, the names and responsibilities of its management, supervisory and technical employees, operating plans, Inventions (as defined below), research and development activities, plans for acquisitions and mergers, manufacturing and/or sales activities, technical information concerning Products and related instrumentation, trade secrets, specifications, procedures, techniques, ideas, methods, Patents (as defined below) and the names of customers and suppliers. Confidential Information also includes the terms and existence of this Agreement, including but not limited to the exhibits attached hereto, and all disclosures made during the negotiations of this Agreement in its entirety.

14.2. Sales Agent covenants that it will hold all Confidential Information confidential and shall only use such Confidential Information to satisfy its obligations under this Agreement. During the term of this Agreement Sales Agent will be permitted, however, to disclose such part of the Confidential Information to those of its employees and/or agents as is necessary to be known by them to assist or enable Sales Agent to perform its services and obligations under this Agreement, provided that such employee or agent has entered into a written agreement of confidentiality, the terms of which are no less rigorous than the terms set forth in this Section 14.

14.3. The restrictions on use and disclosure of Confidential Information set forth in this Section 14 shall not apply: (i) to the extent that the Confidential Information is in the public domain without fault on the part of Sales Agent or any third party not bound by an obligation of confidentiality; or (ii) disclosures that are mandated by court of competent jurisdiction, provided that Sales Agent notifies the Company prior to such disclosure and takes reasonable actions to limit the disclosure of such Confidential Information.

14.4. Upon the Company's written demand or upon expiration or termination of this Agreement, Sales Agent, at its own cost and expense, will promptly return all Confidential Information to the Company to the extent held or controlled by Sales Agent in written, graphic or other tangible form, and all copies, summaries, notes and other write-ups thereof made by Sales Agent, or its employees and agents. The terms of this Section 14 shall survive indefinitely the termination or expiration of this Agreement.

#### 15. TERM AND TERMINATION

15.1. This Agreement will become effective on the Effective Date and will continue until the

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third anniversary of the Effective Date. Upon the written agreement of the parties, this agreement may be extended for additional three-year terms.

15.2. This Agreement may be terminated by the Company giving written notice of termination to Sales Agent as follows: (i) at any time upon thirty (30) days written notice from the Company to the Sales Agent describing any material breach of this Agreement by Sales Agent and Sales Agent fails to cure such breach within such thirty (30) day period; (ii) at any time during the term of this Agreement if Sales Agent fails to meet its sales quotas for two (2) fiscal quarters in a consecutive four (4) fiscal quarter period; (iii) at any time if Sales Agent engages in behavior that, in the Company's reasonable determination, is materially detrimental to the Company or its business reputation, including without limitation, a determination in the Company's sole reasonable discretion that Health Care Providers have acquired too large of a percentage of the Sales Agent's equity securities; (iv) at any time if Sales Agent becomes insolvent or bankrupt, or files a voluntary petition in bankruptcy, or has filed for an involuntary petition in bankruptcy; or (v) at any time following the end of a thirty (30) day cure period if Sales Agent fails to cure any breach of a covenant, commitment or obligation under this Agreement within thirty (30) days after receipt of written notice from the Company of such breach.

15.3. This Agreement may be terminated by Sales Agent as follows: (i) at any time if the Company becomes insolvent or bankrupt, or files a voluntary petition in bankruptcy, or has filed for an involuntary petition in bankruptcy; or (ii) at any time following the end of a thirty (30) day cure period if the Company fails to cure any breach of a covenant, commitment or obligation under this Agreement within thirty (30) days after receipt of written notice from the Company of such breach.

15.4. Following the termination or expiration of this Agreement: (i) Sales Agent shall discontinue all promotion and distribution of the Products in the Territory; (ii) Sales Agent will not be entitled to any commissions on sales of the Products that are invoiced in the Territory after the effective date of expiration or termination of this Agreement; (iii) the Company and Sales Agent will undertake to reconcile all matters pertaining to commission and other amounts, if any, owed by either party to the other up to the effective date of expiration or termination, as promptly as practicable thereafter, and will settle accounts between them (including without limitation the return of all Consigned Inventory in accordance with this Agreement) in good faith not later than 60 days after the effective date of expiration or termination of this Agreement.

## 16. INTELLECTUAL PROPERTY

16.1. Except as granted in this Agreement, Sales Agent has no rights in or to the Company's trademarks, or any other trademarks, trade names or copyrights owned or used by Company (the "Trademarks") and Sales Agent agrees that it shall not in any way infringe upon, harm, contest or otherwise impair the rights of Company to the Trademarks. All material containing Trademarks, including all Samples, shall be used solely in connection with promoting the sale of Products, and distinguishing and identifying them. Sales Agent may not use any Trademarks in its corporate title or the corporate title of any entity it controls. If it becomes necessary, because of conflicts with trademarks or trade names used by third parties, to develop non-conflicting marks and names for

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certain parts of the Territory, Sales Agent shall so inform Company, and such new marks and names shall be developed by Company, and shall belong to Company, subject to Sales Agent's license to use them pursuant to the terms of this Section 16. The Company, on behalf of itself and its subsidiaries, hereby grants to Sales Agent a non-exclusive, non-transferable limited license to use the Trademarks solely in connection with its promotion, marketing and sales of the Products in the Territory pursuant to the terms of this Agreement. Sales Agent shall have no further rights or interest in any such Trademarks.

16.2. Sales Agent acknowledges and agrees that any patent on the Products acquired by the Company or any of its subsidiaries and any patent applications on the Products filed by the Company or any of its subsidiaries (the "Patents") are the sole and exclusive property of the Company and that throughout the term of this Agreement and following its termination or expiration, Sales Agent will not do anything inconsistent with such ownership, will not directly or indirectly challenge the title of the Company or any of its subsidiaries to the same and will not attack the validity of such Patents.

16.3. Sales Agent agrees to promptly notify the Company of any unauthorized use of the Trademarks or infringement of the Patents by others as it comes to Sales Agent's attention.

16.4. Sales Agent shall submit to the Company all inventions, discoveries and ideas concerning any modifications and improvements relating to the Products and related instrumentation (the "Inventions"). Further, all such Inventions are, and shall remain, the sole property of the Company. Sales Agent hereby assigns to the Company all of its rights, title and interest to Inventions, and shall take such actions as is necessary to vest such rights and interests in the Company and shall require its employees and agents to take similar actions to vest ownership of such Inventions in the Company.

#### 17. LIMITED WARRANTY

The Company warrants that, under normal use and service and when used in accordance with specifications supplied by Company, the Products will be of merchantable quality. If any Products do not comply with such warranty, Company will, at its option and expense, correct, repair, or replace any defective Products provided, that, in all such cases that sufficient evidence is produced by Sales Agent to establish that the Products are defective. THE COMPANY MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PRODUCTS AND ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE ARE EXPRESSLY AND SPECIFICALLY EXCLUDED AND DISCLAIMED.

#### 18. LIMITATION OF LIABILITY

THE COMPANY'S LIABILITY UNDER THE WARRANTY SET FORTH IN SECTION 17 OR OTHERWISE WITH RESPECT TO THE PRODUCTS OR THEIR USE (INCLUDING LIABILITY FOR CONTRACT, NEGLIGENCE OR OTHERWISE IN TORT) IS LIMITED EXCLUSIVELY TO THE REMEDY PROVIDED IN SECTION 12, AND NO OTHER RIGHT OR REMEDY WILL BE AVAILABLE TO ANY PERSON. IN NO EVENT WILL THE COMPANY

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BE LIABLE TO THE SALES AGENT OR ANY OTHER PERSON OR ENTITY FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO PERSON OR PROPERTY OR LOSS OF PROFITS OF ANY PERSON RESULTING FROM ANY CAUSE WHATSOEVER, EVEN IF COMPANY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS OF PROFITS. SOME STATES AND JURISDICTIONS OUTSIDE OF THE UNITED STATES DO NOT ALLOW A LIMITATION OR EXCLUSION OF IMPLIED WARRANTIES, OR LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY. SALES AGENT ACKNOWLEDGES THAT THE ALLOCATION OF RISKS AND BENEFITS UNDER THIS AGREEMENT IS BASED ON, AND THE AMOUNTS PAID UNDER THIS AGREEMENT WOULD BE GREATER IN THE ABSENCE OF, THE LIMITATIONS DESCRIBED ABOVE.

19. MISCELLANEOUS PROVISIONS

19.1 This Agreement contains the entire agreement and understanding between the parties respecting the subject matter hereof, and supersedes all prior and collateral agreements and understandings, regardless of form or nature between the parties respecting that subject matter.

19.2 Other than as explicitly set forth in this Agreement, no extension, modification or supplement to this Agreement will be effective unless made in writing and signed by a duly authorized officer of each party.

19.3 This Agreement will be binding upon Sales Agent, the Company and their respective successors and permitted assigns.

19.4 Any notice required, permitted or contemplated by this Agreement must be in writing, sent by facsimile, electronic mail or nationally recognized overnight carrier, addressed to the other party as set forth below, or to such other address as may from time to time be substituted therefore by notice, or delivered in person to such other party. Except as otherwise provided in this Agreement, notices sent by facsimile or electronic mail will be effective on the date that written confirmation of the transmission of the facsimile is received by the sender and notices sent by overnight carrier shall be effective on the business day following written confirmation of delivery of the notice to such carrier. For purposes of notices, the addresses of the parties will be:

If to the Company:           Alphatec Spine, Inc.  
  2051 Palomar Airport Road, Ste 100  
  Carlsbad, CA 92011  
  Attention: Vice President, Sales  
  Phone: 760-431-9286  
  Facsimile: 760-431-9083

If to Sales Agent:           SS Fusion Medical, Inc.  
  309 North Sea Lake Lane

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Ponte Vedra Beach, FL 32082  
Attn: Greg Smith  
Phone: 904 509-6030  
Facsimile: 904 273-9133

19.5 Except as provided for within this Agreement, no delay or failure by either party to enforce or take advantage of any provision of this Agreement for non-performance or breach of any obligation hereunder by the other party, or to exercise any right hereunder, will constitute a waiver of the right of such party subsequently to enforce or take advantage of such provision or any other provisions hereof (unless performance has been resumed or the breach has been cured by the other party) or to exercise such right or any other right hereunder, unless such waiver is in writing signed by a duly authorized officer of the party against whom the waiver is claimed to apply, or unless the respective period for enforcement, taking advantage or exercise, as the case may be, has expired by the express terms of this Agreement.

19.6 This Agreement may not be assigned by Sales Agent except with the written consent of the Company and any assignment that occurs without proper consent shall be deemed to be null and void. For the purposes of this Section 19.6, a merger of the Sales Agent with or into another entity, the sale of more than fifty percent (50%) of the Sales Agent's equity securities in one or a series of transactions, or the sale of substantially all of the Sales Agent's assets shall be deemed to be an assignment. The Company may assign this Agreement by giving written notification to the Sales Agent.

19.7 The parties agree that the breach of this Agreement may cause irreparable harm to a party. Therefore, in addition to the other remedies specified herein, either party may enforce its rights hereunder by all available equitable remedies, including, without limitation, the right to obtain an injunction or specific performance.

19.8 The Company shall not be responsible for any failure or delay in performance of its obligations under this Agreement because of circumstances beyond its reasonable control, including, without limitation, acts of God, fires, floods, wars, civil disturbances, sabotage, accidents, labor disputes (whether or not the employees' demands are reasonable and within the Company's power to satisfy), governmental actions or inability to obtain labor, material, equipment or transportation, nor shall any such failure or delay give the Sales Agent any right to terminate this Agreement. If any delivery or shipment of Products is delayed because of any such circumstance, it shall be made as soon as possible.

19.9 This Agreement may be executed in multiple counterparts, each of which will constitute an original, but all of which together will constitute one and the same Agreement.

19.10 Notwithstanding the expiration or termination of this Agreement for any reason, rights and obligations which by the nature should survive will remain in full force and effect. In particular the following sections shall survive the expiration or termination of this Agreement: Section 2.3, Section 2.4, Section 2.6, Section 2.7, Section 7.8, Section 12.1, Section 12.2, Section 12.3, Section

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14, Section 15.4, Section 16, Section 17, Section 18, Section 19.4, Section 19.7, Section 19.10, Section 19.12 and Section 19.13.

19.11 In the event of: (i) the sale of all or substantially all of the assets of the Company to a buyer (the “Asset Buyer”); (ii) the merger, consolidation or other business transaction in which the Company is not the surviving entity (the “Surviving Entity”); (iii) any joint venture partnership or similar arrangement in which the business of the Company is assumed by a third party (“Joint Venture”); or (iv) the sale of a controlling interest of the stock of the Company to a buyer of the stock (“Stock Buyer”), then the Company shall cause, as a part of such transaction, for the Asset Buyer, Surviving Entity, Joint Venture or Stock Buyer, as the case may be, to assume the terms of this Agreement effective as of the date of the sale, merger or other transaction (the “Transaction”) including without limitation the obligation to pay Sales Agent the commission herein in accordance with this Agreement. If such Asset Buyer, Surviving Entity, Joint Venture, or Stock Buyer does not assume this Agreement, then the Company shall include in the documents governing the Transaction that the Asset Buyer, Surviving Entity, Joint Venture or Stock Buyer, as the case may be, [\*\*\*] equal to the [\*\*\*] for the [\*\*\*]; provided that [\*\*\*] set forth in [\*\*\*].

19.12 The validity, construction and enforcement of this Agreement and all matters related thereto or in connection therewith all be governed by the laws of the State of California.

19.13 If any provision of this Agreement is rendered or declared unlawful by reason of any existing or subsequently enacted law or by decree or order of a court of last resort, the remaining provisions of this Agreement will continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**ALPHATEC SPINE, INC.**

By: /s/ Dirk Kuyper  
Name: Dirk Kuyper  
Title: President and Chief Executive Officer

**SS FUSION MEDICAL, INC.**

By: /s/ Greg Smith  
Name: Greg Smith  
Title: President

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**EXHIBIT A  
PRODUCTS**

The Company's [\*\*\*] as of the Effective Date  
The Company's [\*\*\*] as of the Effective Date

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**Portions of this Exhibit were omitted, as indicated by [\*\*\*], and have been filed separately with the Secretary of the Commission pursuant to the Registrant's application requesting confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

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**EXHIBIT B**  
**LIST OF SALES AGENT'S TERRITORY**

As of the Effective Date, the Sales Agent's Territory shall be as follows:

- (1) The following counties in the state of [\*\*\*].
- (2) The following counties in the state of [\*\*\*].
- (3) The following [\*\*\*].

[\*\*\*]

The Sales Agent shall [\*\*\*] for (i) any counties in[\*\*\*]; provided that (a) Sales Agent continues to satisfy all of its obligations under this Agreement, including without limitation Sections 2 and 13, (b) within fifteen (15) days following receipt of notification from the Company setting forth Sales Agent's [\*\*\*] with respect to a county, Sales Agent accepts the Company's offer to begin sales activities in such county; and (c) within five days of receipt of the commission rates and sales quotas for the county that is the subject of the [\*\*\*] Sales Agent agrees in writing to such commission rates and sales quotas. In the event that Sales Agent (i) declines such [\*\*\*], (ii) does not respond in the methods described above in the allocated time periods, or (iii) does not agree to the commission rate or sales quota presented by the Company with respect to such county, such [\*\*\*] shall expire and shall be of no further force and effect with respect to such county and the Company shall be entitled to offer such county to another person; provided, that the [\*\*\*]. The Company shall be entitled to remove such added county from the Territory in the event that the Sales Agent does not achieve the sales quota set forth for such county. The Sales Agent acknowledges and agrees that [\*\*\*]. The [\*\*\*] shall apply only once with respect to each eligible county.

The parties agree that [\*\*\*].

**Portions of this Exhibit were omitted, as indicated by [\*\*\*], and have been filed separately with the Secretary of the Commission pursuant to the Registrant's application requesting confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

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**EXHIBIT C**  
**COMMISSION RATE**

1. In connection with the Company's [\*\*\*] as of the Effective Date that are a [\*\*\*], the commission rate on Net Sales for Products sold in the Territory shall be [\*\*\*].
2. In connection with the Company's [\*\*\*] as of the Effective Date that are either (i) [\*\*\*]; (ii) [\*\*\*]; (iii) [\*\*\*]; (iv) [\*\*\*]; or (v) [\*\*\*], the commission rate on Net Sales for Products sold in the Territory shall be [\*\*\*].
3. In connection with the Company's [\*\*\*] as of the Effective Date that are either (i) [\*\*\*]; (ii) [\*\*\*], (iii) [\*\*\*], or (iv) [\*\*\*], the commission rate on Net Sales for Products sold in the Territory shall be [\*\*\*].
4. In connection with the Company's [\*\*\*] as of the Effective Date that are either (i) [\*\*\*], (ii) [\*\*\*], or (iii) [\*\*\*], the commission rate on Net Sales for Products sold in the Territory shall be [\*\*\*].

Commission Related to [\*\*\*]:

For sales of any of the Company's [\*\*\*] to [\*\*\*] the commission rate on Net Sales shall be [\*\*\*]. For sales of the Company's [\*\*\*] to [\*\*\*], the commission rate shall be [\*\*\*].

Commission Override for [\*\*\*]:

For the period beginning [\*\*\*], the Sales Agent shall receive [\*\*\*] commission for all Net Sales resulting from orders placed by [\*\*\*]. Sales Agent understands and agrees that Net Sales from orders placed by [\*\*\*].

For the period beginning [\*\*\*], the Sales Agent shall receive [\*\*\*] commission for all Net Sales resulting from orders placed by [\*\*\*]. Sales Agent understands and agrees that Net Sales from orders placed by [\*\*\*].

In the event of [\*\*\*].

**Portions of this Exhibit were omitted, as indicated by [\*\*\*], and have been filed separately with the Secretary of the Commission pursuant to the Registrant's application requesting confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

**EXHIBIT D**  
**SALES QUOTAS**

**Territory Excluding**

[\*\*\*]

[\*\*\*]

**[\*\*\*] Quotas:**

Q1	\$[***]	\$[***]
Q2	\$[***]	\$[***]
Q3	\$[***]	\$[***]
Q4	\$[***]	\$[***]

**[\*\*\*] Quotas:**

Q1	\$[***]	\$[***]
Q2	\$[***]	\$[***]
Q3	\$[***]	\$[***]
Q4	\$[***]	\$[***]

**[\*\*\*] Quotas:**

Q1	\$[***]	\$[***]
Q2	\$[***]	\$[***]
Q3	\$[***]	\$[***]
Q4	\$[***]	\$[***]

The Company shall be [\*\*\*]. In the event [\*\*\*].

**Portions of this Exhibit were omitted, as indicated by [\*\*\*], and have been filed separately with the Secretary of the Commission pursuant to the Registrant's application requesting confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

**EXHIBIT E**  
**FORM OF HOSPITAL CONSIGNMENT AGREEMENT**

**Alphatec Spine, Inc. Inventory Consignment Agreement**

This Inventory Consignment Agreement (the "Agreement") is between Alphatec Spine, Inc., a California corporation (the "Company") and the medical institution listed on the signature page below (the "Institution") is made as of \_\_\_\_\_, 200\_\_ (the "Effective Date").

WHEREAS the Company and the Institution have agreed to have certain of the Company's inventory (including all related instrumentation) (the "Consigned Inventory") stocked at the Institution pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and provisions herein contained, the adequacy of which is hereby satisfied, the parties agree as follows:

1. Listed below is all of the Consignment Inventory:

<u>Item Description</u>	<u>Quantity</u>

2. Institution will hold said Consigned Inventory in a fiduciary capacity under a separate account titled "Consigned Inventory".

3. Institution shall not use the Consigned Inventory for any other purpose other than with the consent of the Company or its authorized employees or agents.

4. At any time during the term of this Agreement, the Company may request a physical inventory of the Consigned Inventory by the Institution and the Institution shall promptly respond to such request.

5. If any Consigned Inventory is returned damaged, then the Company, to the extent possible, will repair or refurbish the Consigned Inventory and invoice the Institution for the cost of said repairs

**Portions of this Exhibit were omitted, as indicated by [\*\*\*], and have been filed separately with the Secretary of the Commission pursuant to the Registrant's application requesting confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

and handling. If the damaged Consigned Inventory cannot be repaired, then the Company shall invoice the Institution for 100% of the list price of such Consigned Inventory. If any Consigned Inventory is lost, missing or stolen, then the Company shall invoice the Institution for 100% of the list price of such Consigned Inventory. In each of the instances set forth in this Section 5, upon receipt of such invoice, Institution shall promptly remit payment to the Company.

6. Either party may terminate this agreement at any time by providing written notice to the other party; provided that Section 5 and Section 7 shall survive the termination of this Agreement.

7. Upon the termination or expiration of this Agreement, the Institution shall immediately, and at its own expense, return all Consignment Inventory in its possession or control to the Company.

\* \* \*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**COMPANY:**

**ALPHATEC SPINE, INC.**

By: \_\_\_\_\_

Name:

Title:

**INSTITUTION:**

(print name of Institution) \_\_\_\_\_

By: \_\_\_\_\_

Name (please print):

Title:

**Portions of this Exhibit were omitted, as indicated by [\*\*\*], and have been filed separately with the Secretary of the Commission pursuant to the Registrant's application requesting confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

**AMENDMENT TO  
EXCLUSIVE LICENSE AGREEMENT**

This Amendment to the License and Supply Agreement (this “Amendment”) is made as of January 14, 2008 by and among Alphatec Spine, Inc., a Delaware corporation with a principal place of business at 2051 Palomar Airport Road, Suite 100, Carlsbad, California 92008 (“Licensee”), Progressive Spinal Technologies LLC, a limited liability company organized under the laws of the state of Delaware, with an address at 410 East Walnut Street, Suite #8, Perkasio, Pennsylvania 18944 (“Licensor”) and for purposes of Section 7.2 and Section 11.15 hereof only Alphatec Holdings, Inc., a Delaware corporation with a principal place of business at 2051 Palomar Airport Road, Suite 100, Carlsbad, California 92008 (“Holdings”). Capitalized terms undefined herein shall have the meaning ascribed them in the Agreement.

**RECITALS**

Reference is made to that certain Exclusive License Agreement dated December 18, 2007, between the parties to this Amendment (the “Agreement”).

The Parties desire to amend the Agreement as set forth herein.

Now, therefore, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties hereto, the Parties hereto agree as follows:

**1. AMENDMENTS**

**1.1 Amendment and Restatement of Section 1.10.** Section 1.10 of the Agreement is hereby deleted and replaced in its entirety with the following language:

“1.10 “Licensed Field” shall mean [\*\*\*].

**1.2 Addition of Section 4.4.4.** The following language shall be added to the Agreement as Section 4.4.4:

“4.4.4 Limitation on the Number of Shares Issued. Notwithstanding anything to the contrary in this Agreement, in no event shall the aggregate number of Shares issued pursuant to this Agreement be greater than 19.9% of the number of shares of Common Stock outstanding on the Effective Date. In the event that an issuance of Shares pursuant to this Agreement would cause an aggregate issuance of Shares that is more than 19.9% of the number of shares Common Stock outstanding on the Effective Date, the Licensee shall make a cash payment to the Licensor equal to the difference between cash value of the Shares that were scheduled to be issued pursuant to this Agreement, and the value of the Shares that were actually issued after giving effect to the limitation set forth in this Section 4.4.4.”

**Portions of this Exhibit were omitted, as indicated by [\*\*\*], and have been filed separately with the Secretary of the Commission pursuant to the Registrant’s application requesting confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

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## 2. MISCELLANEOUS

In the event of any conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall prevail. Other than as set forth in this Amendment, the remainder of the Agreement shall remain in full force and effect.

[Signature Page Follows]

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**Portions of this Exhibit were omitted, as indicated by [\*\*\*], and have been filed separately with the Secretary of the Commission pursuant to the Registrant's application requesting confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

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IN WITNESS WHEREOF, the Parties and Holdings have caused this Amendment to be executed by their duly authorized representative.

ALPHATEC SPINE, INC.

By: /s/ Dirk Kuyper  
Name: Dirk Kuyper  
Title: President and CEO

PROGRESSIVE SPINAL TECHNOLOGIES LLC:

By: /s/ E. Skott Greenhalgh  
Name: E. Skott Greenhalgh  
Title: CEO

ALPHATEC HOLDINGS, INC.

By: /s/ Dirk Kuyper  
Name: Dirk Kuyper  
Title: President and CEO

**Portions of this Exhibit were omitted, as indicated by [\*\*\*], and have been filed separately with the Secretary of the Commission pursuant to the Registrant's application requesting confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

**SECOND AMENDMENT TO  
EXCLUSIVE LICENSE AGREEMENT**

This Second Amendment to the License and Supply Agreement (this "Amendment") is made as of January 12, 2009 by and among Alphatec Spine, Inc., a Delaware corporation with a principal place of business at 5818 El Camino Real, Carlsbad, California 92008 ("Licensee"), Progressive Spinal Technologies LLC, a limited liability company organized under the laws of the state of Delaware, with an address at 410 East Walnut Street, Suite #8, Perkasie, Pennsylvania 18944 ("Licensor") and Alphatec Holdings, Inc., a Delaware corporation with a principal place of business at 5818 El Camino Real, Carlsbad, California 92008 ("Holdings"). Capitalized terms undefined herein shall have the meaning ascribed them in the Agreement.

**RECITALS**

Reference is made to that certain Exclusive License Agreement dated December 18, 2007, as amended, between the parties to this Amendment (the "Agreement").

The Parties desire to amend the Agreement as set forth herein.

Now, therefore, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties hereto, the Parties hereto agree as follows:

**1. AMENDMENTS**

**1.1 Amendment and Restatement of Section 4.1.2.** Section 4.1.2 of the Agreement is hereby deleted and replaced in its entirety with the following language:

"4.1.2 **Milestone Payments.** Licensee shall pay milestone payments (or in the case of the Common Stock cause the issuance thereof by Holdings) to Licensor (each such payment or issuance a "Milestone Payment") as specified below no more than thirty (30) days after the occurrence of the corresponding event designated below, unless this Agreement has been terminated prior to such due date; provided that Licensor hereby assigns to its affiliate [\*\*\*] and (ii) the right to enforce this Agreement to the extent necessary [\*\*\*], and Licensee and Holdings hereby consents to both such assignments. No Milestone Payments described in this Subsection 4.1.2 shall be credited against or otherwise reduce any other amounts payable hereunder.

**Portions of this Exhibit were omitted, as indicated by [\*\*\*], and have been filed separately with the Secretary of the Commission pursuant to the Registrant's application requesting confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

Event	Milestone Payment
[***]	[***] [***]
[***]	[***] [***]
[***]	[***]
[***]	[***]
[***]	[***]

**2. MISCELLANEOUS**

In the event of any conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall prevail. Other than as set forth in this Amendment, the remainder of the Agreement shall remain in full force and effect.

[Signatures Follow]

**Portions of this Exhibit were omitted, as indicated by [\*\*\*], and have been filed separately with the Secretary of the Commission pursuant to the Registrant's application requesting confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

---

IN WITNESS WHEREOF, the Parties and Holdings have caused this Amendment to be executed by their duly authorized representative.

ALPHATEC SPINE, INC.

By: /s/ Dirk Kuyper

Name: Dirk Kuyper  
Title: President and CEO

PROGRESSIVE SPINAL TECHNOLOGIES LLC:

By: /s/ E. Skott Greenhalgh

Name: E. Skott Greenhalgh  
Title: CEO

ALPHATEC HOLDINGS, INC.

By: /s/ Dirk Kuyper

Name: Dirk Kuyper  
Title: President and CEO

**Portions of this Exhibit were omitted, as indicated by [\*\*\*], and have been filed separately with the Secretary of the Commission pursuant to the Registrant's application requesting confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

**CERTIFICATION OF DISCLOSURE  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Dirk Kuyper, certify that:

1. I have reviewed this Amendment No. 1 to the Annual Report on Form 10-K of Alphatec Holdings, Inc.; and
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.

By: /s/ Dirk Kuyper

Dirk Kuyper  
President and Chief Executive Officer  
July 7, 2009

**CERTIFICATION OF DISCLOSURE  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Peter C. Wulff, certify that:

1. I have reviewed this Amendment No. 1 to the Annual Report on Form 10-K of Alphatec Holdings, Inc.; and
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.

By: /s/ Peter C. Wulff

\_\_\_\_\_  
Peter C. Wulff  
Chief Financial Officer, Vice President and Treasurer  
July 7, 2009