

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended March 31, 2020

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, CA 92008**

(Address of principal executive offices, including 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	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value \$.0001 per share	ATEC	The NASDAQ Global Select Market

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

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

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

Large accelerated filer  Accelerated filer   
Non-accelerated filer  Smaller reporting company   
Emerging growth company

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

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

As of May 04, 2020, there were 63,432,932 shares of the registrant's common stock outstanding.

ALPHATEC HOLDINGS, INC.  
QUARTERLY REPORT ON FORM 10-Q  
March 31, 2020

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## PART I. FINANCIAL INFORMATION

## Item 1. Financial Statements

**ALPHATEC HOLDINGS, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(In thousands, except for par value data)

Assets	March 31, 2020 (Unaudited)	December 31, 2019
Current assets:		
Cash	\$ 27,466	\$ 47,113
Accounts receivable, net	15,375	16,150
Inventories, net	37,872	34,854
Prepaid expenses and other current assets	10,646	9,880
Current assets of discontinued operations	353	321
Total current assets	91,712	108,318
Property and equipment, net	20,919	19,722
Right-of-use asset	1,601	1,860
Goodwill	13,897	13,897
Intangibles, net	25,165	25,605
Other assets	493	493
Noncurrent assets of discontinued operations	52	53
Total assets	<u>\$ 153,839</u>	<u>\$ 169,948</u>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 11,800	\$ 7,772
Accrued expenses	23,772	26,416
Current portion of long-term debt	916	489
Current portion of lease liability	1,356	1,314
Current liabilities of discontinued operations	399	399
Total current liabilities	38,243	36,390
Long-term debt, less current portion	53,033	53,448
Operating lease liability, less current portion	559	925
Other long-term liabilities	10,971	11,951
Redeemable preferred stock, \$0.0001 par value; 20,000 shares authorized at March 31, 2020 and December 31, 2019; 3,319 shares issued and outstanding at both March 31, 2020 and December 31, 2019	23,603	23,603
Commitments and contingencies		
Stockholders' equity:		
Series A convertible preferred stock, \$0.0001 par value; 15 shares authorized at March 31, 2020 and December 31, 2019; 0 shares issued and outstanding at March 31, 2020 and December 31, 2019	—	—
Series B convertible preferred stock, \$0.0001 par value; 45 shares authorized at March 31, 2020 and December 31, 2019; 0 shares issued and outstanding at March 31, 2020 and December 31, 2019	—	—
Common stock, \$0.0001 par value; 200,000 authorized; 63,403 shares issued and 63,260 outstanding at March 31, 2020, net of 143 unvested shares; and 61,718 shares issued and 61,400 shares outstanding, net of 318 unvested shares at December 31, 2019	6	6
Treasury stock, 2 shares, at cost	(97)	(97)
Additional paid-in capital	611,091	606,558
Shareholder note receivable	(5,000)	(5,000)
Accumulated other comprehensive income	1,157	1,088
Accumulated deficit	(579,727)	(558,924)
Total stockholders' equity	27,430	43,631
Total liabilities and stockholders' equity	<u>\$ 153,839</u>	<u>\$ 169,948</u>

See accompanying notes to unaudited condensed consolidated financial statements.

**ALPHATEC HOLDINGS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(UNAUDITED)**

(In thousands, except per share amounts)

	Three Months Ended March 31,	
	2020	2019
<b>Revenue:</b>		
Revenue from U.S. products	\$ 29,070	\$ 22,955
Revenue from international supply agreement	1,045	1,600
Total revenue	30,115	24,555
Cost of revenue	9,084	7,987
Gross profit	21,031	16,568
<b>Operating expenses:</b>		
Research and development	3,749	3,372
Sales, general and administrative	28,003	21,097
Litigation-related	2,643	2,623
Amortization of intangible assets	172	182
Transaction-related	4,272	—
Restructuring	—	60
Total operating expenses	38,839	27,334
Operating loss	(17,808)	(10,766)
<b>Other expense:</b>		
Other expense, net	(2,874)	(2,119)
Loss from continuing operations before taxes	(20,682)	(12,885)
Income tax provision	40	31
Loss from continuing operations	(20,722)	(12,916)
Loss from discontinued operations, net of applicable taxes	—	(52)
Net loss	\$ (20,722)	\$ (12,968)
<b>Loss per share, basic and diluted:</b>		
Continuing operations	\$ (0.33)	\$ (0.29)
Discontinued operations	\$ (0.00)	\$ (0.00)
Net loss per share, basic and diluted	\$ (0.33)	\$ (0.29)
Shares used in calculating basic and diluted net loss per share	62,568	45,020

See accompanying notes to unaudited condensed consolidated financial statements.

**ALPHATEC HOLDINGS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**  
**(UNAUDITED)**

**(In thousands)**

	<b>Three Months Ended</b>	
	<b>March 31,</b>	
	<b>2020</b>	<b>2019</b>
Net loss	\$ (20,722)	\$ (12,968)
Foreign currency translation adjustments related to continuing operations	69	75
Comprehensive loss	<u>\$ (20,653)</u>	<u>\$ (12,893)</u>

See accompanying notes to unaudited condensed consolidated financial statements.

**ALPHATEC HOLDINGS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**(UNAUDITED)**  
**(In thousands)**

	Common stock		Series A Convertible Preferred Stock		Series B Convertible Preferred Stock		Additional paid-in capital	Shareholder note receivable	Treasury stock	Accumulated other comprehensive income (loss)	Accumulated deficit	Total stockholders' equity
	Shares	Par Value	Shares	Par Value	Shares	Par Value						
<b>Balance at January 1, 2019</b>	43,368	\$ 4	4	\$ —	—	\$ —	\$ 523,525	\$ (5,000)	\$ (97)	\$ 1,064	\$ (501,922)	\$ 17,574
Stock-based compensation	—	—	—	—	—	—	1,565	—	—	—	—	1,565
Distributor equity incentives	15	—	—	—	—	—	42	—	—	—	—	42
Common stock issued for conversion of Series A preferred stock	1,858	—	(4)	—	—	—	—	—	—	—	—	—
Recognition of beneficial conversion feature - SafeOp Convertible Notes	—	—	—	—	—	—	242	—	—	—	—	242
Common stock issued for stock option exercises	8	—	—	—	—	—	14	—	—	—	—	14
Common stock issued for vesting of restricted stock awards, net of shares repurchased for tax liability	442	—	—	—	—	—	(183)	—	—	—	—	(183)
Issuance of common stock for acquisition of SafeOp - Milestone 2	887	—	—	—	—	—	2,889	—	—	—	—	2,889
Foreign currency translation adjustments	—	—	—	—	—	—	—	—	—	75	—	75
Net loss	—	—	—	—	—	—	—	—	—	—	(12,968)	(12,968)
<b>Balance at March 31, 2019</b>	<u>46,578</u>	<u>\$ 4</u>	<u>—</u>	<u>\$ —</u>	<u>—</u>	<u>\$ —</u>	<u>\$ 528,094</u>	<u>\$ (5,000)</u>	<u>\$ (97)</u>	<u>\$ 1,139</u>	<u>\$ (514,890)</u>	<u>\$ 9,250</u>
<b>Balance at January 1, 2020</b>	61,400	\$ 6	—	\$ —	—	\$ —	\$ 606,558	\$ (5,000)	\$ (97)	\$ 1,088	\$ (558,924)	\$ 43,631
Cumulative effect of change in accounting principle	—	—	—	—	—	—	—	—	—	—	(81)	(81)
Stock-based compensation	—	—	—	—	—	—	3,630	—	—	—	—	3,630
Distributor equity incentives	—	—	—	—	—	—	70	—	—	—	—	70
Common stock issued for warrant exercises	1,390	—	—	—	—	—	1,158	—	—	—	—	1,158
Common stock issued for employee stock purchase plan and stock option exercises	76	—	—	—	—	—	83	—	—	—	—	83
Common stock issued for vesting of restricted stock awards, net of shares repurchased for tax liability	394	—	—	—	—	—	(408)	—	—	—	—	(408)
Foreign currency translation adjustments	—	—	—	—	—	—	—	—	—	69	—	69
Net loss	—	—	—	—	—	—	—	—	—	—	(20,722)	(20,722)
<b>Balance at March 31, 2020</b>	<u>63,260</u>	<u>\$ 6</u>	<u>—</u>	<u>\$ —</u>	<u>—</u>	<u>\$ —</u>	<u>\$ 611,091</u>	<u>\$ (5,000)</u>	<u>\$ (97)</u>	<u>\$ 1,157</u>	<u>\$ (579,727)</u>	<u>\$ 27,430</u>

See accompanying notes to unaudited condensed consolidated financial statements.

**ALPHATEC HOLDINGS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(UNAUDITED)**  
**(In thousands)**

	<b>Three Months Ended March 31,</b>	
	<b>2020</b>	<b>2019</b>
<b>Operating activities:</b>		
Net loss	\$ (20,722)	\$ (12,968)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	2,454	1,785
Stock-based compensation	3,568	1,612
Amortization of debt discount and debt issuance costs	1,238	503
Amortization of right-of-use asset	259	217
Provision for doubtful accounts	(5)	66
Provision for excess and obsolete inventory	1,722	1,997
Deferred income tax benefit	—	4
Beneficial conversion feature from convertible notes	—	242
Loss (Gain) on disposal of instruments	32	(275)
Accretion to contingent consideration	—	289
Changes in operating assets and liabilities:		
Accounts receivable, net	782	1,268
Inventories, net	(4,741)	(4,398)
Prepaid expenses and other current assets	(983)	198
Other assets	—	69
Other long-term assets	—	(2,612)
Accrued expenses and other	(2,643)	(1,071)
Accounts payable	3,414	3,319
Lease liability	(324)	2,910
Other long-term liabilities	(1,099)	(1,099)
Net cash used in operating activities	(17,048)	(7,944)
<b>Investing activities:</b>		
Purchases of property and equipment	(2,629)	(1,068)
Net cash used in investing activities	(2,629)	(1,068)
<b>Financing activities:</b>		
Proceeds from sale of common stock, net	833	14
Borrowings under lines of credit	29,544	26,433
Repayments under lines of credit	(30,408)	(26,822)
Principal payments on capital lease obligations	(8)	(5)
Debt issuance costs	—	(300)
Principal payments on term loan and notes payable	—	(3,022)
Net cash used in financing activities	(39)	(3,702)
Effect of exchange rate changes on cash	69	79
Net decrease in cash	(19,647)	(12,635)
Cash at beginning of period, including discontinued operations	47,113	29,054
Cash at end of period, including discontinued operations	\$ 27,466	\$ 16,419
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for interest	\$ 1,646	\$ 1,357
Cash paid for income taxes	\$ 25	\$ 23
<b>Supplemental disclosure of noncash investing and financing activities:</b>		
Common stock issued for achievement of SafeOp contingent consideration	\$ —	\$ 2,889
Purchases of property and equipment in accounts payable	\$ 1,297	\$ 785

See accompanying notes to unaudited condensed consolidated financial statements.

## 1. The Company and Basis of Presentation

### *The Company*

Alphatec Holdings, Inc. (the “Company”), through its wholly owned subsidiaries, Alphatec Spine, Inc. (“Alphatec Spine”) and SafeOp Surgical, Inc. (“SafeOp”), designs, develops, and markets technology for the treatment of spinal disorders. The Company markets its products in the U.S. via independent sales agents and a direct sales force.

On March 8, 2018, the Company completed its acquisition of SafeOp, a Delaware corporation, pursuant to a reverse triangular merger of SafeOp into a newly-created wholly-owned subsidiary of the Company, with SafeOp being the surviving corporation and a wholly-owned subsidiary of the Company. See Note 8 for further information.

On September 1, 2016, the Company completed the sale of its international distribution operations and agreements (collectively, the “International Business”) to Globus Medical Ireland, Ltd., a subsidiary of Globus Medical, Inc., and its affiliated entities (collectively “Globus”). As a result of this transaction, the International Business has been excluded from continuing operations for all periods presented in this Quarterly Report on Form 10-Q and is reported as discontinued operations. See Note 4 for additional information on the divestiture of the International Business.

### *Basis of Presentation*

The accompanying condensed consolidated balance sheet as of December 31, 2019, which has been derived from audited financial statements, and the unaudited interim condensed consolidated financial statements have been prepared by the Company in accordance with U.S. generally accepted accounting principles (“GAAP”) and the rules and regulations of the Securities and Exchange Commission (“SEC”) related to a quarterly report on Form 10-Q. Certain information and note disclosures normally included in annual audited financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to those rules and regulations, although the Company believes that the disclosures made in this Quarterly Report on Form 10-Q are adequate to make the information not misleading. The unaudited interim condensed consolidated financial statements reflect all adjustments, including normal recurring adjustments which, in the opinion of management, are necessary for a fair statement of the financial position and results of operations for the periods presented. These unaudited condensed consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements for the year ended December 31, 2019, which are included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2019 that was filed with the SEC on March 17, 2020. Operating results for the three months ended March 31, 2020 are not necessarily indicative of the results that may be expected for the year ending December 31, 2020, or any other future periods.

### *Liquidity*

The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. These financial statements do not include any adjustments related to the recovery of the recorded assets or the classification of the liabilities that might be necessary should the Company be unable to continue as a going concern.

At each reporting period, the Company evaluates whether there are conditions or events that raise substantial doubt about the Company’s ability to continue as a going concern within twelve months after the date the consolidated financial statements are issued. The Company’s evaluation entails analyzing prospective operating budgets and forecasts for expectations of the Company’s cash needs and comparing those needs to the current cash and cash equivalent balances, and availability under existing credit facilities. The Company’s working capital at March 31, 2020 was \$53.8 million (including cash of \$27.5 million). In April 2020, the Company completed a \$20 million draw on its credit facility with Squadron Medical Finance Solutions LLC (“Squadron Capital,” or “Squadron”).

The Company's capital requirements over the next twelve months will depend on many factors, including the ability to achieve anticipated revenue, manage operating expense and the timing of required investments in inventory and instrument sets to support its customers. The Company has experienced negative operating cash flows for all historical periods presented and it expects these losses to continue into the foreseeable future, particularly as the COVID-19 pandemic impacts operations and surgical volumes. The severity of the impact of the COVID-19 pandemic on the Company's business will depend on a number of factors, including, but not limited to, the duration, extent and severity of the pandemic and its impact on the Company's customers, all of which are uncertain and cannot be predicted. To reduce expenditures and preserve cash, the Company recently implemented several cost-containment measures, including expense management programs and reductions in projected inventory and capital spending. The company believes it has sufficient

As more fully described in Note 5, the Company's existing credit agreements with MidCap Funding IV Trust ("MidCap") and Squadron (collectively, the "current lenders") include a financial covenant that required the Company to maintain a minimum cash balance of \$5.0 million through March 31, 2020. The Company was in compliance with this covenant at March 31, 2020. The minimum cash covenant converted to a minimum fixed charge coverage ratio as of April 1, 2020. The Company did not meet the fixed charge ratio as of April 2020 and is required to certify its debt covenant compliance with its lenders by May 31, 2020. In order to avoid a default on its existing credit agreements, the Company plans to refinance its existing debt. This factor indicates substantial doubt exists, but management's plans are to refinance the debt.

On May 9, 2020, the Company executed a commitment letter for \$35 million in additional secured financing from Squadron. This capital will be made available under the same material terms and conditions as the existing term loan with Squadron. Under the terms of the amended facility, the maturity date on the entire term loan will be extended to May 2025. A portion of the proceeds from the expanded facility will be used to retire the Company's outstanding obligation under its working capital revolver with MidCap Funding. The expanded Squadron credit facility, as proposed, does not include any financial covenants. ATEC expects this transaction to close before the end of May 2020.

Management believes the credit refinancing of existing debt under the commitment letter with Squadron is probable to occur, and as such, alleviates any substantial doubt about the Company's ability to continue as a going concern.

### **COVID-19**

The Company is subject to risks and uncertainties as a result of the COVID-19 pandemic. In late 2019, a novel strain of coronavirus, COVID-19, was reported to have surfaced in Wuhan, China. Since then, COVID-19 has spread to countries globally, including the United States and mostly all European countries. To date, COVID-19 has had, and may continue to have, an adverse impact on the Company's operations, supply chains, distribution channels and expenses as a result of the preventive and precautionary measures that the Company, its customers, other businesses, and governments are taking, including the deferral of elective medical procedures and diversion of capital and other resources. As information surrounding COVID-19 continues to evolve, the extent of the impact on the Company's business is highly uncertain and difficult to predict. As a result of the pandemic, hospitals and health institutions are diverting resources and deferring elective surgical procedures to treat COVID-19 patients. To date, these measures have impacted, and will continue to impact, the abilities of these institutions to meet their normal recurring business obligations, including those to the Company. Furthermore, capital markets and economies worldwide have been negatively impacted by COVID-19, and it is possible this impact could cause a local and/or global economic recession. As the extent of such economic disruption continues to remain uncertain, the results of the COVID-19 pandemic could have a material adverse effect on the business.

The severity of the impact of the COVID-19 pandemic on the Company's business will depend on a number of factors, including, but not limited to, the duration, extent and severity of the pandemic and its impact on the Company's customers, all of which are uncertain and cannot be predicted. The Company's future results of operations and liquidity could be adversely impacted by delays in payments of outstanding receivable amounts beyond normal payment terms, supply chain disruptions and uncertain demand, and the impact of any initiatives or programs that the Company may undertake to address financial and operations challenges faced by its customers. As of the date of issuance of these condensed consolidated financial statements, the extent to which the pandemic may materially impact the Company's financial condition, liquidity, or results of operations is uncertain.

## Reclassification

Certain amounts in the consolidated financial statements for the three months ended March 31, 2019 have been reclassified to conform to the current period's presentation. These reclassifications include stock-based compensation expense, which was reclassified to correctly present employee expenses consistent with their function, out of research and development and into sales, general and administrative expense on the Company's consolidated statements of operations. This resulted in a reclassification of \$0.1 million of stock compensation expense for the three months ended March 31, 2019. In addition, certain amounts in the Consolidated Statement of Cash Flow for the three months ended March 31, 2019 have been reclassified to conform to current period's presentation. None of the adjustments had any effect on the prior period net loss.

## 2. Summary of Significant Accounting Policies

The Company's significant accounting policies are described in Note 2 to its audited consolidated financial statements for the year ended December 31, 2019, which are included in the Company's Annual Report on Form 10-K that was filed with the SEC on March 17, 2020. Except as discussed below, these accounting policies have not changed during the three months ended March 31, 2020.

### Transaction-related Expenses

The Company expensed certain costs related to the tender offer for the acquisition of EOS Imaging, which primarily include third-party advisory fees, legal fees and commitment fees related to transaction financing arrangements.

### 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 assets that are considered to be Level 1, Level 2 or Level 3 instruments as of March 31, 2020. During the second quarter of 2019, the Company issued a liability classified equity award to one of its executive officers. The award will be earned over a 4 year vesting period and upon a specific market condition. As the award will be cash settled, it is classified as a liability within Level 3 of the fair value hierarchy as the Company is using a probability-weighted income approach, utilizing significant unobservable inputs including the probability of achieving the specified market condition with the valuation updated at each reporting period. The full fair value of the cash settled award was \$0.6 million as of March 31, 2020 and is being recognized ratably as the underlying service period is provided.

The following table provides a reconciliation of liabilities measured at fair value using significant unobservable inputs (Level 3) for the three months ended March 31, 2020 (in thousands):

	<b>Level 3 Liabilities</b>
Balance at January 1, 2020	\$ 266
Vested portion of liability classified equity award	107
Change in fair value measurement	(238)
Balance at March 31, 2020	<u>\$ 135</u>

## Recent Accounting Pronouncements

### Recently Adopted Accounting Pronouncements

In November 2019, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2019-08, Compensation—Stock Compensation (Topic 718) and Revenue from Contracts with Customers (Topic 606), which clarifies that an entity must measure and classify share-based payment awards granted to a customer by applying the guidance in Topic 718. Accounting Standard Codification (“ASC”) 2019-08 is effective for annual reporting periods beginning after December 15, 2019, including interim reporting periods within those annual reporting periods. The Company adopted the guidance effective January 1, 2020 and recorded a cumulative adjustment of \$0.1 million to accumulated deficit as of January 1, 2020.

In January 2017, the FASB issued ASU 2017-04, *Intangibles – Goodwill and Other*, which eliminates the requirement to calculate the implied fair value of goodwill to measure a goodwill impairment charge. Instead, entities will record an impairment charge based on the excess of a reporting unit’s carrying amount over its fair value. The standard has tiered effective dates, starting in 2020 for calendar-year public business entities that meet the definition of an SEC filer. Early adoption is permitted for annual and interim goodwill impairment testing dates after January 1, 2017. The Company adopted the guidance effective January 1, 2020 as part of its process to assess impairment of Goodwill.

In August 2018, the FASB issued ASU 2018-15, *Intangibles—Goodwill and Other—Internal-Use Software* (Subtopic 350-40), which aligns the accounting for cloud computing implementation costs with that of costs to develop or obtain internal-use software, meaning such costs that are part of the application development stage are capitalized as an asset and amortized over the term of the arrangement, otherwise, such costs are expensed as incurred. It also clarifies the classification of amounts related to capitalized implementation costs in the financial statements. ASC 2018-15 is effective for annual reporting periods beginning after December 15, 2019, including interim reporting periods within those annual reporting periods. Early adoption is permitted. The Company adopted the guidance effective January 1, 2020. It did not have a material impact on the Company’s consolidated financial statements.

### Recently Issued Accounting Pronouncements

The Company has evaluated all recent accounting pronouncements issued by the Financial Accounting Standards Board in the form of Accounting Standards Updates through the date these financial statements were available to be issued and found no recent accounting pronouncements issued, but not yet effective that when adopted, would have a material impact on the financial statements of the Company.

## 3. Select Condensed Consolidated Balance Sheet Details

### Accounts Receivable, net

Accounts receivable, net consist of the following (in thousands):

	March 31, 2020	December 31, 2019
Accounts receivable	\$ 15,664	\$ 16,436
Allowance for doubtful accounts	(289)	(286)
Accounts receivable, net	<u>\$ 15,375</u>	<u>\$ 16,150</u>

### Inventories, net

Inventories, net consist of the following (in thousands):

	March 31, 2020	December 31, 2019
Raw materials	\$ 5,402	\$ 5,822
Work-in-process	2,052	1,578
Finished goods	56,005	51,669
	63,459	59,069
Less reserve for excess and obsolete finished goods	(25,587)	(24,215)
Inventories, net	<u>\$ 37,872</u>	<u>\$ 34,854</u>

**Property and Equipment, net**

Property and equipment, net consist of the following (in thousands except as indicated):

	Useful lives (in years)	March 31, 2020	December 31, 2019
Surgical instruments	4	\$ 59,807	\$ 58,502
Machinery and equipment	7	6,426	6,038
Computer equipment	3	3,879	3,594
Office furniture and equipment	5	1,351	1,297
Leasehold improvements	various	1,761	1,761
Construction in progress	n/a	216	496
		73,440	71,688
Less accumulated depreciation and amortization		(52,521)	(51,966)
Property and equipment, net		\$ 20,919	\$ 19,722

Total depreciation expense was \$2.0 million and \$1.6 million for the three months ended March 31, 2020 and 2019, respectively. At both March 31, 2020 and December 31, 2019, assets recorded under capital leases of \$0.1 million were included in the machinery and equipment balance. Amortization of assets under capital leases is included in depreciation expense.

**Intangible Assets, net**

Intangible assets, net consist of the following (in thousands, except as indicated):

	Remaining Avg. Useful lives (in years)	March 31, 2020	December 31, 2019
Developed technology	10	\$ 26,976	\$ 26,976
Intellectual property	—	1,004	1,004
License agreements	1	5,536	5,536
Trademarks and trade names	—	792	792
Customer-related	4	7,458	7,458
Distribution network	3	4,027	4,027
In process research and development	19	8,800	8,800
		54,593	54,593
Less accumulated amortization		(29,428)	(28,988)
Intangible assets, net		\$ 25,165	\$ 25,605

Total amortization expense attributed to intangible assets was \$0.2 million for both the three months ended March 31, 2020 and 2019, respectively.

Developed technology and in process research and development intangibles are expected to begin amortizing when the relevant products reach full commercial launch. Future amortization expense related to intangible assets as of March 31, 2020 is as follows (in thousands):

<b><u>Year Ending December 31,</u></b>	
Remainder of 2020	\$ 1,428
2021	1,888
2022	1,888
2023	1,888
2024	1,785
Thereafter	16,288
	\$ 25,165

## Accrued Expenses

Accrued expenses consist of the following (in thousands):

	March 31, 2020	December 31, 2019
Commissions and sales milestones	\$ 4,129	\$ 5,299
Payroll and payroll related	3,598	7,949
Litigation settlement obligation - short-term portion	4,400	4,400
Professional fees	5,999	3,945
Royalties	2,170	1,981
Restructuring	17	29
Taxes	103	82
Interest	170	155
Other	3,186	2,576
Total accrued expenses	<u>\$ 23,772</u>	<u>\$ 26,416</u>

## Other Long-Term Liabilities

Other long-term liabilities consist of the following (in thousands):

	March 31, 2020	December 31, 2019
Litigation settlement obligation - long-term portion	\$ 9,865	\$ 10,712
Line of credit exit fee	600	600
Tax liabilities	371	373
Other	135	266
Other long-term liabilities	<u>\$ 10,971</u>	<u>\$ 11,951</u>

## 4. Discontinued Operations

In connection with the sale of the International Business, the Company entered into a product manufacture and supply agreement (the "Supply Agreement") with Globus, pursuant to which the Company supplies to Globus certain of its implants and instruments (the "Products"), previously offered for sale by the Company in international markets at agreed-upon prices for a minimum term of three years, with the option for Globus to extend the term for up to two additional twelve month periods subject to Globus meeting specified purchase requirements. During the first quarter of 2019, Globus notified the Company that it will exercise the option to extend the agreement an additional twelve months through August 2020. In accordance with authoritative guidance, sales to Globus are reported under continuing operations as the Company has continuing involvement under the Supply Agreement.

For the three months ended March 31, 2020, the Company recorded \$1.0 million in revenue and \$1.0 million in cost of revenue from the Supply Agreement in continuing operations and for the three months ended March 31, 2019, the Company recorded \$1.6 million in revenue and \$1.4 million in cost of revenue in continuing operations. Sales, general and administrative expense pertaining to discontinued operations on the Company's condensed consolidated statements of operations were immaterial for the three months ended March 31, 2020 and 2019.

## 5. Debt

### MidCap Facility Agreement

The Company's Amended Credit Facility with MidCap provides for a revolving credit commitment up to \$22.5 million and provided for a term loan commitment up to \$5 million. As of March 31, 2020, \$11.9 million was outstanding under the revolving line of credit. The principal balance outstanding under the revolving line of credit is due in December 2022.

Amounts outstanding under the revolving line of credit accrue interest at the London Interbank Offered Rate ("LIBOR") plus 6.0%, reset monthly. At March 31, 2020, the revolving line of credit carried an interest rate of 7.58%, with interest payable monthly. The borrowing base is determined based on the value of domestic eligible accounts receivable. As collateral for the Amended Credit Facility, MidCap has a first lien security interest in accounts receivable and a second lien on substantially all other assets.

At March 31, 2020, \$0.9 million remains as an unamortized debt discount related to the Amended Credit Facility on the condensed consolidated balance sheet, which will be amortized over the remaining term of the Amended Credit Facility.

### ***Squadron Credit Agreement***

On November 6, 2018, the Company closed a \$35 million Term Loan with Squadron, a provider of debt financing to growing companies in the orthopedic industry. The debt has a five-year maturity and bears interest at LIBOR plus 8% (10.0% as of March 31, 2020) per annum. The credit agreement specifies a minimum interest rate of 10% and a maximum of 13% per year. Interest-only payments are due monthly through May 2021, followed by \$10 million in principal payable in 29 equal monthly installments beginning June 2021 and a lump-sum payment payable at maturity in November 2023. As collateral for the Term Loan, Squadron has a first lien security interest in substantially all assets except for accounts receivable.

In connection with the financing, the Company issued initial warrants to Squadron to purchase 845,000 shares of common stock at an exercise price of \$3.15 per share. The warrants have a seven-year term and are immediately exercisable.

In March 2019, the Company expanded the credit facility with Squadron for up to \$30 million in additional secured financing. This additional financing has been made available under the Company's existing credit facility with Squadron. The Company accounted for the amendment as a debt modification with continued amortization of the existing and inclusion of the new debt issuance costs of \$0.3 million amortized into interest expense utilizing the effective interest rate method. The Company took a draw of \$10.0 million of the expanded credit facility in June 2019 to be used for general corporate purposes and, subsequently, took a draw of the remaining \$20.0 million on April 2, 2020. The additional borrowings under the credit facility will mature concurrent with the secured financing received from Squadron in November 2018 and bear interest at the same rate and subject to the same 10% floor and 13% ceiling. Interest-only payments are due monthly through May 2021, followed by principal payable in 29 equal monthly installments beginning June 2021 and a lump-sum payment payable at maturity in November 2023. In conjunction with the first draw under the expanded credit facility, the Company issued to Squadron warrants to purchase 4,838,710 shares of the Company's common stock at an exercise price of \$2.17 per share. The warrants have a seven-year term and are immediately exercisable. The warrants were valued utilizing the Monte-Carlo simulation model as described further in Note 10 and are recorded within equity in accordance with authoritative accounting guidance and with a proportional amount, calculated by taking the draw amount divided by the total expanded credit facility, recorded as a debt discount. The total debt discount will be amortized into interest expense through maturity of the debt utilizing the effective interest rate method. No additional warrants were issued upon draws subsequent to June 2019. The value of the additional warrants issued that are allocated to the remaining balance available for draw on the expanded credit facility were recorded as a deferred cost asset within prepaid and other assets on the condensed consolidated balance sheet as of March 31, 2020 and are being amortized into interest expense on a ratable basis over the term of the debt.

As of March 31, 2020, the debt is recorded at its carrying value of \$39.0 million, net of issuance costs of \$6.0 million, including all amounts paid to third parties to secure the debt and the fair value of the warrants issued. The debt issuance costs are being amortized into interest expense over the five-year term utilizing the effective interest rate method. The total principal outstanding under the Term Loan as of March 31, 2020 is \$45.0 million.

### ***Inventory Financing***

The Company has an Inventory Financing Agreement with a key inventory and instrument components supplier whereby the Company may draw up to \$3.0 million for the purchase of inventory to accrue interest at a rate of LIBOR plus 8% subject to a 10% floor and 13% ceiling. All principal will become due and payable upon maturity on November 6, 2023 and all interest will be paid monthly. The obligation outstanding under the Inventory Financing Agreement as of March 31, 2020 was \$3.0 million.

Principal payments remaining on the Company's debt are as follows as of March 31, 2020 (in thousands):

<b>Year Ending December 31,</b>	
Remainder of 2020	\$ 885
2021	4,483
2022	19,607
2023	35,820
Total	<u>60,795</u>
Add: capital lease principal payments	92
Less: unamortized debt discount and debt issuance costs	<u>(6,938)</u>
Total	53,949
Less: current portion of long-term debt	<u>(916)</u>
Long-term debt, net of current portion	<u>\$ 53,033</u>

### **Covenants**

The Company's various credit agreements include several event of default provisions, such as payment default, insolvency conditions and a material adverse effect clause, 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 the lenders' right to declare all outstanding obligations immediately due and payable. Furthermore, the credit agreements contain various covenants, including monthly compliance certifications and compliance with government regulations and maintenance of insurance, and prohibitions against certain specified actions, including acquiring any new equipment financings over a specified amount. The credit agreements also contain various negative covenants including a \$5 million minimum liquidity requirement through March 31, 2020. The minimum liquidity covenant will be replaced by a fixed charge ratio, pursuant to which operating cash to fixed charges (as defined) must equal at least 1:1 on a rolling 12-month basis, beginning April 2020. The Company was in compliance with the covenants under the credit agreement at March 31, 2020.

## **6. Commitments and Contingencies**

### **Leases**

On December 4, 2019, the Company entered into a new lease agreement for a new headquarters location which will consist of 121,541 square feet of office, engineering, and research and development space in Carlsbad, California. The term of the new lease is currently anticipated to commence November 15, 2020 and terminate November 30, 2030. The Company will recognize a right-of-use ("ROU") asset and liability upon taking control of the premises, currently anticipated to be the lease commencement date.

### **Operating Lease**

The Company leases its buildings and certain equipment under operating leases which expire on various dates through 2021. Upon the Company's adoption of ASU 2016-02, *Leases (Topic 842)*, as of January 1, 2019 the Company recognized a ROU asset and lease liability for its building lease, assuming a 10.5% discount rate. Any short-term leases defined as 12 months or less or month-to-month leases were excluded and continue to be expensed each month. Total costs associated with these leases for the three months ended March 31, 2020 was immaterial.

The Company determines if an arrangement is a lease at inception. The Company has operating leases for its buildings and certain equipment with lease terms of one year to 5.5 years, some of which include options to extend and/or terminate the lease. The exercise of lease renewal options is at the Company's sole discretion and were not included in the calculation of the Company's lease liability as the Company is not able to determine without uncertainty if the renewal option will be exercised. The depreciable life of assets and leasehold improvements are limited to the expected term unless there is a transfer of title or purchase option reasonably certain of exercise. The Company's lease agreements do not contain any variable lease payments, residual value guarantees or any restrictive covenants.

The Company's ROU asset represents the right to use an underlying asset for the lease term and lease liabilities represent the obligation to make lease payments arising from the lease. Operating lease ROU assets and liabilities are recognized at commencement date of the lease or the ASC 842 adoption date, whichever is later, based on the present value of lease payments over the lease term. When readily determinable, the Company uses the implicit rate in determining the present value of lease payments, or 10.5% as of the adoption date. When leases do not provide an implicit rate, the Company uses its incremental borrowing rate based on the information available at the lease commencement date or adoption date, including the lease term. The operating lease ROU asset also includes any lease payments made and excludes lease incentives. Lease expense for lease payments is recognized on a straight-line basis over the lease term.

Future minimum annual lease payments under such leases are as follows as of March 31, 2020 (in thousands):

<b>Undiscounted lease payments:</b>	
<b>Year Ending December 31,</b>	
Remainder of 2020	\$ 1,114
2021	916
2022	39
Total undiscounted lease payments	2,069
Less: present value adjustment	(154)
Operating lease liability	1,915
Less: current portion of operating lease liability	(1,356)
Operating lease liability, less current portion	<u>\$ 559</u>

As of March 31, 2020, the Company's remaining lease term is 1.4 years. Rent expense under operating leases for the three months ended March 31, 2020 and 2019 was \$0.3 million for both periods. The Company paid \$0.4 million and \$0.3 million on its operating lease agreements for the three months ended March 31, 2020 and 2019, 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 the Company's 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.

In February 2018, NuVasive, Inc. filed suit against the Company in the United States District Court for the Southern District of California (NuVasive, Inc. v. Alphatec Holdings, Inc. et al., Case No. 3:18-cv-00347-CAB-MDD (S.D. Cal.)), alleging that certain of the Company's products (including components of its Battalion™ Lateral System), infringe, or contribute to the infringement of, U.S. Patent Nos. 7,819,801, 8,355,780, 8,439,832, 8,753,270, 9,833,227 (entitled "Surgical access system and related methods"), U.S. Patent No. 8,361,156 (entitled "Systems and methods for spinal fusion"), and U.S. Design Patent Nos. D652,519 ("Dilator") and D750,252 ("Intervertebral Implant"). NuVasive seeks unspecified monetary damages and an injunction against future purported infringement.

In March 2018, the Company moved to dismiss NuVasive's claims of infringement of its design patents for failure to state a cognizable legal claim. In May 2018, the Court ruled that NuVasive failed to state a plausible claim for infringement of the asserted design patents and dismissed those claims with prejudice. The Company filed its answer, affirmative defenses and counterclaims to NuVasive's remaining claims in May 2018.

Also in March 2018, NuVasive moved for a preliminary injunction. In March 2018, the Court denied that motion without prejudice for failure to comply with the Court's chambers rules. In April 2018, NuVasive again moved for a preliminary injunction. In July 2018, after a hearing on the matter in June 2018, the Court denied that motion on the grounds that NuVasive failed to establish either likelihood of success on the merits of its remaining claims or that it would suffer irreparable harm absent the preliminary injunction.

In September 2018, NuVasive filed an Amended Complaint, asserting additional infringement claims of U.S. Patent Nos. 9,924,859, 9,974,531 and 8,187,334. The Company filed its answer, affirmative defenses and counterclaims to these new claims in October 2018. Also in October 2018, NuVasive moved to dismiss the Company's counterclaims that NuVasive intentionally had misled the U.S. Patent and Trademark Office as a means of obtaining certain patents asserted against the Company. In January 2019, the Court denied NuVasive's motion as to all but one of the Company's counterclaims, but granted the Company leave to amend its counterclaim to cure the dismissal. The Company amended that counterclaim in February 2019 and, that same month, NuVasive again moved to dismiss it. In March 2019, the Court denied NuVasive's motion. NuVasive filed its Answer to the amended counterclaim in April 2019.

In December 2018, the Company filed a petition with the Patent Trial and Appeal Board ("PTAB") challenging the validity of certain claims of the '156 and '334 Patents. In February 2019, upon joint motion of the parties, the Court stayed all proceedings in this matter, except as noted above, pending PTAB's determination of whether to institute inter partes review ("IPR") of the asserted claims of the two patents at issue and vacated the trial date. In July 2019, PTAB instituted IPR of the validity of asserted claims of the two patents at issue and held a hearing on the matter in April 2020. The Company expects PTAB to issue its final decisions regarding the validity of these claims in the second half of 2020. Also in July 2019, the parties submitted a joint statement to the Court regarding PTAB's decisions and the parties' respective recommendations regarding the stay of proceedings. In August 2019, the Court vacated the stay as to asserted claims concerning those patents at issue not presently before PTAB and continued the stay as to the '156 and '334 Patents.

In January 2020, NuVasive filed a Motion for Partial Summary Judgment of infringement and validity of the '832, '780 and '270 Patents and the Company filed a Motion for Summary Judgment of non-infringement of all asserted claims and of invalidity of the '832 Patent and for dismissal of NuVasive's claim for lost profits and its allegations of assignor estoppel. A hearing on the matters was held on March 13, 2020. On April 10, 2020, the Court granted NuVasive's Motion as to the alleged infringement of the '832 Patent only and denied NuVasive's Motion in all other respects. On April 24, the Court granted the Company's Motion as to dismissal of the allegations of assignor estoppel and denied the Company's Motion in all other respects. Trial, which was originally set for April 27, 2020, has been taken off calendar due to increasing uncertainties surrounding the current public health crisis. A new trial date has not been set.

The Company believes that the allegations lack merit and intends to vigorously defend all claims asserted. A liability is recorded in the consolidated financial statements if it is believed to be probable that a loss has been incurred and the amount of the loss can be reasonably estimated. It is impossible at this time to assess whether the outcome of this proceeding will have a material adverse effect on the Company's consolidated results of operations, cash flows or financial position. Therefore, in accordance with authoritative accounting guidance, the Company has not recorded any accrual for a contingent liability associated with this legal proceeding based on its belief that a liability, while possible, is not probable and any range of potential future charge cannot be reasonably estimated at this time.

### ***Indemnifications***

In the normal course of business, the Company enters into agreements under which it occasionally indemnifies third-parties for intellectual property infringement claims or claims arising from breaches of representations or warranties. In addition, from time to time, the Company provides indemnity protection to third-parties for claims relating to past performance arising from undisclosed liabilities, product liabilities, environmental obligations, representations and warranties, and other claims. In these agreements, the scope and amount of remedy, or the period in which claims can be made, may be limited. It is not possible to determine the maximum potential amount of future payments, if any, due under these indemnities due to the conditional nature of the obligations and the unique facts and circumstances involved in each agreement.

In October 2017, NuVasive filed a lawsuit in Delaware Chancery Court against Mr. Miles, the Company's Chairman and CEO, who was a former officer and board member of NuVasive. The Company itself was not initially a named defendant in this lawsuit; however, on June 28, 2018, NuVasive amended its complaint to add the Company as a defendant. As of March 31, 2020, the Company has not recorded any liability on the condensed consolidated balance sheet related to this matter. On October 12, 2018, the Delaware Court ordered that NuVasive begin advancing a portion of the legal fees for Mr. Miles' defense in the lawsuit, as well as Mr. Miles' legal fees incurred in pursuing advancement of his fees, pursuant to an indemnification agreement between NuVasive and Mr. Miles.

### ***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 based on fixed fees or calculated either as a percentage of net sales or on a per-unit sold basis. Royalties are included on the accompanying consolidated statements of operations as a component of cost of revenue. As of March 31, 2020, the Company is obligated to pay guaranteed minimum royalty payments under these agreements of approximately \$5.1 million through 2024 and beyond.

## 7. Orthotec Settlement

On September 26, 2014, the Company entered into a Settlement and Release Agreement, dated as of August 13, 2014, by and among the Company and its direct subsidiaries, including Alphatec Spine, Inc., Alphatec Holdings International C.V., Scient'x S.A.S. and Surgiview S.A.S.; HealthpointCapital, LLC, HealthpointCapital Partners, L.P., HealthpointCapital Partners II, L.P., John H. Foster and Mortimer Berkowitz III; and Orthotec, LLC and Patrick Bertranou, (the "Settlement Agreement"). Pursuant to the Settlement Agreement, the Company agreed to pay Orthotec, LLC \$49.0 million in cash, including initial cash payments totaling \$1.75 million, which the Company previously paid in March 2014, and an additional lump sum payment of \$15.75 million, which the Company previously paid in April 2014. The Company agreed to pay the remaining \$31.5 million in 28 quarterly installments of \$1.1 million and one additional quarterly installment of \$0.7 million, commencing October 1, 2014. The payments set forth above are guaranteed by Stipulated Judgments held against the Company, HealthpointCapital Partners, L.P., HealthpointCapital Partners II, L.P., HealthpointCapital, LLC, John H. Foster and Mortimer Berkowitz III and, in the event of a default, will be entered and enforced against these entities and/or individuals in that order. In September 2014, the Company and HealthpointCapital entered into an agreement for joint payment of settlement whereby HealthpointCapital has agreed to contribute \$5 million to the \$49 million settlement amount. The \$5 million is classified within stockholders' equity on the Company's condensed consolidated balance sheet due to the related party nature with HealthpointCapital and its affiliates. See Note 12 for further information.

As of March 31, 2020, the Company has made installment payments in the aggregate of \$41.7 million, with a remaining outstanding balance of \$16.1 million (including interest). The Company has the right to prepay the amounts due without penalty. In addition, the unpaid balance of the amounts due accrues interest at the rate of 7% per year until paid in full. The accrued but unpaid interest will be paid in quarterly installments of \$1.1 million (or the full amount of the accrued but unpaid interest if less than \$1.1 million) following the full payment of the \$31.5 million in quarterly installments described above. No interest will accrue on the accrued interest. The Settlement Agreement provides for mutual releases of all claims in the Orthotec, LLC v. Surgiview, S.A.S, et al. matter in the Superior Court of California, Los Angeles County and all other related litigation matters involving the Company and its directors and affiliates.

A reconciliation of the total net settlement obligation is as follows (in thousands):

	March 31 2020	December 31, 2019
Litigation settlement obligation - short-term portion	\$ 4,400	\$ 4,400
Litigation settlement obligation - long-term portion	9,865	10,712
Total	14,265	15,112
Future Interest	1,868	2,121
Total settlement obligation, gross	16,133	17,233
Related party receivable - included in stockholders' equity	(5,000)	(5,000)
Total settlement obligation, net	\$ 11,133	\$ 12,233

## 8. Acquisition of SafeOp Surgical, Inc.

On March 8, 2018, the Company acquired SafeOp, a privately-held provider of neuromonitoring technology designed to enable effective intra-operative nerve health assessment. At the time of the acquisition, SafeOp had FDA 510(k) approval for a somatosensory evoked potential ("SSEP") monitoring technology. The Company has developed a product that will allow for both free run and triggered specific recording of muscle activity, also known as Electromyography ("EMG"). The Company received FDA clearance for SafeOp's EMG technology in February 2019 to complement the SSEP solution, and anticipates commercialization of the combined technology solution in mid-2019. In addition to expanding the Company's market presence in lateral spine surgery, the Company believes that the SafeOp solution will allow it to integrate neuromonitoring into its broader product portfolio and accelerate the transition to procedural integration of the entire portfolio.

As part of the consideration paid, in March 2018, the Company also issued \$3 million in convertible notes that were convertible into a total of 987,578 shares of common stock, which included total interest incurred, and issued warrants to purchase 2.2 million shares of common stock at an exercise price of \$3.50 per share and contain a five year life. The convertible notes matured on March 9, 2019 and were settled in cash. Upon maturity, the Company recognized the value associated with the beneficial conversion feature calculated at issuance of \$0.2 million within interest expense on the Company's condensed consolidated statements of operations for the three months ended March 31, 2019. Shares of common stock were issued upon achievement of post-closing milestones as described further below. The warrants issued remain outstanding as of March 31, 2020.

The first of the two milestones was achieved during the year ended December 31, 2018 and resulted in the issuance of 443,421 shares of common stock as payment. The second milestone pertaining to regulatory approval was achieved and the Company issued 886,843 shares of common stock as payment during the three months ended March 31, 2019.

## 9. 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 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, convertible preferred stock, options, convertible notes 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 presents the computation of basic and diluted net loss per share for continuing and discontinued operations (in thousands, except per share amounts):

	Three Months Ended March 31,	
	2020	2019
<b>Numerator:</b>		
Net loss, basic and diluted	\$ (20,722)	\$ (12,968)
<b>Denominator:</b>		
Weighted average common shares outstanding	62,732	45,310
Weighted average unvested common shares subject to repurchase	(164)	(290)
Weighted average common shares outstanding—basic and diluted	62,568	45,020
Net loss per share, basic and diluted:	<u>\$ (0.33)</u>	<u>\$ (0.29)</u>

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

	As of March 31,	
	2020	2019
Options to purchase common stock	4,195	4,670
Unvested restricted share awards	6,487	3,761
Series A Convertible Preferred Stock	67	164
Warrants to purchase common stock	24,372	22,302
Total	<u>35,121</u>	<u>30,897</u>

## 10. Stock Benefit Plans and Equity Transactions

### Stock Benefit Plans

On October 25, 2018, the Company’s Board of Directors adopted an amendment to the Company’s 2016 Equity Incentive Award Plan, which increased the maximum aggregate number of shares with respect to one or more stock rights that may be granted to any one person during any fiscal year from 500,000 to 1,250,000.

Total stock-based compensation for the three months ended March 31, 2020 and 2019 is as follows (in thousands):

	Three Months Ended March 31,	
	2020	2019
Cost of revenues	\$ 107	\$ 28
Research and development	291	143
Sales, general and administrative	3,170	1,441
Total	<u>\$ 3,568</u>	<u>\$ 1,612</u>

## Shares Reserved for Future Issuance

As of March 31, 2020, the Company had reserved shares of its common stock for future issuance as follows (in thousands):

Stock options outstanding	4,195
Unvested restricted stock award	6,487
Employee stock purchase plan	114
Series A convertible preferred stock	67
Warrants outstanding	24,325
Authorized for future grant under the Distributor and Development Services plans	3,908
Authorized for future grant under the Management Objective Strategic Incentive Plan	445
Authorized for future grant under the Company equity plans	1,092
Total	<u>40,633</u>

### Series A Convertible Preferred Stock

In March 2017, the Company completed a private placement (the “2017 Private Placement”) with certain institutional and accredited investors, including certain directors, executive officers and employees of the Company (collectively, the “Purchasers”), providing for the sale by the Company of 1,809,628 shares of the Company’s common stock at a purchase price of \$2.00 per share and 15,245 shares of newly designated Series A Convertible Preferred Stock at a purchase price of \$1,000 per share (which shares were convertible into approximately 7,622,372 shares of common stock). Except as otherwise required by law, the holders of Series A Convertible Preferred Stock have no right to vote on matters submitted to a vote of the Company’s stockholders.

During the three months ended March 31, 2020 there were no shares of Series A Convertible Preferred Stock converted into shares of common stock. During the three months ended March 31, 2019, 3,715 shares of Series A Convertible Preferred Stock were converted into 1,857,586 shares of common stock. As of March 31, 2020, there were 135 shares of Series A Convertible Preferred Stock outstanding, which are convertible into 67,338 shares of common stock.

### 2017 Warrants

In connection with the 2017 Private Placement, the Company issued warrants to purchase up to 9,432,000 shares of the Company’s common stock at an exercise price of \$2.00 per share (the “2017 Common Stock Warrants”). The Company also issued warrants to purchase common stock to the exclusive placement agents for the issuance (the “2017 Banker Warrants”). The 2017 Banker Warrants were for the purchase of up to an aggregate of 471,600 shares of the Company’s common stock with substantially the same terms as the 2017 Common Stock Warrants, except that they have an exercise price equal \$2.50 per share. The 2017 Common Stock Warrants and the 2017 Banker Warrants (collectively, the “2017 Warrants”) expire on June 15, 2022. The 2017 Warrants may not be exercised by the holder to the extent that the holder, together with its affiliates, would beneficially own, after such exercise more than 4.99% of the shares of the Company’s common stock then outstanding (subject to the right of the holder to increase or decrease such beneficial ownership limitation upon notice to the Company, provided that such limitation cannot exceed 9.99%) and provided that any increase in the beneficial ownership limitation shall not be effective until 61 days after such notice is delivered.

During the three months ended March 31, 2020, there were 0.1 million 2017 Warrant exercises for total cash proceeds of \$0.3 million. There were no 2017 Warrant exercises for the three months ended March 31, 2019. As of March 31, 2020, there were 3,107,000 2017 Common Stock Warrants outstanding.

There were no 2017 Banker Warrant exercises for the three months ended March 31, 2020 and March 31, 2019. A total of 148,554 2017 Banker Warrants remained outstanding as of March 31, 2020.

All the 2017 Warrants were deemed to qualify for equity classification under authoritative accounting guidance.

### Series B Convertible Preferred Stock

On March 8, 2018, the Company completed the 2018 Private Placement to certain institutional and accredited investors, including certain directors and executive officers of the Company, providing for the sale by the Company at a purchase price of \$1,000 per share, 45,200 of newly designated Series B Convertible Preferred Stock, which shares of preferred stock were automatically converted into 14,349,236 shares of the Company’s common stock upon approval by the Company’s stockholders at the

2018 annual meeting of stockholders held in May 2018, and warrants to purchase up to 12,196,851 shares of common stock at an exercise price of \$3.50 per share (the “2018 Common Stock Warrants”). The 2018 Common Stock Warrants became exercisable following stockholder approval at the 2018 annual meeting of stockholders, are subject to certain ownership limitations in certain cases, and expire five years after the date of such stockholder approval. The gross proceeds from the 2018 Private Placement were approximately \$45.2 million.

### **2018 Warrants**

The 2018 Common Stock Warrants (the “2018 Warrants”) have a five year life and are exercisable for cash or by cashless exercise. Some of the 2018 Warrants may not be exercised by the holder to the extent that the holder, together with its affiliates, would beneficially own, after such exercise more than 4.99% of the shares of the Company’s common stock then outstanding (subject to the right of the holder to increase or decrease such beneficial ownership limitation upon notice to the Company, provided that such limitation cannot exceed 9.99%) and provided that any increase in the beneficial ownership limitation shall not be effective until 61 days after such notice is delivered.

In addition to the 12,196,851 warrants issued in the 2018 Private Placement, the Company issued 1,800,000 warrants with identical terms to the 2018 Warrants, including the exercise price of \$3.50. During the three months ended March 31, 2020, 525,000 of these additional warrants were exercised. As of March 31, 2020 the additional 2018 warrants were fully exercised.

During the three months ended March 31, 2020, 2.1 million of the 2018 Warrants were exercised for total proceeds of \$0.9 million. There were no 2018 Warrants exercised during the three months ended March 31, 2019. A total of 11,663,147 2018 Warrants remained outstanding as of March 31, 2020.

All the 2018 Warrants were deemed to qualify for equity classification under authoritative accounting guidance.

### **Squadron Warrants**

As further described in Note 5, during the year ended December 31, 2018, in connection with the initial debt financing with Squadron, the Company issued warrants to purchase 845,000 shares of common stock at an exercise price of \$3.15 per share. An additional 4,838,710 warrants were issued at an exercise price of \$2.17 per share during the second quarter of 2019, in conjunction with the Company’s draw on the expanded credit facility for total warrants outstanding to Squadron of 5,683,710. The warrants have a seven-year term and are immediately exercisable. In accordance with authoritative accounting guidance, the warrants qualified for equity treatment upon issuance and the portion allocated to the outstanding debt were recorded as a debt discount to the face of the debt liability based on fair value to be amortized into interest expense over the life of the debt agreement. As the warrants provide for partial price protection that allow for a reduction in the price in the event of a lower per share priced issuance, the warrants were valued utilizing a Monte Carlo simulation that considers the probabilities of future financings. The Monte Carlo model simulates the present value of the potential outcomes of future stock prices of the Company over the seven-year life of the warrants. The projection of stock prices is based on the risk-free rate of return and the volatility of the stock price of the Company and correlates future equity raises based on the probabilities provided.

A summary of all outstanding warrants is as follows:

	<b>Number of Warrants</b>	<b>Strike Price</b>
2017 Common Stock Warrants	3,107,000	\$ 2.00
2017 Banker Warrants	148,554	\$ 2.50
2018 Common Stock Warrants	11,663,147	\$ 3.50
Merger Warrants	2,199,682	\$ 3.50
Executive	1,327,434	\$ 5.00
Squadron Capital	845,000	\$ 3.15
Squadron Capital	4,838,710	\$ 2.17
Other	195,312	\$ 3.85*
<b>Total</b>	<b>24,324,839</b>	

\* Represents weighted average exercise price.

### **2017 Distributor Inducement Plan**

In December 2017, the Board of Directors approved and adopted the 2017 Distributor Inducement Plan which authorizes the Company to issue to distributors restricted shares of common stock of the Company and/or warrants to purchase the Company’s common stock. The warrants are issuable with an exercise price equal to the fair market value of the common stock on the date of

issuance. Each warrant and common stock issuance is subject to a time-based or net sales-based vesting provision. The Board of Directors authorized the grant of up to 1,000,000 shares of common stock under the 2017 Distributor Inducement Plan and also authorized the grant of warrants to purchase 50,000 shares of common stock, and 75,000 restricted stock units to a distributor of which 75,000 were earned and issued. These warrants and restricted stock units are subject to time based and net sales based vesting conditions. As of March 31, 2020, 260,000 warrants and 92,000 shares of common stock were earned and issued under the 2017 Distributor Inducement Plan. Total expense for the plan was \$0.1 million for the three months ended March 31, 2020 and 2019.

### ***2017 Development Services Plan***

In December 2017, the Board approved and adopted the 2017 Development Services Plan which authorizes the Company to enter into Development Services Agreements with third-party individuals or entities whereby, upon the achievement of certain Company financial and commercial revenue milestones, future royalty payments for product and/or intellectual property development work may be paid in either cash or restricted shares of Company common stock at the option of the developer. Each common stock issuance would be subject to net sales-based vesting provisions and satisfaction of applicable laws and market regulations regarding the issuance of restricted shares to such developers. The Board of Directors authorized the grant of up to 3,000,000 shares of common stock under the Development Services Plan. As of March 31, 2020, 2.4 million shares of restricted common stock have been granted under the 2017 Development Services Plan, but none are deemed probable of election as of March 31, 2020. In addition, no common stock elections or cash payouts have been made as of March 31, 2020.

### ***Management Objective Strategic Incentive Plan***

In July 2019, the Board of Directors approved and adopted the 2019 Management Objective Strategic Incentive Plan which authorizes the Company to grant restricted stock to individuals or entities that do not qualify under the other existing equity plans. The Board of Directors authorized the grant of up to 500,000 shares of common stock with a maximum grant of 50,000 shares per participant under the plan. As of March 31, 2020, 55,000 restricted shares have been granted under the 2019 Management Objective Strategic Incentive Plan. Total expense for the plan was immaterial for the three months ended March 31, 2020.

## **11. Income Taxes**

To calculate its interim tax provision, at the end of each interim period the Company estimates the annual effective tax rate and applies that to its ordinary quarterly earnings. In addition, the effect of changes in enacted tax laws or rates or tax status is recognized in the interim period in which the change occurs. The computation of the annual estimated effective tax rate at each interim period requires certain estimates and significant judgment including, but not limited to, the expected operating income for the year, projections of the proportion of income earned and taxed in foreign jurisdictions, permanent and temporary differences between book and tax amounts, and the likelihood of recovering deferred tax assets generated in the current year. The accounting estimates used to compute the provision for income taxes may change as new events occur, additional information is obtained or the tax environment changes.

Intraperiod tax allocation rules require the Company to allocate the provision for income taxes between continuing operations and other categories of earnings, such as discontinued operations. In periods in which the Company has a year-to-date pre-tax loss from continuing operations and pre-tax income in other categories of earnings, such as discontinued operations, the Company must allocate the tax provision to the other categories of earnings, and then record a related tax benefit in continuing operations

The unrecognized tax benefits at March 31, 2020 and December 31, 2019 were \$2.5 million for both periods, with no changes occurring during the year-to-date period. With the information currently available to the Company, it is reasonably possible there will not be a reversal to the tax reserves over the next twelve-month period. The Company recognizes interest and penalties related to uncertain tax positions as a component of the income tax provision. The Company is not currently under examination by the Internal Revenue Service, foreign, or state or local tax authorities.

For the three months ended March 31, 2020, the Company had an effective tax rate of 0% and recognized an immaterial amount of income tax benefit from continuing operations. The Company's effective tax rate differs from the federal statutory rate of 21% primarily due to the Company's net loss position.

## **12. Related Party Transactions**

In July 2016, the Company entered into a forbearance agreement with HealthpointCapital, LLC, HealthpointCapital Partners, L.P., and HealthpointCapital Partners II, L.P. (collectively, "HealthpointCapital"), pursuant to which HealthpointCapital, on behalf of the Company, paid \$1.0 million of the \$1.1 million payment due and payable by the Company to Orthotec on July 1, 2016 and agreed to not exercise its contractual rights to seek an immediate repayment of such amount. Pursuant to this forbearance agreement, the

Company repaid this amount in September 2016. The Company and HealthpointCapital also entered into an agreement for joint payment of settlement whereby HealthpointCapital has agreed to contribute \$5 million to the \$49 million Orthotec settlement amount.

During the second quarter of 2018, HealthpointCapital Partners, L.P., and HealthpointCapital Partners II, L.P. distributed its holdings in the Company's common stock to its limited partners. As a result, the fund is no longer a shareholder of the Company as of March 31, 2020. The \$5 million receivable from HealthpointCapital, LLC continues to be classified within stockholders' equity on the Company's condensed consolidated balance sheets due to the related party nature with HealthpointCapital affiliates.

### 13. Restructuring

In connection with the sale of the International Business (described in Note 4), the Company terminated employment agreements with several executive officers, including the chief executive officer and the chief financial officer, and commenced an employee headcount reduction program. In conjunction with the restructuring program, the Company recorded restructuring expenses related to severance liabilities and post-employment benefits. A rollforward of the accrued restructuring liability is presented below (in thousands):

Balance at January 1, 2020	\$	24
Accrued restructuring charges		—
Payments		(7)
Balance at March 31, 2020	\$	<u>17</u>

All activities and costs are expected to be completed during 2020.

### 14. Subsequent Event

#### *Salary-to-Equity Conversion Program*

Effective April 5, 2020, the Company implemented a voluntary salary-to-equity conversion program for certain employees whose annual payroll costs exceed \$100,000, including the Company's executive officers. The program permits each participant to make a voluntary election to reduce the participant's compensation rate through July 11, 2020 from 10% to 75%. In exchange for the compensation reduction, each participant will be granted a restricted stock unit equal to the dollar amount of compensation reduction divided by the 30-day volume weighted average price of the Company's common stock as of close of market on April 3, 2020. The restricted stock units granted under the program will fully vest on July 10, 2020. The restricted stock units will also vest upon a change in control of the Company and will be subject to certain accelerated vesting in the event of the participant's death or disability. The temporary reduction in compensation to the participants shall not be treated as a reduction in base annual salary rate for purposes of any other benefits plans in which the participants are enrolled or eligible to participate, including in any bonus plans of the Company.

#### *Paycheck Protection Program Loan*

On April 23, 2020, the Company received the proceeds from a loan in the amount of approximately \$4.3 million (the "PPP Loan") from Silicon Valley Bank, as lender, pursuant to the Paycheck Protection Program ("PPP") of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). The PPP Loan matures on April 21, 2022 and bears interest at a rate of 1.0% per annum. Commencing November 21, 2020, the Company is required to pay the lender equal monthly payments of principal and interest as required to fully amortize by April 21, 2022 the principal amount outstanding on the PPP Loan as of October 21, 2020. The PPP Loan is evidenced by a promissory note dated April 21, 2020, which contains customary events of default relating to, among other things, payment defaults and breaches of representations and warranties. The PPP Loan may be prepaid by the Company at any time prior to maturity with no prepayment penalties.

All or a portion of the PPP Loan may be forgiven by the U.S. Small Business Administration ("SBA") upon application by the Company beginning 60 days but not later than 120 days after loan approval and upon documentation of expenditures in accordance with the SBA requirements. Under the CARES Act, loan forgiveness is available for the sum of documented payroll costs, covered rent payments, covered mortgage interest and covered utilities during the eight-week period beginning on the date of loan approval. For purposes of the CARES Act, payroll costs exclude compensation of an individual employee in excess of \$100,000, prorated annually. Not more than 25% of the forgiven amount may be for non-payroll costs. Forgiveness is reduced if full-time headcount declines, or if salaries and wages for employees with salaries of \$100,000 or less annually are reduced by more than 25%. In the event the PPP Loan, or any portion thereof, is forgiven pursuant to the PPP, the amount forgiven is applied to outstanding principal. No assurance is provided that the Company will apply for and obtain forgiveness of the PPP Loan in whole or in part.

The Company intends to use all proceeds from the PPP Loan to retain employees and maintain payroll.

### ***Termination of Tender Offer Agreement and Commitment Letter***

On April 27, 2020, the Company announced that it has terminated the Tender Offer Agreement with EOS Imaging S.A., or EOS. This decision follows the Company's consideration and analysis of the expected ongoing market effects of the COVID-19 pandemic, including the magnitude and duration of its impact on capital equipment priorities and purchases in significant EOS markets, including the United States. Based upon its assessment, the Company concluded that a "Material Adverse Effect" (as defined in the Tender Offer Agreement) has occurred, resulting in circumstances that are no longer conducive to completion of the transaction described in the Tender Offer Agreement. The Company notified EOS of its termination decision, as required by the Tender Offer Agreement, in a letter dated April 24, 2020.

On April 27, 2020, the Company also announced that, in connection with the termination of the Tender Offer Agreement, the Company and Perceptive Credit Holdings III, LP have agreed to terminate the debt refinancing commitment letter, including the exclusivity obligations thereunder, entered into in connection with the EOS transaction.

### ***Expanded Credit Facility With Squadron Capital***

On May 9, 2020, the Company executed a commitment letter for \$35 million in additional secured financing from Squadron. This capital will be made available under the same material terms and conditions as the existing term loan with Squadron, subject to customary closing conditions. Under the terms of the amended facility, the maturity date on the entire term loan will be extended to May 2025. A portion of the proceeds from the expanded facility will be used to retire the Company's outstanding obligation under its working capital revolver with MidCap. In connection with the additional commitment, the Company will issue warrants to purchase 1.076 million shares of ATEC common stock at an exercise price of \$4.88 per share. ATEC expects this transaction to close before the end of May 2020.

## **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

*You should read the following management's discussion and analysis of our financial condition and results of operations in conjunction with our unaudited condensed consolidated financial statements and the related notes thereto that appear elsewhere in this Quarterly Report on Form 10-Q and the audited consolidated financial statements and notes thereto and under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K filed with the Securities and Exchange Commission ("SEC"), on March 17, 2020. In addition to historical information the following management's discussion and analysis of our financial condition and results of operations includes forward-looking information that involves risks, uncertainties, and assumptions. Our actual results and the timing of events could differ materially from those anticipated by these forward-looking statements as a result of many factors, such as those set forth under "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2019 and any updates to those risk factors filed from time to time in our subsequent periodic and current reports filed with the SEC.*

### **Overview**

We are a medical technology company focused on the design, development, and advancement of technology for better surgical treatment of spinal disorders. We are dedicated to revolutionizing the approach to spine surgery. We have a broad product portfolio designed to address the majority of U.S. market for fusion-based spinal disorder solutions. We intend to drive growth by exploiting our collective spine experience and investing in the research and development to continually differentiate our solutions and improve spine surgery. We believe our future success will be fueled by introducing market-shifting innovation to the spine market, and that we are well-positioned to capitalize on current spine market dynamics.

We market and sell our products in the U.S. through a network of independent distributors and direct sales representatives. An objective of our leadership team is to deliver increasingly consistent, predictable growth. To accomplish this, we have partnered more closely with new and existing distributors to create a more dedicated and loyal sales channel for the future. We have added, and intend to continue to add, new high-quality dedicated distributors to expand future growth. We believe this will allow us to reach an untapped market of surgeons, hospitals, and national accounts across the U.S., as well as better penetrate existing accounts and territories.

We have continued to make progress in the transition of our sales channel since early 2017, driving the percent of sales contributed by our strategic distribution channel from approximately 84% for the three months ended March 31, 2019 to 89% for the three months ended March 31, 2020. We intend to continue to relentlessly drive toward a fully exclusive network of independent and direct sales agents. Consolidation within the industry is helping facilitate the process, as large, seasoned agents continue to seek opportunities to re-enter the spine market by partnering with spine-focused companies that have broad, growing product portfolios.

### **Recent Developments**

On February 28, 2020, we announced an agreement to acquire EOS imaging, SA, or EOS. EOS imaging is a leader in outcome-improving orthopedic medical imaging and software solutions, and is globally recognized for its rapid, low dose, biplanar full-body imaging and 3D modeling capabilities. Subsequently, on April 27, 2020, we announced that we have terminated the EOS agreement. This decision follows our consideration and analysis of the expected ongoing market effects of the COVID-19 pandemic, including the magnitude and duration of its impact on capital equipment priorities and purchases in significant EOS markets, including the U.S.

On April 27, 2020, we also announced that, in connection with the termination of the EOS agreement, we and Perceptive Credit Holdings III, LP have agreed to terminate the debt refinancing commitment letter, including the exclusivity obligations thereunder, entered into in connection with the EOS transaction

### **COVID-19 Pandemic**

Prior to the spread of COVID-19, we experienced U.S. sales growth of over 30%, which was consistent with previously issued revenue guidance in January 2020. As the COVID-19 pandemic spread to Western Europe and the U.S., we experienced a significant decline in procedures in the last half of March 2020. Procedures per week in the U.S. declined more than 50% compared to the weekly procedure rate experienced earlier in the first quarter of 2020.

The depth and extent to which the COVID-19 pandemic will impact individual markets continues to vary. While we cannot reliably estimate the extent or length of the impact, we expect procedure volumes to continue to significantly decline or be delayed in the second quarter of 2020 as COVID-19 infections continue to spread and cause additional strain on hospital resources and deferral of elective procedures. We expect sales volumes to begin to eventually increase and eventually recover, as elective procedures begin to re-commence as early as the second quarter of 2020.

Capital markets and worldwide economies have also been significantly impacted by the COVID-19 pandemic, and it is possible that this could cause a local and/or global economic recession. Such economic recession could have a material adverse effect on our long-term business as hospitals curtail and reduce capital and overall spending. The COVID-19 pandemic and local actions, such as “shelter-in-place” orders and restrictions on our ability to travel and access our customers or temporary closures of the facilities of our suppliers and their contract manufacturers, could further significantly impact our sales and our ability to ship our products and supply our customers. Any of these events could negatively impact the number of procedures performed and have a material adverse effect on our business, financial condition, results of operations, or cash flows.

## Revenue and Expense Components

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

*Revenue.* We derive our revenue 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 revenue is 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. Currently, most 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 revenue until the time of collection if circumstances related to payment terms, regional market risk or customer history indicate that collectability is not certain.

*Cost of revenue.* Cost of revenue consists of direct product costs, royalties, milestones and the amortization of purchased intangibles. Our product costs consist primarily of direct labor, 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 expenses.* 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.

*Sales, general and administrative expenses.* Sales, general and administrative expense consists primarily of salaries and related employee benefits, sales commissions and support costs, depreciation of our surgical instruments, regulatory affairs, quality assurance costs, professional service fees, travel, medical education, trade show and marketing costs, insurance and legal expenses.

*Litigation-related expenses.* Litigation-related expenses are costs incurred for our ongoing litigation, primarily with NuVasive, Inc.

*Transaction-related expenses.* Transaction-related expenses reflects the recognition of transaction expenses incurred as part of the EOS transaction.

*Restructuring expenses.* Restructuring expense consists of severance, social plan benefits and related taxes in connection with our historical cost rationalization efforts.

*Other expenses, net.* Other expenses, net includes interest income, interest expense, gains and losses from foreign currency exchanges and other non-operating gains and losses.

*Income tax benefit.* Income tax benefit from continuing operations primarily consists of release of the valuation allowance from the SafeOp acquisition, partially offset by state taxes.

## Sale of International Business

On September 1, 2016, we completed the sale of our international distribution operations and agreements, including our wholly-owned subsidiaries in Japan, Brazil, Australia, China and Singapore and substantially all of the assets of our other sales operations in the United Kingdom and Italy (“International Business”), to an affiliate of Globus (“Globus Transaction”). Following the closing of the Globus Transaction, we now operate in the U.S. market only and are restricted from marketing and selling our products in foreign markets pursuant to the terms and conditions, and for the time periods, set forth in the definitive documents related to the Globus Transaction.

## Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations is based upon our unaudited condensed 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 and intangible assets, stock-based compensation and income taxes. We base our estimates on historical experience and on various other assumptions that we believe 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 assumption conditions.

Critical accounting policies are those that, in management's view, are most important in the portrayal of our financial condition and results of operations. Aside from the changes disclosed in Note 2 to the Notes to Condensed Consolidated Financial Statements included in Item 1, Part I of this Quarterly Report on Form 10-Q, management believes there have been no material changes during the three months ended March 31, 2020 to the critical accounting policies discussed in the Management's Discussion and Analysis of Financial Condition and Results of Operations section of our Annual Report on Form 10-K for the year ended December 31, 2019 filed with the SEC on March 17, 2020.

## Results of Operations

The tables below set forth certain statements of operations data for the periods indicated (in thousands). Our historical results are not necessarily indicative of the operating results that may be expected in the future.

	Three Months Ended March 31,	
	2020	2019
<b>Revenue:</b>		
Revenue from U.S. products	\$ 29,070	\$ 22,955
Revenue from international supply agreement	1,045	1,600
Total revenue	30,115	24,555
Cost of revenue	9,084	7,987
Gross profit	21,031	16,568
<b>Operating expenses:</b>		
Research and development	3,749	3,372
Sales, general and administrative	28,003	21,097
Litigation-related	2,643	2,623
Amortization of intangible assets	172	182
Transaction-related	4,272	—
Restructuring	—	60
Total operating expenses	38,839	27,334
Operating loss	(17,808)	(10,766)
Other expense, net	(2,874)	(2,119)
Loss from continuing operations before taxes	(20,682)	(12,885)
Income tax provision	40	31
Loss from continuing operations	(20,722)	(12,916)
Loss from discontinued operations, net of applicable taxes	—	(52)
Net loss	\$ (20,722)	\$ (12,968)

	Three Months Ended March 31,	
	2020	2019
Revenue by source		
Revenue from U.S. products	\$ 29,070	\$ 22,955
Revenue from international supply agreement	1,045	1,600
Total revenue	\$ 30,115	\$ 24,555
Gross profit by source		
Revenue from U.S. products	\$ 20,954	\$ 16,394
Revenue from international supply agreement	77	174
Total gross profit	\$ 21,031	\$ 16,568
Gross profit margin by source		
Revenue from U.S. products	72.1%	71.4%
Revenue from international supply agreement	7.4%	10.9%
Total gross profit margin	69.8%	67.5%

### Three Months Ended March 31, 2020 Compared to the Three Months Ended March 31, 2019

*Total revenue.* Total revenue was \$30.1 million for the three months ended March 31, 2020 compared to \$24.6 million for the three months ended March 31, 2019, representing an increase of \$5.5 million, or 22.4%.

Revenue from U.S. products was \$29.1 million for the three months ended March 31, 2020 compared to \$23.0 million for the three months ended March 31, 2019, representing an increase of \$6.1 million, or 26.5%. The increase in revenue for the three months ended March 31, 2020 was attributed to the launch of new products and focus on our strategic distribution channel, as detailed below (in thousands):

	Three Months Ended March 31,		Increase (Decrease)			
	2020	2019	\$	%		
U.S. revenue by distributor type:						
Strategic distribution	\$ 25,992	89%	\$ 19,372	84%	\$ 6,620	34%
Legacy and terminated distribution	3,078	11%	3,583	16%	(505)	-14%
Total U.S. revenue	\$ 29,070	100%	\$ 22,955	100%	\$ 6,115	27%

Revenue from the international supply agreement which is attributed to sales to Globus under which we supply to Globus certain of its implants and instruments at agreed-upon prices for a minimum term of three years, was \$1.0 million for the three months ended March 31, 2020 compared to \$1.6 million for the three months ended March 31, 2019, representing a decrease of \$0.6 million. We expect this revenue to continue to decrease over the next several quarters, as Globus continues to register its own products in international markets. Globus has the option to extend the term for up to two additional twelve-month periods subject to Globus meeting specified purchase requirements. During the first quarter of 2019, Globus notified us that it would exercise the option to extend the agreement an additional twelve months through August 2020.

*Cost of revenue.* Cost of revenue was \$9.1 million for the three months ended March 31, 2020 compared to \$8.0 million for the three months ended March 31, 2019, representing an increase of \$1.1 million, or 13.8% .

Cost of revenue from U.S. products for the three months ended March 31, 2020 was \$8.1 million compared to \$6.6 million for the three months ended March 31, 2019, representing an increase of \$1.5 million, or 22.7%. The increase is consistent with our revenue growth. Non-cash excess and obsolescence expense primarily related to the phase out of older legacy products was \$1.7 million for the three months ended March 31, 2020 compared to \$1.9 million for the three months ended March 31, 2019, representing a decrease of \$0.2 million, or 10.5%.

Cost of revenue from international supply agreement was \$1.0 million for the three months ended March 31, 2020 compared to \$1.4 million for the three months ended March 31, 2019. The decrease was attributed to a reduction in sales volumes and related costs under the supply agreement with Globus.

*Gross profit.* Gross profit was \$21.0 million for the three months ended March 31, 2020 compared to \$16.6 million for the three months ended March 31, 2019, representing an increase of \$4.4 million, or 26.5%.

Gross profit margin from U.S. product revenue was 72.1% for the three months ended March 31, 2020 compared to 71.4% for the three months ended March 31, 2019. The increase was attributed to a reduction in non-cash excess and obsolescence expense for the three months ended March 31, 2020 as compared to the three months ended March 31, 2019.

Gross profit margin from international supply agreement was 7.4% for the three months ended March 31, 2020 compared to 10.9% for the three months ended March 31, 2019. The changes in gross margin from international supply agreement was primarily related to the impact of fixed minimum royalty costs, product mix, and to a lesser extent, decrease in average selling price for certain products.

*Research and development expense.* Research and development expense increased \$0.4 million, or 8.8% during the three months ended March 31, 2020 compared to the three months ended March 31, 2019. The increase was primarily related to increased personnel related costs for our SafeOp neuromonitoring system partially offset by decreased regulatory expenses. We expect research and development expenses to increase in future periods as we hire additional engineering and development talent and continue to invest in our product pipeline.

*Sales, general and administrative expense.* Sales, general and administrative expense increased \$6.9 million, or 32.7% during the three months ended March 31, 2020 compared to the three months ended March 31, 2019. The increase was primarily related to commissions and related sales compensation expenses associated with our increase in U.S. revenue and continued investment in building out our strategic distribution channel, as well as increased marketing efforts, additional headcount and increases in our stock-based compensation. We expect our sales, general and administrative expenses to increase in absolute dollars and in line with expected increase in our U.S. product revenue.

*Litigation expenses.* Litigation expense was consistent for the three months ended March 31, 2020 compared to the three months ended March 31, 2019. The expense is primarily related to our ongoing litigation with NuVasive, Inc.

*Amortization of acquired intangible assets.* Amortization of acquired intangible assets remained consistent for the three months ended March 31, 2020 compared to the three months ended March 31, 2019. The expense represents amortization in the period associated with general business assets, intellectual property, licenses and other assets obtained in acquisitions and licensing agreements.

*Transaction-related expenses.* Transaction-related expenses of \$4.3 million for the three months ended March 31, 2020 are attributed to advisory fees, legal fees, transaction financing commitment fees and other transaction-related costs incurred in connection with the EOS tender offer.

*Restructuring expense.* Restructuring expense was negligible for the three months ended March 31, 2020 compared to \$0.1 million for the three months ended March 31, 2019. The decrease was primarily related to lower severance and other personnel charges associated with historical cost rationalization efforts.

*Other expenses, net.* Other expenses, net increased \$0.8 million during the three months ended March 31, 2020 compared to the three months ended March 31, 2019 primarily due to new debt arrangements and additional draws on existing agreements.

*Income tax provision.* Income tax provision for the three months ended March 31, 2020 was negligible and remained consistent as compared to the three months ended March 31, 2019. For the three months ended March 31, 2020, we had an effective income tax rate of 0%, primarily due to our net loss position.

## **Liquidity and Capital Resources**

The accompanying financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. These financial statements do not include any adjustments related to the recovery of the recorded assets or the classification of the liabilities that might be necessary should the Company be unable to continue as a going concern.

At each reporting period, we evaluate whether there are conditions or events that raise substantial doubt about our ability to continue as a going concern within twelve months after the date the consolidated financial statements are issued. Our evaluation entails analyzing prospective operating budgets and forecasts for expectations of our cash needs and comparing those needs to current cash and cash equivalent balances, and availability under existing credit facilities. Our working capital at March 31, 2020 was \$53.8 million (including cash of \$27.5 million). In April 2020, we completed a \$20 million draw on our credit facility with Squadron Medical Finance Solutions LLC (“Squadron Capital,” or “Squadron”).

Our capital requirements over the next twelve months will depend on many factors, including the ability to achieve anticipated revenue, manage operating expense and the timing of required investments in inventory and instrument sets to support our customers. We have experienced negative operating cash flows for all historical periods presented and we expect these losses to continue into the foreseeable future, particularly as the COVID-19 pandemic impacts operations and surgical volumes. The severity of the impact of the COVID-19 pandemic on our business will depend on a number of factors, including, but not limited to, the duration, extent and severity of the pandemic and its impact on our customers, all of which are uncertain and cannot be predicted. To reduce expenditures and preserve cash, we recently implemented several cost-containment measures, including expense management programs and reductions in projected inventory and capital spending.

As more fully described in Note 5, our existing credit agreements with MidCap and Squadron (collectively, the “current lenders”) include a financial covenant that requires us to maintain a minimum cash balance of \$5.0 million. The minimum cash covenant converted to a minimum fixed charge coverage ratio as of April 1, 2020. We did not meet the fixed charge ratio as of April 2020 and we are required to certify our debt covenant compliance with our lenders by May 31, 2020. In order to avoid a default on its existing credit agreements, we plan to refinance its existing debt. This factor indicates substantial doubt exists, but our plans are to refinance the debt.

On May 9, 2020, we executed a commitment letter for \$35.0 million in additional secured financing from Squadron. This capital will be made available under the same material terms and conditions as the existing term loan with Squadron. Under the terms of the amended facility, the maturity date on the entire term loan will be extended May 2025. A portion of the proceeds from the expanded facility will be used to retire the Company’s outstanding obligation under its working capital revolver with MidCap Funding. The expanded Squadron credit facility, as proposed, does not include any financial covenants. We expect this transaction to close before the end of May 2020.

We believe the credit refinancing of existing debt under the commitment letter with Squadron is probable to occur, and as such, alleviates any substantial doubt about our ability to continue as a going concern.

#### *Amended Credit Facility, Squadron Credit Agreement and Other Debt*

Our Amended Credit Facility with MidCap provides for a revolving credit commitment up to \$22.5 million. As of March 31, 2020, \$11.9 million was outstanding under the revolving line of credit.

The revolving line of credit accrues interest at LIBOR plus 6.0%, reset monthly. At March 31, 2020, the revolving line of credit carried an interest rate of 7.58%. The borrowing base is determined based on the value of domestic eligible accounts receivable. As collateral for the Amended Credit Facility, MidCap has a first lien security interest in accounts receivable and a second lien on substantially all other assets. The Amended Credit Facility also includes several event of default provisions, such as payment default, insolvency conditions and a material adverse effect clause, 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.

On November 6, 2018, we closed the \$35 million Term Loan with Squadron for net proceeds of approximately \$34.1 million, which were partially used to retire our existing \$29.2 million term debt with Globus. In addition, in June 2019, we took a draw of \$10 million from our total available \$30 million expanded credit facility with Squadron. The total debt outstanding with Squadron has a five-year maturity and bears interest at LIBOR plus 8% (10.0% as of March 31, 2020) per annum. The credit agreement specifies a minimum interest rate of 10% and a maximum of 13% per year. Interest-only payments are due monthly through May 2021, followed by \$10 million in principal payable in 29 equal monthly installments beginning June 2021 and a \$25 million lump-sum payment payable at maturity in November 2023. As collateral for the Term Loan, Squadron has a first lien security interest in substantially all assets except for accounts receivable.

We entered into an Inventory Financing Agreement whereby we may draw up to \$3.0 million for the purchase of inventory to accrue interest at a rate of LIBOR plus 8% and also includes a 10% floor and 13% ceiling. All principal will become due and payable upon maturity on November 6, 2023 and all interest will be paid monthly. Should we elect to prepay the Squadron credit agreement, all amounts due under the Inventory Financing Agreement will become mandatorily due.

Our various debt agreements include several event of default provisions, such as payment default, insolvency conditions and a material adverse effect clause, 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 our lenders' rights to declare all outstanding obligations immediately due and payable. Furthermore, the credit agreements contain various covenants, including various negative covenants including a \$5 million minimum liquidity requirement through March 31, 2020. The minimum liquidity covenant will be replaced by a fixed charge ratio, pursuant to which operating cash to fixed charges (as defined) must equal at least 1:1 on a rolling 12-month basis, beginning April 2020. We were in compliance with the covenants under the credit agreements at March 31, 2020.

As of March 31, 2020, we have made \$41.7 million in Orthotec settlement payments and there remains an aggregate \$16.1 million of Orthotec settlement payments (including accrued and future interest) to be paid by us.

#### *Operating Activities*

We used net cash of \$17.0 million from operating activities for the three months ended March 31, 2020. During this period, net cash used in operating activities consisted of our net loss adjusted for \$11.4 million of non-cash adjustments including amortization, depreciation, stock-based compensation, provision for doubtful accounts, provision for excess and obsolete inventory, interest expense related to amortization of debt discount and issuance costs, and loss on disposal of instruments, and \$5.6 million use of cash related to working capital and other assets.

#### *Investing Activities*

We used cash of \$2.6 million in investing activities for the three months ended March 31, 2020 primarily for the purchase of surgical instruments to support the commercial launch of new products.

#### *Financing Activities*

Financing activities used a negligible amount of cash for the three months ended March 31, 2020, primarily attributed to net payments under the lines of credit of \$0.9 million, offset by proceeds of \$0.8 million from warrant and stock option exercises and purchases of common stock under our employee stock purchase plan.

#### *Off-Balance Sheet Arrangements*

We do not have any off-balance sheet arrangements.

### Contractual obligations and commercial commitments

Total contractual obligations and commercial commitments as of March 31, 2020 are summarized in the following table (in thousands):

	Payment Due by Year						
	Total	2020 (remainder)	2021	2022	2023	2024	Thereafter
Amended Credit Facility with MidCap	\$ 12,522	\$ —	\$ —	\$ 12,522	\$ —	\$ —	\$ —
Inventory financing	2,988	—	—	—	2,988	—	—
Squadron Term Loan	45,000	—	4,483	7,685	32,832	—	—
Interest expense	20,019	5,246	6,311	5,612	2,850	—	—
Note payable for software agreements and insurance premiums	885	885	—	—	—	—	—
Capital lease obligations	102	28	37	37	—	—	—
Facility lease obligations (3)	32,159	1,218	1,550	2,976	3,025	3,116	20,274
Other operating lease obligations	415	226	189	—	—	—	—
Litigation settlement obligations, gross (2)	16,133	3,300	4,000	4,400	4,400	33	—
Guaranteed minimum royalty obligations	5,124	696	918	918	918	918	756
License agreement milestones (1)	2,250	—	700	450	650	250	200
<b>Total</b>	<b>\$ 137,597</b>	<b>\$ 11,599</b>	<b>\$ 18,188</b>	<b>\$ 34,600</b>	<b>\$ 47,663</b>	<b>\$ 4,317</b>	<b>\$ 21,230</b>

- (1) These commitments represent payments in cash and are subject to attaining certain sales milestones which we believe are reasonably likely to be achieved beginning in 2020.
- (2) Represents gross payments due to Orthotec, LLC pursuant to a Settlement and Release Agreement, dated as of August 13, 2014, by and among the Company and its direct subsidiaries, including Alphatec Spine, Inc., Alphatec Holdings International C.V., Scient'x S.A.S. and Surgiview S.A.S.; HealthpointCapital, LLC, HealthpointCapital Partners, L.P., HealthpointCapital Partners II, L.P., John H. Foster and Mortimer Berkowitz III; and Orthotec, LLC and Patrick Bertranou. In September 2014, the Company and HealthpointCapital entered into an agreement for joint payment of settlement whereby HealthpointCapital is obligated to pay \$5 million of the settlement amount, with payments beginning in the fourth quarter of 2020 and continuing through 2021. See Note 12 to the Notes to Condensed Consolidated Financial Statements included in Item 1, Part I of this Quarterly Report on Form 10-Q for further information.
- (3) Includes our new headquarters building lease commitment anticipated to commence in November 2020.

### Real Property Leases

In January 2016, we entered into a lease agreement, or the Building Lease, for office, engineering, and research and development space in Carlsbad, California with the lease term through July 31, 2021. Under the Building Lease our monthly rent payable is approximately \$105,000 per month during the first year and increases by approximately \$3,000 each year thereafter.

On December 4, 2019, we entered into a new lease agreement, or new Building Lease, for a new headquarters location which will consist of 121,541 square feet of office, engineering, and research and development space in Carlsbad, California. The term of the new Building Lease is currently anticipated to commence November 15, 2020 and terminate November 30, 2030, subject to two (2) sixty (60) month options to renew. Base rent under the Building Lease for the first twelve months of the term will be \$195,000 per month subject to full abatement during months two through ten. Base rent for the second year of the term will be \$244,115 per month and thereafter will increase annually by 3%. At the beginning of each exercised option period, base rent will be adjusted to the market rental value, and thereafter will increase annually by 3% through the end of such option period.

## Recent Accounting Pronouncements

Aside from newly implemented accounting policies related to leases discussed above under “Critical Accounting Policies and Estimates” and for the changes disclosed in Note 2 to the Notes to Condensed Consolidated Financial Statements (Unaudited) under the heading “Recent Accounting Pronouncements,” there have been no new accounting pronouncements or changes to accounting pronouncements during the three months ended March 31, 2020, as compared to the recent accounting pronouncements described in the Company’s Annual Report on Form 10-K for the year ended December 31, 2019, filed on March 17, 2020.

## Forward Looking Statements

This Quarterly Report on Form 10-Q incorporates a number of forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”) and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), including statements regarding:

- our estimates regarding anticipated operating losses, future revenue, expenses, cost savings, 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;
- our ability to ensure that we have effective disclosure controls and procedures;
- our not realizing the full economic benefit from the Globus Transaction, including as a result of indemnification claims under the definitive agreement and the retention by us of certain liabilities associated with the international business, and our ability to meet our obligations under the Globus supply agreement;
- 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;
- 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 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 attract and retain a qualified management team, as well as other qualified personnel and advisors;
- our ability to protect our intellectual property, and to not infringe upon the intellectual property of third parties;
- our ability to meet or exceed the industry standard in clinical and legal compliance and corporate governance programs;
- potential liability resulting from litigation;
- 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 Quarterly Report on Form 10-Q;
- our beliefs with respect to our critical accounting policies and the reasonableness of our estimates and assumptions; and
- other factors discussed elsewhere in this Quarterly Report on Form 10-Q or any document incorporated by reference herein or therein.

Any or all of our forward-looking statements in this Quarterly Report on Form 10-Q may turn out to be wrong. They can be affected by inaccurate assumptions and/or by known or unknown risks and uncertainties. Many factors mentioned in our discussion in this Quarterly Report on Form 10-Q 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 our Annual Report on Form 10-K for the year ended December 31, 2019 and any updates to those risk factors filed from time to time in our subsequent periodic and current reports filed with the SEC. 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,” “estimate,” “may,” “will,” “should,” “could,” “would,” “seek,” “intend,” “continue,” “project,” 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 “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2019 and any updates to those risk factors filed from time to time in our subsequent periodic and current reports filed with the SEC. 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 3. Quantitative and Qualitative Disclosures About Market Risk**

#### *Interest Rate Risk*

Other outstanding debt consists of various variable rate instruments, including debt outstanding under the Amended Credit Facility with MidCap and the Term Loan with Squadron.

Our borrowings under our credit facilities expose us to market risk related to changes in interest rates. As of March 31, 2020, our outstanding floating rate indebtedness totaled \$59.9 million. The primary base interest rate is the LIBOR rate. 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.

#### *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 revenue, we have not experienced any material impact on our results of operations from changes in commodity prices. A 10% change in commodity prices would not have had a material impact on our results of operations for the three months ended March 31, 2020.

### **Item 4. 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 our reports that we file or submit pursuant to the Securities Exchange Act of 1934, as amended, or the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission’s, or SEC’s, rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, 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 participation of our management, including our Chief Executive Officer and our Chief Financial Officer, we carried out an evaluation of the effectiveness 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 report. Based on this evaluation, our Company’s Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective at the reasonable level of assurance.

#### *Previously Reported Material Weaknesses in Internal Control over Financial Reporting*

As reported in in our Annual Report on Form 10-K for the year ended December 31, 2019, we identified deficiencies in our internal controls over financial reporting related to our revenue and inventory cycles whereby the review of sales orders and inventory transfers were not properly applied to a portion of orders during the year. We reported these deficiencies to the Audit Committee of our Board of Directors and a material weakness related to these deficiencies existed at December 31, 2019.

#### Remediation of the Material Weakness during the first quarter 2020

The material weakness related to the lack of sufficient review over sales order and inventory transfers resulted in a reasonable possibility that a material misstatement of our revenue and inventory in the annual or interim financial statements may not be prevented or detected on a timely basis. To remediate the deficiencies described above and prevent similar deficiencies in the future, we developed and implemented a remediation plan during the first quarter of 2020 which included:

- Improving controls to ensure proper documentation over revenue orders and inventory transfers
- Assurance that control owners have appropriate training and understanding surrounding affected controls

Although we have implemented these remediation efforts, the deficiencies will not be considered fully remediated until the applicable remedial controls operate for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively. Any actions we have taken or may take to remediate these deficiencies are subject to continued management review supported by testing, as well as oversight by the Audit Committee of our Board of Directors.

We cannot provide complete assurance that other material weaknesses or significant deficiencies will not occur in the future or that we will be able to remediate such weaknesses or deficiencies in a timely manner. The occurrence of such material weaknesses or our inability to remediate these deficiencies could impair our ability to accurately and timely report our financial position, results of operations or cash flows.

#### *Changes in Internal Control over Financial Reporting*

Except as described above, there have been no changes to our internal control over financial reporting during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. Despite most of our employees working remotely due to the current COVID-19 pandemic, we have not experienced any material impact to our internal control over financial reporting. We will continue to monitor the COVID-19 situation to assess and minimize any impact on the design and operating effectiveness of our internal control over financial reporting.

**Item 1. Legal Proceedings****Litigation**

We are and may become involved in various legal proceedings arising from our business activities. While the Company has no material accruals for pending litigation or claims for which accrual amounts are not disclosed in the Company's consolidated financial statements, litigation is inherently unpredictable, and depending on the nature and timing of a proceeding, an unfavorable resolution could materially affect our future consolidated results of operations, cash flows or financial position in a particular period. We assess 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 our 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, we 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 our potential liability.

Refer to Note 6 to the Notes to Condensed Consolidated Financial Statements included in Item 1, Part I of this Quarterly Report on Form 10-Q for further information regarding the NuVasive, Inc. litigation.

**Item 1A. Risk Factors**

There have been no material changes to the risk factors described under Item 1A of our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, filed with the SEC on March 17, 2020 except for those noted below:

**COVID-19**

In December 2019, a novel strain of coronavirus, COVID-19, was reported to have surfaced in Wuhan, China. Since then, COVID-19 has spread to multiple countries, including the United States, and several European countries. To date, COVID-19 has had, and may continue to have, an adverse impact on our operations, supply chains, distribution channels and expenses as a result of the preventive and precautionary measures that we, our customers, other businesses, and governments are taking, including the deferral of elective medical procedures and diversion of capital and other resources. Due to these impacts and measures, we have experienced and may continue to experience significant and unpredictable reductions in the demand for our products as healthcare customers divert medical resources and priorities towards the treatment of the disease. For example, as COVID-19 reached a global pandemic level in the month of March 2020, we experienced significant decline in procedure volume in the U.S., as healthcare systems diverted resources to meet the increasing demands of managing COVID-19. In addition, the American College of Surgeons, U.S. surgeon general, and other public health bodies have recommended delaying elective surgeries during the COVID-19 pandemic, and surgeons and medical societies are evaluating the risks of minimally invasive surgeries in the presence of infectious diseases, which we expect will continue to negatively impact the usage of our products and procedures performed.

Due to the COVID-19 outbreak, we have experienced significant business disruptions, including restrictions on our ability to sell, distribute and service our products, temporary closures of our facilities and the facilities of our suppliers and their contract manufacturers, as well as reduction in access to our customers due to diverted resources and priorities and the business hours of hospitals as governments institute prolonged shelter-in-place and/or self-quarantine mandates. For example, our corporate headquarters located in California has instituted shelter-in-place orders applicable to our employees in that region. These unprecedented measures to slow the spread of the virus taken by local governments and health care authorities globally, including the deferral of elective medical procedures and social distancing measures, have had, and will continue to have, a significant negative impact on our operations and financial results.

As a result of the shelter-in-place orders implemented by state and local governments, we have instituted a remote work environment which has impacted our employees working at our California headquarters. The remote work environment makes us more susceptible to fraud, system interruptions and similar errors that from time to time result in lost funds or delayed transactions. To date, our email and computer systems have been subject to and are likely to continue to be the target of, fraudulent attacks, including attempts to cause us to improperly transfer funds or defraud our vendors into improperly transferring funds meant for us. These attacks have increased in frequency and sophistication. When a fraud is successfully perpetrated, funds transferred to a fraudulent recipient are often times not recoverable, and, in certain instances, we may be liable for those unrecovered funds. While we have greatly enhanced our automated and manual controls to mitigate this risk, there can be no assurance that such controls will prevent or detect such attempts, which may result in financial losses or other adverse consequences which could be material to us.

In addition, the COVID-19 pandemic has adversely affected, and may continue to adversely affect, the economies and financial markets of many countries, which may result in a period of regional, national, and global economic slowdown or regional, national, or global recessions that could curtail or delay spending by hospitals and affect demand for our products as well as increased risk of customer defaults or delays in payments. COVID-19 and the current financial, economic, and capital markets environment, and future developments in these and other areas present material uncertainty and risk with respect to our performance, financial condition, volume of business, results of operations, and cash flows. Due to the uncertain scope and duration of the pandemic and uncertain timing of global recovery and economic normalization, we are unable to estimate the impacts on our operations and financial results. As a result, we have withdrawn our full year 2020 financial and procedure guidance.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

None.

**Item 5. Other Information**

Effective April 5, 2020, the Company implemented a voluntary salary-to-equity conversion program for certain employees whose annual payroll costs exceed \$100,000, including the Company's executive officers. The program permits each participant to make a voluntary election to reduce the participant's compensation rate through July 11, 2020 from 10% to 75%. In exchange for the compensation reduction, each participant will be granted a restricted stock unit equal to the dollar amount of compensation reduction divided by the 30-day volume weighted average price of the Company's common stock as of close of market on April 3, 2020. The restricted stock units granted under the program will fully vest on July 10, 2020. The restricted stock units will also vest upon a change in control of the Company and will be subject to certain accelerated vesting in the event of the participant's death or disability. The temporary reduction in compensation to the participants shall not be treated as a reduction in base annual salary rate for purposes of any other benefits plans in which the participants are enrolled or eligible to participate, including in any bonus plans of the Company.

**Item 6. Exhibits**

<b>Exhibit Number</b>	<b>Exhibit Description</b>
10.1	<a href="#">U.S. Small Business Administration Paycheck Protection Program Note</a> <sup>(1)</sup> .
10.2	<a href="#">David Sponsel Severance Agreement</a> <sup>(1)</sup> .
10.3	<a href="#">Eric Dasso Severance Agreement</a> <sup>(1)</sup> .
10.4	<a href="#">Kelli Howell Severance Agreement</a> <sup>(1)</sup> .
10.5	<a href="#">Mark Ojeda Severance Agreement</a> <sup>(1)</sup> .
31.1	<a href="#">Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.2	<a href="#">Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
32	<a href="#">Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
101	The following materials from the Alphatec Holdings, Inc. Quarterly Report on Form 10-Q for the Three Months ended March 31, 2020, formatted in XBRL (eXtensible Business Reporting Language): (i) Condensed Consolidated Balance Sheets (Unaudited) as of March 31, 2020 and December 31, 2019, (ii) Condensed Consolidated Statements of Operations (Unaudited) for the Three Months Ended March 31, 2020 and 2019, (iii) Condensed Consolidated Statements of Comprehensive Loss (Unaudited) for the Three Months Ended March 31, 2020 and 2019, (iv) Condensed Consolidated Statements of Stockholders' Equity (Unaudited) for the Three Months Ended March 31, 2020 and 2019 (v) Condensed Consolidated Statements of Cash Flows (Unaudited) for the Three Months Ended March 31, 2020 and 2019, and (vi) Notes to Condensed Consolidated Financial Statements (Unaudited).

(1) Filed herein

## SIGNATURES

Pursuant to the requirements 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.

By: /s/ Patrick S. Miles

Patrick S. Miles  
Chairman and Chief Executive Officer  
(principal executive officer)

By: /s/ Jeffrey G. Black

Jeffrey G. Black  
Executive Vice President and Chief Financial Officer  
(principal financial officer and principal accounting officer)

Date: May 11, 2020

**Silicon Valley Bank****U.S. Small Business Administration  
Paycheck Protection Program  
Note**

SBA Loan No.	1260967208	
SBA Loan Name	Borrower Legal Name	Alphatec Spine Inc
	DBA	
Date	4/21/2020	
Loan Amount	\$ 4270693	
Interest Rate	1.0% per annum	
Borrower	Alphatec Spine Inc	
Operating Company	Not applicable	
Lender	Silicon Valley Bank	

**1. PROMISE TO PAY.**

In return for the Loan, Borrower promises to pay to the order of Lender the amount of \$ 4270693 Dollars, interest on the unpaid principal balance, and all other amounts required by this Note.

**2. DEFINITIONS.**

“Collateral” means any property taken as security for payment of this Note or any guarantee of this Note.

“CARES Act” means the Coronavirus Aid, Relief, and Economic Security Act.

“Guarantor” means each person or entity that signs a guarantee of payment of this Note.

“Loan” means the loan evidenced by this Note.

“Loan Documents” means the documents related to this loan signed by Borrower, any Guarantor, or anyone who pledges collateral.

“Paycheck Protection Program” means loan program created by Section 1102 of the CARES Act.

“Per Annum” means for a year deemed to be comprised of 360 days.

“SBA” means the Small Business Administration, an Agency of the United States of America.

3. PAYMENT TERMS: Borrower must make all payments at the place Lender designates. The payment terms for this Note are:

A. Conditions Precedent to Disbursement of Loan Proceeds.

Before the funding of the Loan, the following conditions must be satisfied:

1. Lender has approved the request for the Loan.
2. Lender has received approval from SBA to fund the Loan.

B. No Payments During Deferral Period. There shall be no payments due by Borrower during the sixmonth period beginning on the date of this Note (the “Deferral Period”). However, during the Deferral Period interest will accrue at the Interest Rate on the unpaid principal balance computed on the basis of the actual number of days elapsed in a year of 360 days.

C. Principal and Interest Payments. Commencing one month after the expiration of the Deferral Period, and continuing on the same day of each month thereafter until the Maturity Date, Borrower shall pay to Lender monthly payments of principal and interest, each in such equal amount required to fully amortize the principal amount outstanding on the Note on the last day of the Deferral Period by the Maturity Date.

D. Maturity Date. On the date which is twenty-four (24) months from the date of this Note (the “Maturity Date”), Borrower shall pay to Lender any and all unpaid principal plus accrued and unpaid interest plus interest accrued during the Deferral Period. This Note will mature on the Maturity Date.

E. Not a Business Day. If any payment is due on a date for which there is no numerical equivalent in a particular calendar month then it shall be due on the last day of such month. If any payment is due on a day that is a Saturday, Sunday or any other day on which California chartered banks are authorized to be closed, the payment will be made on the next business day.

F. Payment Allocation. Payments shall be allocated among principal and interest at the discretion of Lender unless otherwise agreed or required by applicable law (including the CARES Act).

Notwithstanding, in the event the Loan, or any portion thereof, is forgiven pursuant to the Paycheck Protection Program under the federal CARES Act, the amount so forgiven shall be applied to principal.

F. Prepayments. Borrower may prepay this Note at any time without payment of any penalty or premium.

G. Borrower Certifications.

Borrower certifies to Lender as follows:

1. Current economic uncertainty makes this Loan necessary to support the ongoing operations of Borrower.
2. Loan funds will be used by Borrower to retain its workers and maintain its payroll or make its mortgage payments, lease payments, and utility payments.
3. For the period beginning on February 15, 2020 and ending on December 31, 2020, Borrower did not receive, and agrees it will not apply for or receive, another loan under the Paycheck Protection Program.
4. Borrower was in operation on February 15, 2020 and (i) had employees for whom it paid salaries and payroll taxes or (ii) paid independent contractors as reported on a 1099-Misc.
5. Borrower has reviewed and understands Sections 1102 and 1106 of the CARES Act and the related guidelines and has completed the Application, including Borrower's eligibility in conformity with those provisions.
6. Borrower has taken its "affiliates" (as defined by the SBA) into account when determining the number of employees and the total amount of loans permitted under the Paycheck Protection Program.
7. Borrower is a small business concern or is otherwise eligible to receive a covered loan.
8. The person who has completed and signed the application, this Note and the Loan Documents has been validly authorized by Borrower to enter into borrowings on behalf of Borrower.

H. Agreements.

Borrower understands and agrees, and waives and releases Lender, its affiliates and their respective directors, officers, agents and employees, as follows:

1. The Loan will be made under the SBA's Paycheck Protection Program. Accordingly, this Note and the other Loan Documents must be submitted to and approved by the SBA. There is limited funding available under the Paycheck Protection Program and accordingly, all applications submitted will not be approved by the SBA.
2. Lender is participating in the Payroll Protection Program to help businesses impacted by the economic impact from COVID-19. However, Lender anticipates high volumes and there may be processing delays and system failures along with other issues that interfere with submission of Borrower's application to SBA. Lender does not represent or guarantee that it will submit the application while SBA funding remains available under the Payroll Protection Program or at all. Borrower hereby agrees that Lender is not responsible or liable to Borrower or any of its affiliates (i) if the Lender does not submit Borrower's application to the SBA until after the date that SBA stops approving applications under the Paycheck Protection Program, for any reason or (ii) if the application is not processed by Lender. Borrower forever releases

and waives any claims against Lender, its affiliates and their respective directors, officers, agents and employees concerning failure to obtain the Loan. This release and waiver applies to, but is not limited to, any claims concerning Lender's (i) pace, manner or systems for processing or prioritizing applications, or (ii) representations by Lender regarding the application process, the Paycheck Protection Program, or availability of funding. This agreement to release and waiver supersedes any prior communications, understandings, agreements or communications on the issues set forth herein.

3. Forgiveness of the Loan is only available for principal that is used for the limited purposes that expressly qualify for forgiveness under SBA requirements, and that to obtain forgiveness, Borrower must request forgiveness from the Lender, provide documentation in accordance with the SBA requirements, and certify that the amounts Borrower is requesting to be forgiven qualify under those requirements. Borrower also understands that Borrower shall remain responsible under the Loan for any amounts not forgiven, and that interest payable under the Loan will not be forgiven, but that the SBA may pay the Loan interest on forgiven amounts.
4. Forgiveness of the Loan is not automatic and Borrower must request forgiveness of the Loan from Lender. Borrower is not relying on Lender for its understanding of the requirements for forgiveness such as eligible expenditures, necessary records/documentation, or possible reductions due to changes in number of employees or compensation. Borrower agrees that will consult the SBA's program materials and consult with its own counsel regarding the criteria forgiveness.
5. The Loan Documents are subject to review, and Borrower may not receive the Loan. The Loan also remains subject to availability of funds under the SBA's Payment Protection Program, and to the SBA issuing an SBA loan number.
6. Borrower's liability under this Note will continue with respect to any amounts SBA may pay Bank based on an SBA guarantee of this Note. Any agreement with Bank under which SBA may guarantee this Note does not create any third party rights or benefits for Borrower and, if SBA pays Bank under such an agreement, SBA or Bank may then seek recovery from Borrower of amounts paid by SBA.
7. Lender reserves the right to modify the Note Amount based on documentation received from Borrower.
8. Borrower's execution of this Note has been duly authorized by all necessary actions of its governing body. The person signing this Note is duly authorized to do so on behalf of Borrower.
9. This Note shall not be governed by any existing or future credit agreement or loan agreement with Lender. The liabilities guaranteed pursuant to any existing or future guaranty in favor of Lender shall not include this Note. The liabilities secured by any existing or future security instrument in favor of Lender shall not include the Loan.
10. The proceeds of the Loan will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the

Paycheck Protection Program Rule. Borrower understands that if the funds are knowingly used for unauthorized purposes, the federal government may hold Borrower legally liable, such as for charges of fraud.

Electronic Execution of Loan Documents.

The words “execution,” “signed,” “signature” and words of like import in this Note and any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

4. DEFAULT:

Borrower is in default under this Note if Borrower does not make a payment when due under this Note, or if Borrower or Operating Company:

- A. Fails to do anything required by this Note and other Loan Documents;
- B. Defaults on any other loan with Lender;
- C. Does not preserve, or account to Lender’s satisfaction for, any of the Collateral or its proceeds;
- D. Does not disclose, or anyone acting on their behalf does not disclose, any material fact to Lender or SBA;
- E. Makes, or anyone acting on their behalf makes, a materially false or misleading representation to Lender or SBA;
- F. Defaults on any loan or agreement with another creditor, if Lender believes the default may materially affect Borrower’s ability to pay this Note;
- G. Fails to pay any taxes when due;
- H. Becomes the subject of a proceeding under any bankruptcy or insolvency law;
- I. Has a receiver or liquidator appointed for any part of their business or property;
- J. Makes an assignment for the benefit of creditors;
- K. Has any adverse change in financial condition or business operation that Lender believes may materially affect Borrower’s ability to pay this Note;
- L. Reorganizes, merges, consolidates, or otherwise changes ownership or business structure without Lender’s prior written consent;  
or
- M. Becomes the subject of a civil or criminal action that Lender believes may materially affect Borrower’s ability to pay this Note.

5. LENDER'S RIGHTS IF THERE IS A DEFAULT.

Without notice or demand and without giving up any of its rights, Lender may:

- A. Require immediate payment of all amounts owing under this Note;
- B. Collect all amounts owing from any Borrower or Guarantor;
- C. File suit and obtain judgment.
- D. Take possession of any Collateral; or
- E. Sell, lease, or otherwise dispose of, any Collateral at public or private sale, with or without advertisement.

6. LENDER'S GENERAL POWERS.

Without notice and without Borrower's consent, Lender may:

- A. Bid on or buy the Collateral at its sale or the sale of another lienholder, at any price it chooses;
- B. Incur expenses to collect amounts due under this Note, enforce the terms of this Note or any other Loan Document, and preserve or dispose of the Collateral. Among other things, the expenses may include payments for property taxes, prior liens, insurance, appraisals, environmental remediation costs, and reasonable attorney's fees and costs. If Lender incurs such expenses, it may demand immediate repayment from Borrower or add the expenses to the principal balance;
- C. Release anyone obligated to pay this Note;
- D. Compromise, release, renew, extend or substitute any of the Collateral; and
- E. Take any action necessary to protect the Collateral or collect amounts owing on this Note.

7. WHEN FEDERAL LAW APPLIES; GOVERNING LAW; FORUM SELECTION.

When SBA is the holder, this Note will be interpreted and enforced under federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Note, Borrower may not claim or assert against SBA any local or state law to deny any obligation, defeat any claim of SBA, or preempt federal law.

8. SUCCESSORS AND ASSIGNS.

Under this Note, Borrower and Operating Company includes its successors, and Lender includes its successors and assigns.

9. GENERAL PROVISIONS.

- A. All individuals and entities signing this Note are jointly and severally liable.
- B. Borrower waives all suretyship defenses.
- C. Borrower must sign all documents necessary at any time to comply with the Loan Documents and to enable Lender to acquire, perfect, or maintain Lender's liens on Collateral.
- D. Lender may exercise any of its rights separately or together, as many times and in any order it chooses. Lender may delay or forgo enforcing any of its rights without giving up any of them. E. Borrower may not use an oral statement of Lender or SBA to contradict or alter the written terms of this Note.
- E. If any part of this Note is unenforceable, all other parts remain in effect.
- F. To the extent allowed by law, Borrower waives all demands and notices in connection with this Note, including presentment, demand, protest, and notice of dishonor. Borrower also waives any defenses based upon any claim that Lender did not obtain any guarantee; did not obtain, perfect, or maintain a lien upon Collateral; impaired Collateral; or did not obtain the fair market value of Collateral at a sale.

10. STATE-SPECIFIC PROVISIONS:

If the SBA is not the holder, this Note shall be governed by and construed in accordance with the laws of the State of California where the main office of Lender is located. MATTERS REGARDING INTEREST TO BE CHARGED BY LENDER AND THE EXPORTATION OF INTEREST SHALL BE GOVERNED BY FEDERAL LAW (INCLUDING WITHOUT LIMITATION 12 U.S.C. SECTIONS 85 AND 1831(u) AND THE LAW OF THE STATE OF CALIFORNIA. Borrower agrees that any legal action or proceeding with respect to any of its obligations under this Note may be brought by Lender in any state or federal court located in the State of California, as Lender in its sole discretion may elect. Borrower submits to and accepts in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of those courts. Borrower waives any claim that the State of California is not a convenient forum or the proper venue for any such suit, action or proceeding. The extension of credit that is the subject of this Note is being made by Lender in California.

11. BORROWER'S NAME(S) AND SIGNATURE(S).

BORROWER CERTIFIES THAT THE INFORMATION PROVIDED IN THIS APPLICATION AND THE INFORMATION PROVIDED IN ALL SUPPORTING DOCUMENTS AND FORMS IS TRUE AND ACCURATE IN ALL MATERIAL RESPECTS. BORROWER UNDERSTANDS THAT KNOWINGLY MAKING A FALSE STATEMENT TO OBTAIN A GUARANTEED LOAN FROM SBA IS PUNISHABLE UNDER THE LAW, INCLUDING UNDER 18 USC 1001 AND 3571 BY IMPRISONMENT OF NOT MORE THAN FIVE YEARS AND/OR A FINE OF UP TO \$250,000; UNDER 15 USC 645 BY IMPRISONMENT OF NOT MORE THAN TWO YEARS AND/OR A FINE OF NOT MORE THAN \$5,000; AND, IF SUBMITTED TO A FEDERALLY INSURED INSTITUTION, UNDER 18 USC 1014 BY IMPRISONMENT OF NOT MORE THAN THIRTY YEARS AND/OR A FINE OF NOT MORE THAN \$1,000,000.

By signing below, each individual or entity becomes obligated under this Note as Borrower.

Funds will be credited to your Deposit  
Account Number ending in:

0019

**BORROWER:**

**By:** /s/ Jeffrey G. Black

**Name:** Jeff Black

**Title:** Authorized Signer

**Date:** 4/21/2020

**ATEC SEVERANCE AGREEMENT****I. INTRODUCTION**

This Severance Agreement (the “*Agreement*”) is entered into as of March 11, 2019 (the “*Commencement Date*”), by and between Alphatec Spine, Inc., a subsidiary of Alphatec Holdings, Inc. (“*AHI*”) (collectively, “*ATEC*” or the “*Company*”) and David Sponsel (the “*Executive*”) to provide severance benefits to the Executive in the event his employment is terminated involuntarily under certain circumstances. All benefit determinations under this Severance Agreement and any interpretation of provisions in this Severance Agreement will be made by the Board of Directors of AHI (the “*Board*”) or its designee in its sole discretion. The Agreement is described in further detail below.

**II. ELIGIBILITY**

In the event Executive is terminated involuntarily he will be eligible for severance benefits described in Section III of this Agreement, PROVIDED each of the following requirements is met:

- A. The termination of employment is involuntary.
  - B. The termination is not due to retirement, death or disability of the Executive.
  - C. The termination of employment is not for “Cause” (as defined below). For purposes of the Agreement, “Cause” shall mean the following:
    - 1. Executive’s repeated failure to satisfactorily perform Executive’s job duties;
    - 2. refusal or failure to follow the lawful directions of Executive’s direct supervisor, the Company’s Chief Executive Officer or Board, as applicable;
    - 3. conviction of, or plea of guilty or *nolo contendere* to a crime involving moral turpitude; or
    - 4. engaging in acts or omissions constituting gross negligence, recklessness or willful misconduct on the part of the Executive with respect to his obligations or otherwise relating to the business of the Company, its affiliates or customers.

The Executive must be provided a period of at least thirty (30) days following receipt of written notice outlining with specificity all acts or omissions that the Company alleges give rise to a termination for cause pursuant to Section II, C.1 or C.2 immediately above, during which period he may effect a cure of any curable actions or omissions forming the basis for the termination for cause. The Board, will, in its sole discretion, apply the definitions of “Cause” herein to determine if a termination of employment is for “Cause.”

  - D. The Executive is not a temporary employee or a new hire who has not yet started to work on a regular, full-time or part-time basis (as appropriate).
-

E. The Executive is not covered under any other severance-type plan, policy, arrangement or agreement that provides severance payments and benefits more favorable in the aggregate to those provided herein. If any such plan, policy, arrangement or agreement exists, the Executive will receive payments and benefits pursuant to that plan, policy, arrangement or agreement and shall not receive any of the severance payments and benefits described herein. In no case will the Executive receive severance payments and benefits under any other such severance-type plan, policy, arrangement or agreement and this Agreement.

F. In the event that the Executive is party to a "Change in Control" Agreement with Company that also provides for severance benefits, in the event of a "Change in Control" (as defined therein) the Executive shall not receive benefits under this Agreement, but instead shall receive only the severance benefits provided under such "Change in Control" Agreement (i.e., there shall be no "double-dipping" and only the "Change in Control" Agreement shall apply in such an event).

G. The Executive has not agreed in writing to waive severance benefits under this Agreement or otherwise payable from the Company.

H. The Executive (or, in the event of the executive's death or incapacity, the Executive's executor, representative or guardian, as applicable) signs and does not revoke a separation agreement and general release of all claims in such form as the Company may from time-to-time reasonably require ("Separation Agreement").

I. The Executive has returned all Company property and equipment that was assigned to, or taken general control of by, him during his tenure with the Company.

If terminated, the Executive must satisfy all of the requirements set forth above in order to receive severance benefits under this Agreement. Eligibility for severance benefits under this Agreement will be determined by the Company upon the Executive's termination of employment. The Company has full power and authority to interpret the provisions of this Agreement and render decisions on eligibility for benefits. If the Company determines that the Executive satisfies all of the eligibility conditions described above, the Executive will receive severance benefits calculated in accordance with Section III below. The severance benefits will be paid following the Executive's termination of employment in accordance with the terms set forth below and in the respective Separation Agreement.

### III. SEVERANCE BENEFITS

A. Severance Pay and Benefits. The following severance pay and benefits are payable under this Agreement:

1. Severance Pay. The severance pay provided to the Executive if involuntarily terminated under the terms of this Agreement consists of an amount equal to one times (1x) his regular annual base salary.

The amount of severance pay to the Executive shall be based upon the Executive's regular annual base salary in effect immediately before the Executive's termination of

employment, determined without regard to any overtime, bonuses, fringe benefits, reimbursements or other irregular payments. The Executive's general release of all claims referred to in Section II.H. must be effective no later than the sixtieth (60<sup>th</sup>) day following the Executive's termination of employment in order for the Executive to receive any severance pay or benefits under the Agreement. Severance pay will be paid in a single cash lump-sum on the sixtieth (60<sup>th</sup>) day following the Executive's termination of employment (or as soon as administratively practicable after such sixtieth (60<sup>th</sup>) day).

2. Benefits Continuation. Upon an involuntary termination of employment pursuant to which the Executive is entitled to severance pay under Section III.A.1., subject to the Executive's timely election of continuation coverage under the Consolidated Budget Omnibus Reconciliation Act of 1985, as amended ("COBRA"), the Company will pay the premiums for the Executive for a period of eighteen (18) months based on the level of coverage in effect as of the date of the Executive's termination. Notwithstanding the foregoing, in the event that the Executive becomes eligible to receive substantially similar or improved medical, dental or vision benefits from a subsequent employer (whether or not the Executive accepts such benefits), the Company's obligations under this Section III.A.2. shall immediately cease. The Executive will notify the Company of his eligibility for such benefits from a subsequent employer within thirty (30) days of such eligibility.

In the event that the Company's making payments under this Section III.A.2 would violate nondiscrimination rules or result in the imposition of penalties under the Patient Protection and Affordable Care Act of 2010 ("PPACA") and related regulations and guidance promulgated thereunder, the parties agree to reform this Section III.A.2. in such manner as is necessary to comply with tax laws and the PPACA, as applicable.

3. Equity Awards. Upon an involuntary termination of employment pursuant to which the Executive is entitled to severance pay under Section III.A.1., any vested stock option awards held by Executive at the time of his termination will remain exercisable by the Executive for the greater of (i) 90 days following the effective date of the Executive's termination and (ii) the remaining term of such option award, and all other Company equity awards held by Executive that remain unvested upon the effective date of his termination will be forfeited for no consideration.

#### IV. OTHER PROVISIONS

A. No Separate Fund. All severance benefits payable under this Agreement are payable from the Company's general assets. There is no separate trust or fund established for the payment of severance benefits under this Agreement. All amounts payable hereunder shall be less all appropriate deductions, including federal, state and local withholding taxes.

B. Section 409A.

1. It is the intent of the parties that the payments and benefits provided hereunder are exempt from Section 409A of the Internal Revenue Code of 1986, as amended (“Section 409A”), and should be interpreted and construed in such a manner.

2. “Termination of employment”, “resignation”, “separation from service”, or correlative phrases or terms, as used in this Agreement means, for purposes of any payments under this Agreement that are payments of deferred compensation, has the same meaning as “separation from service” as defined in Section 409A.

3. If a payment obligation under this Agreement arises on account of the Executive’s separation from service while the Executive is a “specified employee” (as defined under Section 409A and determined in good faith by the Board), any payment of “deferred compensation” (as defined under Treasury Regulation Section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation Sections 1.409A-1(b)(3) through (b)(12)) that is scheduled to be paid within six (6) months after such separation from service shall accrue with interest and shall be paid within 15 days after the end of the six-month period beginning on the date of such separation from service or, if earlier, within 15 days after the appointment of the personal representative or executor of the Executive’s estate following his death.

4. Each payment and benefit payable under this Agreement, and each other benefit required to be aggregated with the payment and benefits under this Agreement pursuant to Section 409A, is hereby designated as a separate payment, as provided in Treasury Regulation section 1.409A-2(b)(2)(iii), and will not collectively be treated as a single payment.

C. Amendment or Waiver. No provisions of this Agreement may be amended, modified, waived or discharged unless Executive and the Company agree to such amendment, modification, waiver or discharge in writing.

D. Entire Agreement. This Agreement represents the entire agreement between Executive and the Company with respect to the matters set forth herein and supersedes and replaces any prior agreements in their entirety. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter of this Agreement will be made by either party which are not set forth expressly herein. No future agreement between Executive and the Company may supersede this Agreement, unless it is in writing and specifically makes reference to this Section IV.D.

E. Executive’s Successors. This Agreement shall inure to the benefit of and be enforceable by Executive’s personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If Executive dies while any amounts are still payable hereunder, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to Executive’s devisee, legatee, or other designee or, if there be no such designees, to Executive’s estate.

F. Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

G. Counterparts; Electronic Signatures. This Agreement may be executed (including via electronic signature) in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

**IN WITNESS WHEREOF**, this Agreement is executed effective as of the date set forth above.

Alphatec Holdings, Inc.  
Alphatec Spine, Inc.

By: /S/ Craig E. Hunsaker

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Craig E. Hunsaker  
Executive Vice President, People &  
Culture and General Counsel

ACCEPTED AND AGREED TO AS  
OF THE DATE FIRST SET FORTH  
ABOVE:

/S/ David Sponsel

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David Sponsel

## ATEC SEVERANCE AGREEMENT

## I. INTRODUCTION

This Severance Agreement (the “*Agreement*”) is entered into as of August 5, 2019 (the “*Commencement Date*”), by and between Alphatec Spine, Inc., a subsidiary of Alphatec Holdings, Inc. (“*AHI*”) (collectively, “*ATEC*” or the “*Company*”) and Eric Dasso (the “*Executive*”) to provide severance benefits to the Executive in the event his employment is terminated involuntarily under certain circumstances. All benefit determinations under this Severance Agreement and any interpretation of provisions in this Severance Agreement will be made by the Board of Directors of AHI (the “*Board*”) or its designee in its sole discretion. The Agreement is described in further detail below.

## II. ELIGIBILITY

In the event Executive is terminated involuntarily he will be eligible for severance benefits described in Section III of this Agreement, PROVIDED each of the following requirements is met:

- A. The termination of employment is involuntary.
  - B. The termination is not due to retirement, death or disability of the Executive.
  - C. The termination of employment is not for “Cause” (as defined below). For purposes of the Agreement, “Cause” shall mean the following:
    1. Executive’s repeated failure to satisfactorily perform Executive’s job duties;
    2. refusal or failure to follow the lawful directions of Executive’s direct supervisor, the Company’s Chief Executive Officer or Board, as applicable;
    3. conviction of, or plea of guilty or *nolo contendere* to a crime involving moral turpitude; or
    4. engaging in acts or omissions constituting gross negligence, recklessness or willful misconduct on the part of the Executive with respect to his obligations or otherwise relating to the business of the Company, its affiliates or customers.
- The Executive must be provided a period of at least thirty (30) days following receipt of written notice outlining with specificity all acts or omissions that the Company alleges give rise to a termination for cause pursuant to Section II, C.1 or C.2 immediately above, during which period he may effect a cure of any curable actions or omissions forming the basis for the termination for cause. The Board, will, in its sole discretion, apply the definitions of “Cause” herein to determine if a termination of employment is for “Cause.”
- D. The Executive is not a temporary employee or a new hire who has not yet started to work on a regular, full-time or part-time basis (as appropriate).
-

E. The Executive is not covered under any other severance-type plan, policy, arrangement or agreement that provides severance payments and benefits more favorable in the aggregate to those provided herein. If any such plan, policy, arrangement or agreement exists, the Executive will receive payments and benefits pursuant to that plan, policy, arrangement or agreement and shall not receive any of the severance payments and benefits described herein. In no case will the Executive receive severance payments and benefits under any other such severance-type plan, policy, arrangement or agreement and this Agreement.

F. In the event that the Executive is party to a "Change in Control" Agreement with Company that also provides for severance benefits, in the event of a "Change in Control" (as defined therein) the Executive shall not receive benefits under this Agreement, but instead shall receive only the severance benefits provided under such "Change in Control" Agreement (i.e., there shall be no "double-dipping" and only the "Change in Control" Agreement shall apply in such an event).

G. The Executive has not agreed in writing to waive severance benefits under this Agreement or otherwise payable from the Company.

H. The Executive (or, in the event of the executive's death or incapacity, the Executive's executor, representative or guardian, as applicable) signs and does not revoke a separation agreement and general release of all claims in such form as the Company may from time-to-time reasonably require ("Separation Agreement").

I. The Executive has returned all Company property and equipment that was assigned to, or taken general control of by, him during his tenure with the Company.

If terminated, the Executive must satisfy all of the requirements set forth above in order to receive severance benefits under this Agreement. Eligibility for severance benefits under this Agreement will be determined by the Company upon the Executive's termination of employment. The Company has full power and authority to interpret the provisions of this Agreement and render decisions on eligibility for benefits. If the Company determines that the Executive satisfies all of the eligibility conditions described above, the Executive will receive severance benefits calculated in accordance with Section III below. The severance benefits will be paid following the Executive's termination of employment in accordance with the terms set forth below and in the respective Separation Agreement.

### III. SEVERANCE BENEFITS

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1. Severance Pay. The severance pay provided to the Executive if involuntarily terminated under the terms of this Agreement consists of an amount equal to one times (1x) his regular annual base salary.

The amount of severance pay to the Executive shall be based upon the Executive's regular annual base salary in effect immediately before the Executive's termination of

employment, determined without regard to any overtime, bonuses, fringe benefits, reimbursements or other irregular payments. The Executive's general release of all claims referred to in Section II.H. must be effective no later than the sixtieth (60<sup>th</sup>) day following the Executive's termination of employment in order for the Executive to receive any severance pay or benefits under the Agreement. Severance pay will be paid in a single cash lump-sum on the sixtieth (60<sup>th</sup>) day following the Executive's termination of employment (or as soon as administratively practicable after such sixtieth (60<sup>th</sup>) day).

2. Benefits Continuation. Upon an involuntary termination of employment pursuant to which the Executive is entitled to severance pay under Section III.A.1., subject to the Executive's timely election of continuation coverage under the Consolidated Budget Omnibus Reconciliation Act of 1985, as amended ("COBRA"), the Company will pay the premiums for the Executive for a period of eighteen (18) months based on the level of coverage in effect as of the date of the Executive's termination. Notwithstanding the foregoing, in the event that the Executive becomes eligible to receive substantially similar or improved medical, dental or vision benefits from a subsequent employer (whether or not the Executive accepts such benefits), the Company's obligations under this Section III.A.2. shall immediately cease. The Executive will notify the Company of his eligibility for such benefits from a subsequent employer within thirty (30) days of such eligibility.

In the event that the Company's making payments under this Section III.A.2 would violate nondiscrimination rules or result in the imposition of penalties under the Patient Protection and Affordable Care Act of 2010 ("PPACA") and related regulations and guidance promulgated thereunder, the parties agree to reform this Section III.A.2. in such manner as is necessary to comply with tax laws and the PPACA, as applicable.

3. Equity Awards. Upon an involuntary termination of employment pursuant to which the Executive is entitled to severance pay under Section III.A.1., any vested stock option awards held by Executive at the time of his termination will remain exercisable by the Executive for the greater of (i) 90 days following the effective date of the Executive's termination and (ii) the remaining term of such option award, and all other Company equity awards held by Executive that remain unvested upon the effective date of his termination will be forfeited for no consideration.

#### IV. OTHER PROVISIONS

A. No Separate Fund. All severance benefits payable under this Agreement are payable from the Company's general assets. There is no separate trust or fund established for the payment of severance benefits under this Agreement. All amounts payable hereunder shall be less all appropriate deductions, including federal, state and local withholding taxes.

B. Section 409A.

1. It is the intent of the parties that the payments and benefits provided hereunder are exempt from Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"), and should be interpreted and construed in such a manner.

2. "Termination of employment", "resignation", "separation from service", or correlative phrases or terms, as used in this Agreement means, for purposes of any payments under this Agreement that are payments of deferred compensation, has the same meaning as "separation from service" as defined in Section 409A.

3. If a payment obligation under this Agreement arises on account of the Executive's separation from service while the Executive is a "specified employee" (as defined under Section 409A and determined in good faith by the Board), any payment of "deferred compensation" (as defined under Treasury Regulation Section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation Sections 1.409A-1(b)(3) through (b)(12)) that is scheduled to be paid within six (6) months after such separation from service shall accrue with interest and shall be paid within 15 days after the end of the six-month period beginning on the date of such separation from service or, if earlier, within 15 days after the appointment of the personal representative or executor of the Executive's estate following his death.

4. Each payment and benefit payable under this Agreement, and each other benefit required to be aggregated with the payment and benefits under this Agreement pursuant to Section 409A, is hereby designated as a separate payment, as provided in Treasury Regulation section 1.409A-2(b)(2)(iii), and will not collectively be treated as a single payment.

C. Amendment or Waiver. No provisions of this Agreement may be amended, modified, waived or discharged unless Executive and the Company agree to such amendment, modification, waiver or discharge in writing.

D. Entire Agreement. This Agreement represents the entire agreement between Executive and the Company with respect to the matters set forth herein and supersedes and replaces any prior agreements in their entirety. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter of this Agreement will be made by either party which are not set forth expressly herein. No future agreement between Executive and the Company may supersede this Agreement, unless it is in writing and specifically makes reference to this Section IV.D.

E. Executive's Successors. This Agreement shall inure to the benefit of and be enforceable by Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If Executive dies while any amounts are still payable hereunder, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to Executive's devisee, legatee, or other designee or, if there be no such designees, to Executive's estate.

F. Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

G. Counterparts; Electronic Signatures. This Agreement may be executed (including via electronic signature) in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

**IN WITNESS WHEREOF**, this Agreement is executed effective as of the date set forth above.

Alphatec Holdings, Inc.  
Alphatec Spine, Inc.

By: /S/ Craig E. Hunsaker

---

Craig E. Hunsaker  
Executive Vice President, People &  
Culture and General Counsel

ACCEPTED AND AGREED TO AS  
OF THE DATE FIRST SET FORTH  
ABOVE:

/S/ Eric Dasso

---

Eric Dasso

**ALPHATEC SEVERANCE AGREEMENT****I. INTRODUCTION**

This Severance Agreement (the “*Agreement*”) is entered into as of March 12, 2017 (the “*Commencement Date*”), by and between Alphatec Spine, Inc., a subsidiary of Alphatec Holdings, Inc. (“*AHI*”) (collectively, “*Alphatec*” or the “*Company*”) and Kelli Howell (the “*Executive*”) to provide severance benefits to the Executive in the event her employment is terminated involuntarily under certain circumstances. All benefit determinations under this Severance Agreement and any interpretation of provisions in this Severance Agreement will be made by the Board of Directors of AHI (the “*Board*”) or its designee in its sole discretion. The Agreement is described in further detail below.

**II. ELIGIBILITY**

In the event Executive is terminated involuntarily she will be eligible for severance benefits described in Section III of this Agreement, PROVIDED each of the following requirements is met:

- A. The termination of employment is involuntary.
- B. The termination is not due to retirement, death or disability of the Executive.
- C. The termination of employment is not for “Cause” (as defined below). For purposes of the Agreement, “Cause” shall mean the following:
  - 1. Executive’s repeated failure to satisfactorily perform Executive’s job duties;
  - 2. refusal or failure to follow the lawful directions of Executive’s direct supervisor, the Company’s Chief Executive Officer or Board, as applicable;
  - 3. conviction of, or plea of guilty or *nolo contendere* to a crime involving moral turpitude; or
  - 4. engaging in acts or omissions constituting gross negligence, recklessness or willful misconduct on the part of the Executive with respect to her obligations or otherwise relating to the business of the Company, its affiliates or customers.
- D. The Executive is not a temporary employee or a new hire who has not yet started to work on a regular, full-time or part-time basis (as appropriate).

The Executive must be provided a period of at least thirty (30) days following receipt of written notice outlining with specificity all acts or omissions that the Company alleges give rise to a termination for cause pursuant to Section II, C.1 or C.2 immediately above, during which period she may effect a cure of any curable actions or omissions forming the basis for the termination for cause. The Board, will, in its sole discretion, apply the definitions of “Cause” herein to determine if a termination of employment is for “Cause.”

E. The Executive is not covered under any other severance-type plan, policy, arrangement or agreement that provides severance payments and benefits more favorable in the aggregate to those provided herein. If any such plan, policy, arrangement or agreement exists, the Executive will receive payments and benefits pursuant to that plan, policy, arrangement or agreement and shall not receive any of the severance payments and benefits described herein. In no case will the Executive receive severance payments and benefits under any other such severance-type plan, policy, arrangement or agreement and this Agreement.

F. In the event that the Executive is party to a "Change in Control" Agreement with Company that also provides for severance benefits, in the event of a "Change in Control" (as defined therein) the Executive shall not receive benefits under this Agreement, but instead shall receive only the severance benefits provided under such "Change in Control" Agreement (i.e., there shall be no "double-dipping" and only the "Change in Control" Agreement shall apply in such an event).

G. The Executive has not agreed in writing to waive severance benefits under this Agreement or otherwise payable from the Company.

H. The Executive (or, in the event of the executive's death or incapacity, the Executive's executor, representative or guardian, as applicable) signs and does not revoke a separation agreement and general release of all claims in such form as the Company may from time-to-time reasonably require ("Separation Agreement").

I. The Executive has returned all Company property and equipment that was assigned to, or taken general control of by, her during her tenure with the Company.

If terminated, the Executive must satisfy all of the requirements set forth above in order to receive severance benefits under this Agreement. Eligibility for severance benefits under this Agreement will be determined by the Company upon the Executive's termination of employment. The Company has full power and authority to interpret the provisions of this Agreement and render decisions on eligibility for benefits. If the Company determines that the Executive satisfies all of the eligibility conditions described above, the Executive will receive severance benefits calculated in accordance with Section III below. The severance benefits will be paid following the Executive's termination of employment in accordance with the terms set forth below and in the respective Separation Agreement.

### III. SEVERANCE BENEFITS

A. Severance Pay and Benefits. The following severance pay and benefits are payable under this Agreement:

1. Severance Pay. The severance pay provided to the Executive if involuntarily terminated under the terms of this Agreement consists of an amount equal to one times (1x) her regular annual base salary.

The amount of severance pay to the Executive shall be based upon the Executive's regular annual base salary in effect immediately before the Executive's termination of

employment, determined without regard to any overtime, bonuses, fringe benefits, reimbursements or other irregular payments. The Executive's general release of all claims referred to in Section II.H. must be effective no later than the sixtieth (60<sup>th</sup>) day following the Executive's termination of employment in order for the Executive to receive any severance pay or benefits under the Agreement. Severance pay will be paid in a single cash lump-sum on the sixtieth (60<sup>th</sup>) day following the Executive's termination of employment (or as soon as administratively practicable after such sixtieth (60<sup>th</sup>) day).

2. Benefits Continuation. Upon an involuntary termination of employment pursuant to which the Executive is entitled to severance pay under Section III.A.1., subject to the Executive's timely election of continuation coverage under the Consolidated Budget Omnibus Reconciliation Act of 1985, as amended ("COBRA"), the Company will pay the premiums for the Executive for a period of eighteen (18) months based on the level of coverage in effect as of the date of the Executive's termination. Notwithstanding the foregoing, in the event that the Executive becomes eligible to receive substantially similar or improved medical, dental or vision benefits from a subsequent employer (whether or not the Executive accepts such benefits), the Company's obligations under this Section III.A.2. shall immediately cease. The Executive will notify the Company of her eligibility for such benefits from a subsequent employer within thirty (30) days of such eligibility.

In the event that the Company's making payments under this Section III.A.2 would violate nondiscrimination rules or result in the imposition of penalties under the Patient Protection and Affordable Care Act of 2010 ("PPACA") and related regulations and guidance promulgated thereunder, the parties agree to reform this Section III.A.2. in such manner as is necessary to comply with tax laws and the PPACA, as applicable.

3. Equity Awards. Upon an involuntary termination of employment pursuant to which the Executive is entitled to severance pay under Section III.A.1., any vested stock option awards held by Executive at the time of her termination will remain exercisable by the Executive for the greater of (i) 90 days following the effective date of the Executive's termination and (ii) the remaining term of such option award, and all other Company equity awards held by Executive that remain unvested upon the effective date of her termination will be forfeited for no consideration.

#### IV. OTHER PROVISIONS

A. No Separate Fund. All severance benefits payable under this Agreement are payable from the Company's general assets. There is no separate trust or fund established for the payment of severance benefits under this Agreement. All amounts payable hereunder shall be less all appropriate deductions, including federal, state and local withholding taxes.

B. Section 409A.

1. It is the intent of the parties that the payments and benefits provided hereunder are exempt from Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"), and should be interpreted and construed in such a manner.

2. "Termination of employment", "resignation", "separation from service", or correlative phrases or terms, as used in this Agreement means, for purposes of any payments under this Agreement that are payments of deferred compensation, has the same meaning as "separation from service" as defined in Section 409A.

3. If a payment obligation under this Agreement arises on account of the Executive's separation from service while the Executive is a "specified employee" (as defined under Section 409A and determined in good faith by the Board), any payment of "deferred compensation" (as defined under Treasury Regulation Section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation Sections 1.409A-1(b)(3) through (b)(12)) that is scheduled to be paid within six (6) months after such separation from service shall accrue with interest and shall be paid within 15 days after the end of the six-month period beginning on the date of such separation from service or, if earlier, within 15 days after the appointment of the personal representative or executor of the Executive's estate following her death.

4. Each payment and benefit payable under this Agreement, and each other benefit required to be aggregated with the payment and benefits under this Agreement pursuant to Section 409A, is hereby designated as a separate payment, as provided in Treasury Regulation section 1.409A-2(b)(2)(iii), and will not collectively be treated as a single payment.

C. Amendment or Waiver. No provisions of this Agreement may be amended, modified, waived or discharged unless Executive and the Company agree to such amendment, modification, waiver or discharge in writing.

D. Entire Agreement. This Agreement represents the entire agreement between Executive and the Company with respect to the matters set forth herein and supersedes and replaces any prior agreements in their entirety. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter of this Agreement will be made by either party which are not set forth expressly herein. No future agreement between Executive and the Company may supersede this Agreement, unless it is in writing and specifically makes reference to this Section IV.D.

E. Executive's Successors. This Agreement shall inure to the benefit of and be enforceable by Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If Executive dies while any amounts are still payable hereunder, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to Executive's devisee, legatee, or other designee or, if there be no such designees, to Executive's estate.

F. Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

G. Counterparts; Electronic Signatures. This Agreement may be executed (including via electronic signature) in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

**IN WITNESS WHEREOF**, this Agreement is executed effective as of the date set forth above.

Alphatec Holdings, Inc.  
Alphatec Spine, Inc.

By: /S/ Craig E. Hunsaker

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Craig E. Hunsaker  
Executive Vice President, People &  
Culture

ACCEPTED AND AGREED TO AS  
OF THE DATE FIRST SET FORTH  
ABOVE:

/S/ Kelli Howell

---

Kelli Howell

**ALPHATEC SEVERANCE AGREEMENT****I. INTRODUCTION**

This Severance Agreement (the “*Agreement*”) is entered into as of September 17, 2018 (the “*Commencement Date*”), by and between Alphatec Spine, Inc., a subsidiary of Alphatec Holdings, Inc. (“*AHI*”) (collectively, “*Alphatec*” or the “*Company*”) and Mark Ojeda (the “*Executive*”) to provide severance benefits to the Executive in the event his employment is terminated involuntarily under certain circumstances. All benefit determinations under this Severance Agreement and any interpretation of provisions in this Severance Agreement will be made by the Board of Directors of AHI (the “*Board*”) or its designee in its sole discretion. The Agreement is described in further detail below.

**II. ELIGIBILITY**

In the event Executive is terminated involuntarily he will be eligible for severance benefits described in Section III of this Agreement, PROVIDED each of the following requirements is met:

- A. The termination of employment is involuntary.
- B. The termination is not due to retirement, death or disability of the Executive.
- C. The termination of employment is not for “Cause” (as defined below). For purposes of the Agreement, “Cause” shall mean the following:
  - 1. Executive’s repeated failure to satisfactorily perform Executive’s job duties;
  - 2. refusal or failure to follow the lawful directions of Executive's direct supervisor, the Company's Chief Executive Officer or Board, as applicable;
  - 3. conviction of, or plea of guilty or *nolo contendere* to a crime involving moral turpitude; or
  - 4. engaging in acts or omissions constituting gross negligence, recklessness or willful misconduct on the part of the Executive with respect to his obligations or otherwise relating to the business of the Company, its affiliates or customers.

The Executive must be provided a period of at least thirty (30) days following receipt of written notice outlining with specificity all acts or omissions that the Company alleges give rise to a termination for cause pursuant to Section II, C. 1 or C.2 immediately above, during which period he may effect a cure of any curable actions or omissions forming the basis for the termination for cause. The Board, will, in its sole discretion, apply the definitions of “Cause” herein to determine if a termination of employment is for “Cause.”

- D. The Executive is not a temporary employee or a new hire who has not yet started to work on a regular, full-time or part-time basis (as appropriate).
-

E. The Executive is not covered under any other severance-type plan, policy, arrangement or agreement that provides severance payments and benefits more favorable in the aggregate to those provided herein. If any such plan, policy, arrangement or agreement exists, the Executive will receive payments and benefits pursuant to that plan, policy, arrangement or agreement and shall not receive any of the severance payments and benefits described herein. In no case will the Executive receive severance payments and benefits under any other such severance-type plan, policy, arrangement or agreement and this Agreement.

F. In the event that the Executive is party to a "Change in Control" Agreement with Company that also provides for severance benefits, in the event of a "Change in Control" (as defined therein) the Executive shall not receive benefits under this Agreement, but instead shall receive only the severance benefits provided under such "Change in Control" Agreement (i.e., there shall be no "double-dipping" and only the "Change in Control" Agreement shall apply in such an event).

G. The Executive has not agreed in writing to waive severance benefits under this Agreement or otherwise payable from the Company.

H. The Executive (or, in the event of the executive's death or incapacity, the Executive's executor, representative or guardian, as applicable) signs and does not revoke a separation agreement and general release of all claims in such form as the Company may from time-to-time reasonably require ("Separation Agreement").

I. The Executive has returned all Company property and equipment that was assigned to, or taken general control of by, him during his tenure with the Company.

If terminated, the Executive must satisfy all of the requirements set forth above in order to receive severance benefits under this Agreement. Eligibility for severance benefits under this Agreement will be determined by the Company upon the Executive's termination of employment. The Company has full power and authority to interpret the provisions of this Agreement and render decisions on eligibility for benefits. If the Company determines that the Executive satisfies all of the eligibility conditions described above, the Executive will receive severance benefits calculated in accordance with Section III below. The severance benefits will be paid following the Executive's termination of employment in accordance with the terms set forth below and in the respective Separation Agreement.

### III. SEVERANCE BENEFITS

A. Severance Pay and Benefits. The following severance pay and benefits are payable under this Agreement:

1. Severance Pay. The severance pay provided to the Executive if involuntarily terminated under the terms of this Agreement consists of an amount equal to one times (1x) his regular annual base salary.

The amount of severance pay to the Executive shall be based upon the Executive's regular annual base salary in effect immediately before the Executive's termination of employment, determined without regard to any overtime, bonuses, fringe benefits, reimbursements or other irregular payments. The Executive's general release of all claims referred to in Section II.H. must be effective no later than the sixtieth (60<sup>th</sup>) day following the Executive's termination of employment in order for the Executive to receive any severance pay or benefits under the Agreement. Severance pay will be paid in a single cash lump-sum on the sixtieth (60<sup>th</sup>) day following the Executive's termination of employment (or as soon as administratively practicable after such sixtieth (60<sup>th</sup>) day).

2. Benefits Continuation. Upon an involuntary termination of employment pursuant to which the Executive is entitled to severance pay under Section III.A.1., subject to the Executive's timely election of continuation coverage under the Consolidated Budget Omnibus Reconciliation Act of 1985, as amended ("*COBRA*"), the Company will pay the premiums for the Executive for a period of eighteen (18) months based on the level of coverage in effect as of the date of the Executive's termination. Notwithstanding the foregoing, in the event that the Executive becomes eligible to receive substantially similar or improved medical, dental or vision benefits from a subsequent employer (whether or not the Executive accepts such benefits), the Company's obligations under this Section III.A.2. shall immediately cease. The Executive will notify the Company of his eligibility for such benefits from a subsequent employer within thirty (30) days of such eligibility.

In the event that the Company's making payments under this Section III.A.2 would violate nondiscrimination rules or result in the imposition of penalties under the Patient Protection and Affordable Care Act of 2010 ("*PPACA*") and related regulations and guidance promulgated thereunder, the parties agree to reform this Section III.A.2. in such manner as is necessary to comply with tax laws and the PPACA, as applicable.

3. Equity Awards. Upon an involuntary termination of employment pursuant to which the Executive is entitled to severance pay under Section III.A.1., any vested stock option awards held by Executive at the time of his termination will remain exercisable by the Executive for the greater of (i) 90 days following the effective date of the Executive's termination and (ii) the remaining term of such option award, and all other Company equity awards held by Executive that remain unvested upon the effective date of his termination will be forfeited for no consideration.

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A. No Separate Fund. All severance benefits payable under this Agreement are payable from the Company's general assets. There is no separate trust or fund established for the payment of severance benefits under this Agreement. All amounts payable hereunder shall be less all appropriate deductions, including federal, state and local withholding taxes.

B. Section 409A.

1. It is the intent of the parties that the payments and benefits provided hereunder are exempt from Section 409A of the Internal Revenue Code of 1986, as amended (“Section 409A”), and should be interpreted and construed in such a manner.

2. “Termination of employment”, “resignation”, “separation from service”, correlative phrases or terms, as used in this Agreement means, for purposes of any payments under this Agreement that are payments of deferred compensation, has the same meaning as “separation from service” as defined in Section 409A.

3. If a payment obligation under this Agreement arises on account of the Executive’s separation from service while the Executive is a “specified employee” (as defined under Section 409A and determined in good faith by the Board), any payment of “deferred compensation” (as defined under Treasury Regulation Section 1.409A-1 (b)(1), after giving effect to the exemptions in Treasury Regulation Sections 1.409A-1(b)(3) through (b)(12)) that is scheduled to be paid within six (6) months after such separation from service shall accrue with interest and shall be paid within 15 days after the end of the six-month period beginning on the date of such separation from service or, if earlier, within 15 days after the appointment of the personal representative or executor of the Executive’s estate following his death.

4. Each payment and benefit payable under this Agreement, and each other benefit required to be aggregated with the payment and benefits under this Agreement pursuant to Section 409A, is hereby designated as a separate payment, as provided in Treasury Regulation section 1.409A-2(b)(2)(iii), and will not collectively be treated as a single payment.

C. Amendment or Waiver. No provisions of this Agreement may be amended, modified, waived or discharged unless Executive and the Company agree to such amendment, modification, waiver or discharge in writing.

D. Entire Agreement. This Agreement represents the entire agreement between Executive and the Company with respect to the matters set forth herein and supersedes and replaces any prior agreements in their entirety. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter of this Agreement will be made by either party which are not set forth expressly herein. No future agreement between Executive and the Company may supersede this Agreement, unless it is in writing and specifically makes reference to this Section IV.D.

E. Executive’s Successors. This Agreement shall inure to the benefit of and be enforceable by Executive’s personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If Executive dies while any amounts are still payable hereunder, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to Executive’s devisee, legatee, or other designee or, if there be no such designees, to Executive’s estate.

F. Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

G. Counterparts; Electronic Signatures. This Agreement may be executed (including via electronic signature) in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

**IN WITNESS WHEREOF**, this Agreement is executed effective as of the date set forth above.

Alphatec Holdings, Inc.  
Alphatec Spine, Inc.

By: /s/ Craig E. Hunsaker  
Craig E. Hunsaker  
Executive Vice President, People &  
Culture

ACCEPTED AND AGREED TO AS  
OF THE DATE FIRST SET FORTH  
ABOVE:

/s/ Mark Ojeda  
Mark Ojeda

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Patrick S. Miles, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q 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/ Patrick S. Miles

Patrick S. Miles  
Chairman and Chief Executive Officer  
(principal executive officer)  
May 11, 2020

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Jeffrey G. Black, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q 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/ Jeffrey G. Black  
Jeffrey G. Black  
Chief Financial Officer  
(principal financial and accounting officer)  
May 11, 2020

**CERTIFICATION UNDER  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Alphatec Holdings, Inc. (the "Company") on Form 10-Q for the quarterly period ended March 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Patrick S. Miles, Chairman 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: May 11, 2020

/s/ Patrick S. Miles

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Patrick S. Miles  
Chairman and Chief Executive Officer  
(principal executive officer of the Company)

In connection with the Quarterly Report of Alphatec Holdings, Inc. (the "Company") on Form 10-Q for the quarterly period ended March 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jeffrey G. Black, 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: May 11, 2020

/s/ Jeffrey G. Black

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Jeffrey G. Black  
Chief Financial Officer  
(principal financial and accounting officer of the Company)