

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549
FORM 10-K**

(Mark One)

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

For the fiscal year ended December 31, 2015
or

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

For the transition period from to

COMMISSION FILE NO. 001-36905

SeaSpine Holdings Corporation
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE
(STATE OR OTHER JURISDICTION OF
INCORPORATION OR ORGANIZATION)

47-3251758
(I.R.S. EMPLOYER
IDENTIFICATION NO.)

5770 Armada Drive, Carlsbad, California
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

92008
(ZIP CODE)

REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE: (760) 727-8399

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:

<u>Title of Each Class</u>	<u>Name of Exchange on Which Registered</u>
Common Stock, Par Value \$.01 Per Share	The Nasdaq Stock Market LLC

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:

NONE

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

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act. Yes

No

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

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

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

As of July 2, 2015, the aggregate market value of the registrant’s common stock held by non-affiliates was approximately \$9,069,768 based upon the closing sales price of the registrant’s common stock on The Nasdaq Global Market on such date. The number of shares of the registrant’s Common Stock, \$0.01 par value, outstanding as of February 29, 2016 was 11,101,777.

DOCUMENTS INCORPORATED BY REFERENCE:

Certain portions of the registrant’s definitive proxy statement relating to its scheduled June 7, 2016 Annual Meeting of Stockholders are incorporated by reference in Part III of this report.

**SEASPINE HOLDINGS CORPORATION
INDEX**

	Page Number
<u>PART I</u>	
Item 1. Business	4
Item 1A. Risk Factors	16
Item 1B. Unresolved Staff Comments	37
Item 2. Properties	37
Item 3. Legal Proceedings	37
Item 4. Mine Safety Disclosures	37
<u>PART II</u>	
Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	37
Item 6. Selected Financial Data	38
Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations	39
Item 7A. Quantitative and Qualitative Disclosures About Market Risk	53
Item 8. Financial Statements and Supplementary Data	54
Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosures	54
Item 9A. Controls and Procedures	54
Item 9B. Other Information	55
<u>PART III</u>	
Item 10. Directors, Executive Officers and Corporate Governance	55
Item 11. Executive Compensation	55
Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	55
Item 13. Certain Relationships, Related Transactions, and Director Independence	55
Item 14. Principal Accountant Fees and Services	55
<u>PART IV</u>	
Item 15. Exhibits and Financial Statements Schedules	55
<u>SIGNATURES</u>	59

PART I

ITEM 1. BUSINESS

Overview

SeaSpine Holdings Corporation (“SeaSpine” or “Company”) is a global medical technology company focused on the design, development and commercialization of surgical solutions for the treatment of patients suffering from spinal disorders. We have a comprehensive portfolio of orthobiologics and spinal fusion hardware solutions to meet the varying combinations of products that neurosurgeons and orthopedic spine surgeons need to perform fusion procedures in the lumbar, thoracic and cervical spine. Our orthobiologics products consist of a broad range of advanced and traditional bone graft substitutes that are designed to improve bone fusion rates following a wide range of orthopedic surgeries, including spine, hip, and extremities procedures. We manufacture most of our orthobiologics products at our Irvine, California manufacturing facility. Our spinal fusion hardware portfolio consists of an extensive line of products to facilitate spinal fusion in minimally invasive surgery (“MIS”), complex spine, deformity and degenerative procedures. We believe this broad combined portfolio of orthobiologics and spinal fusion hardware products is essential to meet the “complete solution” requirements of neurosurgeons and orthopedic spine surgeons.

Mission

We believe spine surgery patients should benefit from the most advanced scientific knowledge and technology available. The SeaSpine team is dedicated to improving the lives of spine patients, collaborating with surgeons and developing advanced and effective spinal surgery technologies. Our team collaborates closely with leading spine surgeons, global distributors and other partners on the cutting edge of spinal solutions. From research and development, to product design and engineering, to commercialization and distribution - SeaSpine’s product portfolio is dedicated to assist in restoring mobility and quality of life to patients.

Our Products

Our comprehensive offering of orthobiologics and spinal fusion hardware products has evolved to meet the surgical needs for our customers. Bone grafts and bone graft substitutes are frequently used to promote the bone healing process in orthopedic surgical procedures where a bone void or defect has been created. Our hardware products such as metal plates, rods and screws, and metal, polyetheretherketone (“PEEK”), PEEK NanoMetalene coated or machined allograft bone spacers, are used to restore and stabilize the bone structure, and our orthobiologics products can be used to support the fusion of bone. Most often autograft, the patient’s own bone, is not adequate for the complete bone healing process, so bone graft substitutes are used to either replace or supplement and extend the autograft. Bone healing requires three components-osteogenic cells which build new bone, an osteoinductive signal, which stimulates the cells to build bone, and an osteoconductive scaffold, or conductive matrix, over which the cells can migrate. Our broad orthobiologics portfolio employs these principles to provide osteoinductive and/or osteoconductive properties to support the patient’s own cells in the formation of new bone. We believe our expertise in both orthobiologic sciences and spinal fusion hardware product development allows us to offer our surgeon customers a differentiated portfolio and a “complete solution” to meet their fusion requirements.

Our orthobiologics products include a variety of bone graft substitutes including demineralized bone matrices (“DBM”) and collagen ceramic matrices that have a balance of osteoinductive and osteoconductive properties. Demineralized bone matrices consist of human cadaver (allograft) bone that has been processed to remove the mineral content but preserve the protein content and osteoinductive properties of the bone. Our most advanced bone graft substitute solution, marketed as Accell Evo3® and OsteoSurge® 300, is our third-generation demineralized bone matrix product. Utilizing our proprietary Accell technology, this optimized formulation also incorporates a standard particulate DBM in a unique biocompatible carrier designed to provide better handling and containment characteristics as compared to competitive demineralized bone matrix products. Accell Bone Matrix is an open structured, dispersed form of DBM, which provides accessibility to bone proteins without the need to be broken down after implantation in the patient. Standard particulate DBM is dense and requires more time to break down. Until these dense particles break down, access to natural bone proteins is limited. As a result, the combination of these two forms of DBM creates a favorable environment for the formation of bone over time. In addition, the carrier allows Accell Evo3 to meet the needs of challenging surgical applications where robust handling is essential. The material is considered to be a reverse-phase carrier, which means at room temperature, it is less viscous and thereby more moldable, while at body temperature after implantation, it becomes more viscous, thereby resisting irrigation and minimizing graft migration. We also offer first- and second-generation demineralized bone matrix products which also include some of the technologies in our most advanced formulation. Additional demineralized bone matrix product configurations include products designed specifically for use in spine fusion procedures. Our collagen ceramic matrix product, marketed as Isotis Mozaik™ and OsteoStrux, is an engineered collagen framework with ceramic components that together provide a scaffold for bone cell migration. The ceramic components provide mineral content to foster bone formation

[Table of Contents](#)

during the healing process. This product is offered in strip, putty and moldable morsel configurations to meet the varying needs and preferences of our surgeon customers. We also offer allograft cancellous bone in sponge, chips and crushed preparations, as well as synthetic beta-tricalcium phosphate synthetic bone void fillers.

Spinal fusion utilizes the body's own bone growth processes to fuse two or more spinal vertebrae. Spinal fusion consists of a variety of different approaches or techniques and is used to treat a range of spinal conditions. Our spinal fusion hardware portfolio includes a broad offering of products to facilitate spinal fusion in MIS, complex spine, deformity and degenerative procedures. We offer MIS products consisting of multiblade adjustable retractors, tube retractors and mini-open and percutaneous solutions. We also offer rods, screws and instrumentation for posterior lumbar fusion and a broad range of PEEK and titanium coated PEEK anterior, posterior and lateral approach interbody devices, including an expandable interbody system intended for one or two adjacent levels.

Our complex spine and deformity products are used to treat multilevel conditions, including traumatic injury, tumors and abnormal curvatures of the spine. These product offerings include our Vu Mesh™ system which features a system of cages, spacers and endplates in a modular design that provide surgeons with intraoperative flexibility for their most challenging cases such as the surgical removal of a vertebral body. Our Malibu™ pedicle screw system is used in complex spine cases where its specialty screws can be leveraged to extend and capture the rod, and its specialty trauma screws can be used to help realign the vertebrae before fusing. Our Daytona® Deformity System addresses complex deformity cases by utilizing extended tab uniplanar and polyaxial screws with multiple rod options and intuitive instrumentation to create a versatile system adaptable to surgeon preference.

Our extensive line of products for degenerative cases includes devices for cervical and thoracolumbar procedures, and primarily consists of screw and plating systems and interbody devices that are typically used in open procedures. Degenerative disease refers to a variety of conditions including the degeneration of one or more of the cartilaginous discs located between the vertebral bones of the spine. Our Hollywood™, Ventura™ and Cambria NanoMetalene® Interbody Devices offer the combined benefits of a PEEK device with an innovative titanium coating. These devices are composed of PEEK-OPTIMA®, an engineered thermoplastic polymer, which has undergone a proprietary process that creates a titanium coating around the entire implant. We believe that this coating process has significant advantages over other existing material processes as it allows for the surface benefits of titanium, which is believed by scientists to encourage bone growth and cell migration, without compromising the mechanical and imaging benefits of PEEK-OPTIMA. The ultrathin NanoMetalene coating does not impair postoperative imaging, allowing surgeons to view the operative area and determine the extent of fusion of the vertebral bodies. Our cervical portfolio consists of a complete line of anterior cervical screw and plating systems, a full range of anterior cervical interbody devices and posterior cervical rod, screw and hook systems.

We currently market and sell our products in the United States and in over 30 countries worldwide. Our U.S. sales organization consists of regional business managers who oversee direct orthobiologics sales specialists and a broad network of independent orthobiologics and spine sales agents that receive commissions from us for sales that they generate. Our international sales organization is composed of a sales management team that oversees a network of independent orthobiologics and spine stocking distributors that purchase our products directly from us and independently sell them. International sales represented approximately 10%, 10% and 12% of our total revenue for the year ended December 31, 2015, 2014 and 2013, respectively.

Our History

SeaSpine was incorporated in Delaware on February 12, 2015 in connection with the spin-off of Integra LifeSciences Holdings Corporation's (Integra) spinal fusion hardware and orthobiologics business from Integra's diversified medical technology business on July 1, 2015. Our corporate offices are located at 5770 Amada Drive, Carlsbad, California.

We operate three facilities: our headquarters in Carlsbad, California, from which our orthobiologics and spinal fusion hardware products are designed, developed, and marketed; our Vista, California site from which our spinal fusion hardware products are procured, inspected, kitted and distributed; and our orthobiologics manufacturing facility in Irvine, California from which virtually all of our orthobiologics products are designed, developed, manufactured and distributed. We distribute our orthobiologics and spinal fusion hardware products in certain international markets through third-party logistics provider facilities in Belgium and the Netherlands.

Industry Overview

The bone graft substitutes market consists of surgical procedures in which a bone graft substitute made from donated human bone tissue or a synthetic material is implanted in the patient to augment or stimulate bone growth to aid healing. According to iData, this market was estimated at \$0.9 billion in 2014 in the United States and will grow at a compound annual growth rate of 3.4% through 2021. According to the same source, spinal fusion procedures are where bone graft substitutes are most commonly

[Table of Contents](#)

used, representing approximately 45% of the market, and are expected to grow faster than the other major uses with a compound annual growth rate of 4.2% through 2021. Demineralized bone matrix grafts are the largest component of the bone graft substitutes market representing approximately 43% of the overall bone graft substitute market or approximately \$0.4 billion in 2014. iData estimates our share of the bone graft substitutes and demineralized bone matrices markets in the United States in 2014 to be 8.6% and 12.3%, respectively, which place us as fourth and third in market position in these markets, respectively. Orthopedic stem cell and cell therapy as well as orthopedic growth factor represent additional segments in the orthobiologics market. Products in these segments are typically used in the same surgical procedures as traditional bone graft substitutes and iData estimates these segments, collectively, at approximately \$0.7 billion in 2014.

According to iData, the spinal fusion procedure market consists of products for cervical fixation, thoracolumbar fixation and interbody devices. The market for these products was \$4.4 billion in 2014 in the United States and is expected to grow at a compound annual growth rate of 0.7% through 2021. The fastest growing sub segment of this market, according to iData, is the \$1.6 billion interbody device market, which will grow at a compound annual growth rate of 2.9% through 2021.

Spine Anatomy

The spine is a column of bone and cartilage that consists of 33 interlocking bones, called vertebrae, which stack upon each other at a slight angle to form the spine’s S-shaped curve. With the exception of the bottom nine vertebrae, the vertebrae are separated by thin regions of cartilage known as intervertebral discs, which act as shock absorbers that facilitate motion and absorb stress during movement. The spine protects the spinal cord and acts as the core of the human skeleton, extending from the pelvis to the base of skull. Soft tissues, including ligaments, tendons and muscles are attached to the vertebrae and provide stability to the vertebral segment. The spine encloses and protects the spinal cord which carries nerves that exit through openings between the vertebrae and deliver sensation and control to the body.

Lateral View of Spine



The spine consists of five regions, of which the cervical, thoracic and lumbar are the three primary regions. The cervical region consists of the seven vertebrae extending from the base of the skull to the shoulders. The thoracic, or central, region of the spine consists of the next twelve vertebrae in the middle of the back. Each vertebra in the thoracic region is connected to two ribs that protect the body’s vital organs. Below the thoracic region, the lumbar region consists of five vertebrae in the lower back and is the primary load-bearing region of the spine. The thoracic and lumbar regions are commonly referred to as thoracolumbar and many of the products and procedures to treat these regions are similar. The final two regions of the spine, the sacrum and coccyx, consist of nine naturally fused vertebrae connected to the hip bones to provide support for the spine.

In spinal fusion procedures, two or more of the vertebrae in the spine are fused together to eliminate instability as a result of deformity, degeneration or trauma affecting the vertebrae and intervertebral discs. During the surgical procedure, hardware products are used to stabilize the spine and the surgeon will often remove the damaged intervertebral disc and place a bone graft substitute product in its place to allow new bone to grow and bridge the affected vertebrae together. In addition to the bone graft substitute, the surgeon may replace the disc which was removed with an interbody device (“IBD”). An IBD may be made out of machined bone or PEEK polymer and is designed to maintain spine alignment and appropriate spacing while allowing bone to grow between the vertebrae to achieve bone fusion. Procedures that include the implantation of IBDs are often referred to by the surgical approach used to place the IBD in the disc space. A Posterior Lateral Interbody Fusion (“PLIF”) uses a direct posterior approach from the patient’s back, a Transforaminal Lumbar Interbody Fusion (“TLIF”) uses an angled approach from either the left or right side of the back, and an Anterior Lumbar Interbody Fusion (“ALIF”) uses a direct anterior approach from the patient’s front (stomach) area.

Our Competitive Strengths

We provide a broad portfolio of advanced and traditional orthobiologics and spinal fusion hardware solutions to assist our surgeon customers in treating patients suffering from spinal and other orthopedic disorders. Our executive management team has extensive experience in the spine and medical technology industries. We believe that our focused and experienced management team, combined with the following competitive strengths will enable us to grow our revenue and increase our presence in the markets that we serve.

- ***An extensive, scaled and differentiated offering of orthobiologics products.*** We offer a broad range of orthobiologics products consisting of advanced and traditional bone graft substitutes that enables us to fulfill a greater portion of the orthobiologics needs of neurosurgeons and orthopedic spine surgeons than our competitors who focus primarily on offering spinal fusion hardware products. Despite our relatively small size, we are a significant participant in the U.S. market for these products, with an estimated 8.6% share in 2014 of the U.S. bone graft substitutes market, representing the fourth-largest position, according to iData. We believe that our orthobiologics portfolio offers differentiated products. For example, our third-generation demineralized bone matrix is formulated using our proprietary Accell technology and is designed to provide both immediate and sustained availability of the natural array of osteoinductive bone proteins. It also provides flexibility in handling as a result of its carrier which is more moldable at room temperature and more viscous at body temperature after implantation, resisting irrigation and minimizing graft migration. Demand for this product and our other demineralized bone products has garnered us a 12.3% market share in demineralized bone matrix products in the United States in 2014, which is the third-largest position in the U.S. market, according to iData.
- ***A range of innovative, titanium coated PEEK interbody devices.*** Our NanoMetalene technology is an ultra-thin layer of commercially pure titanium molecularly bonded to a PEEK implant that is applied in a proprietary high-energy, low-temperature surface process and encompasses the entire implant, including the center graft aperture. We believe that our NanoMetalene technology offers advantages over existing materials as it allows for the surface benefits of titanium, which is believed by scientists to encourage bone growth and cell migration, while maintaining the mechanical and imaging benefits of PEEK, which has a modulus of elasticity similar to bone and a radiolucency for postoperative imaging, allowing surgeons to view the operative area and determine the extent of fusion of the vertebral bodies. We currently offer the NanoMetalene technology in our Ventura and Hollywood NanoMetalene interbody devices for lumbar fusion and our Cambria NanoMetalene interbody device for cervical fusion. We have received U.S. Food and Drug Administration (FDA) 510(k) clearance for a number of other NanoMetalene coated PEEK interbody devices in our current portfolio and we expect to launch these additional products in 2016 and beyond.
- ***A synergistic channel strategy for orthobiologics products.*** We maintain a dual branding strategy that allows us to market orthobiologics into territories in which we do not maintain independent spine sales agents who currently sell our hardware products. We achieve this result by marketing these products under an alternative brand through independent orthobiologics sales agents, many of whom carry competitive spinal fusion hardware products, or products for other orthopedic procedures, such as those used in large joint reconstruction. For example, we market our third-generation demineralized bone matrix product as both Accell Evo3 and OsteoSurge300 to allow differentiation between independent sales agents who sell our spinal fusion hardware, and those that sell our orthobiologics products alongside other orthopedic hardware. We believe this dual branding strategy allows us to penetrate a greater number of customer accounts than we would otherwise serve if we marketed a single line of orthobiologics brands.
- ***Our own orthobiologics design, development and manufacturing operations.*** While many of our spine competitors source their orthobiologics products from original equipment manufacturers to supplement their spinal fusion hardware portfolio, we design, develop and manufacture the vast majority of our orthobiologics products at our facility in Irvine, California. By controlling our own manufacturing processes, we believe we should be able to control the cost of our products more tightly and provide operational leverage with volume increases.

Our Strategy

Our goal is to continue to scale our business in order to enhance our market position in orthobiologics and become a leader in the spinal fusion hardware market. To achieve our goals, we are investing in the following strategies:

- ***Research and development to bring new products and techniques to market.*** We have recently increased, and intend to continue to increase our annual research and development spending as a percentage of revenue in order to drive higher revenue growth through new product sales. We plan to invest significant resources to expand our product portfolio and develop next-generation products for our existing core product lines. In order to achieve this goal, we intend to collaborate with our surgeon customers to innovate, design and develop new orthobiologics and spinal fusion hardware products. We plan to make further investments in our infrastructure by hiring additional dedicated orthobiologics engineers and

scientists with expertise in material sciences and biology and hardware engineers with expertise in product design and development. By promoting a corporate culture of accountability, innovation and responsiveness to our customer needs, we plan to expedite our product launch process and bring a greater number of new products to market in the next few years than we have in recent years.

- **Commercial infrastructure to further penetrate the U.S. orthobiologics and spinal fusion hardware markets and increase our focus in international markets where we currently have a presence.** We have recently increased, and intend to continue to increase the size and geographic breadth of our sales management team and network of independent sales agents in the United States. To support these efforts, we aim to develop comprehensive marketing support and physician training programs to communicate the strengths of our product platforms. We plan to expand the current schedule of hands-on cadaveric laboratory training opportunities for physicians and sales agents at our Carlsbad, California facility. In addition, we plan to increase our presence within teaching institutions that provide spinal surgery fellowship programs to educate new surgeons on the use of our products. These programs will aid surgeons in becoming comfortable with our spinal fusion hardware products and techniques. Internationally, we intend to focus our sales and marketing efforts on expanding our presence in those markets where we currently have relationships with stocking distributors.
- **Clinical affairs programs to generate data on product efficacy.** We plan to invest in additional clinical development programs to generate peer-reviewed clinical data that we believe will validate the efficacy of select orthobiologics and spinal fusion hardware solutions over competing technologies. Specifically, we believe that our third-generation demineralized bone matrix technology has benefits over other commercially available advanced bone graft substitutes in the stimulation of bone formation and bone fusion. Additionally, we plan to initiate studies to generate data on the unique surface characteristics of titanium and the mechanical properties and radiolucency of PEEK-OPTIMA as are incorporated together in a single device using our NanoMetalene technology. We believe this technology has significant advantages over existing implant materials.
- **Opportunities to enhance our product offering through strategic alliances and acquisitions.** We currently market several products under distribution agreements and licenses with third-party companies. We intend to continue to pursue alliances that will provide us with technologies to strengthen our market position. Our current business is the result of the acquisition of several companies, and we plan to continue to evaluate product alliances and acquisition opportunities as they arise to help grow our business.

Our Products

We offer a broad portfolio of orthobiologics and spinal fusion hardware products for the treatment of patients suffering from spinal and other orthopedic disorders. The tables below group our core products into key categories and provide a summary of each technology's features.

Orthobiologics

Our orthobiologics portfolio is used in orthopedic and dental procedures, and consists of a broad range of traditional and advanced bone graft substitutes intended to address key elements of bone regeneration, which are osteoinduction, osteoconduction and osteogenesis. Osteoinduction refers to the ability of an implant to stimulate bone forming cells based primarily on soluble growth factor signals. Osteoconduction refers to the ability of an implant to promote bone formation based primarily on a physical matrix or scaffold, when placed adjacent to viable bone tissue. Osteogenesis refers to the ability to promote new bone formation based primarily on the cells contained within the bone graft. Bone graft substitutes composed of natural biologic proteins and synthetic materials are designed to reduce the amount of autologous bone grafts needed for spinal fusion procedures. Bone graft substitutes, depending on their design, can be used entirely in place of the patient's own bone tissue, referred to as an autograft, or by extending the volume of bone graft material from the patient by combining it with the bone graft substitute. Our products include demineralized bone matrices, collagen ceramic matrices, demineralized cancellous allograft bone and synthetic bone void fillers. We offer these products in the form of putties, pastes and strips for a range of surgical applications.

Demineralized Bone Matrix Technology

Demineralized bone matrix formulations are designed to provide proteins and other growth factors at varying stages of the bone healing process. Developed in the early 1990s, our first-generation demineralized bone matrix formulations combined particulate-demineralized bone matrix with an inert carrier engineered for easy graft handling and graft containment. The inert carrier is a highly biocompatible synthetic polymer, known as a reverse-phase medium, and has a unique property which allows the product to remain moldable at room temperature, but becomes more viscous at body temperature once implanted. In 2002, we developed a proprietary process to transform particulate-based demineralized bone matrix into a dispersed form in order to enhance the performance of the graft material. The result of this process was our second-generation demineralized bone matrix, which we refer to as Accell Bone Matrix. Accell Bone Matrix is an open structured, dispersed form of DBM, which provides accessibility

[Table of Contents](#)

to bone proteins without the need to be broken down following implantation in the surgical site. Standard particulate DBM is dense and requires more time to break down. Until these dense particles break down, access to natural bone proteins is limited. Our third-generation and most advanced demineralized bone matrix solution, marketed as Accell Evo3 and OsteoSurge 300, provides an optimized formulation of Accell Bone Matrix, particulate-based demineralized bone matrix, and our reverse-phase medium carrier. Our third-generation products have an advanced handling property for bone grafting procedures and contain three times the amount of the Accell Bone Matrix compared to our second-generation technology.

Accell Technology

Our proprietary Accell technology combines our patented highly dispersed Accell Bone Matrix with a standard particulate-based demineralized bone matrix. Using a process of demineralization during manufacturing, mineral is carefully removed from the underlying organic structure, leaving behind a framework of densely packed type-1 collagen and the natural array of osteoinductive bone proteins, including bone morphogenetic proteins (“BMPs”), such as BMP-2, BMP-7 and BMP-4, and Transforming Growth Factor Beta 1. While the demineralization process allows access to the osteoinductive bone proteins, this standard particulate-form of demineralized bone matrix structure requires the body to break down the dense collagen structure in order to gain access to osteoinductive bone proteins. By contrast, during the Accell Bone Matrix production process, normal particulate-based demineralized bone matrix is converted into Accell Bone Matrix by carefully disrupting and dispersing the dense particles. This process yields a matrix with increased surface area providing for more rapid availability of the natural array of osteoinductive bone proteins. We believe that providing both the early-stage and late-stage accessibility of osteoinductive bone proteins provided by a composite of Accell Bone Matrix and the particulate-based demineralized matrix makes our product unique compared to competitive demineralized bone matrix products. The Pure Strip is a pre-shaped demineralized bone implant with an open matrix allowing bone ingrowth and providing exposure to a range of growth factors and BMPs. When hydrated, the implants can be contoured to the defect site.

Collagen Ceramic Matrix Technologies

Our collagen ceramic matrix technology leverages our long history of experience in regenerative technology and collagen engineering. Our leading products in this category are currently marketed as IsoTis Mozaik and OsteoStrux and are specifically engineered to provide a porous scaffold architecture and osteoconductivity. These products also support osteogenesis, as they are indicated for use with bone marrow aspirate, which contains osteogenic cells. They are composed of highly purified beta-tricalcium phosphate granules, which provide mineral content to foster bone formation during the healing process in a framework of type-1 collagen that provides a scaffold for bone cell migration. These products are engineered with a resorption profile consistent with the rate of natural bone formation.

Other Bone Graft Substitutes

Our other bone graft substitutes products consist of allograft cancellous bone scaffolds and synthetic bone void fillers.

Spinal Fusion Hardware

Our spinal fusion hardware portfolio consists of an extensive line of products for spinal fusion in MIS, complex spine, deformity and degenerative procedures throughout the lumbar, thoracic and cervical regions of the spine.

Minimally Invasive Surgery

Our MIS products enable a surgeon to perform a procedure less invasively than traditional open surgery, which may result in reduced postoperative pain, faster rates of healing and fewer procedure complications by minimizing incision size and tissue dissection. Our surgeon customers utilize our iPassage™ MIS Retractors and NewPort™ Tube Retractors to perform MIS fusions and decompression procedures, a surgical technique used to alleviate pain caused from compression on the spinal cord or the nerves that emanate from it. During the procedure, the surgeon makes a small incision and inserts the retractor through the skin and soft tissues down to the spinal column, creating a tunnel to the spine. The retractor is kept in place to hold the muscles open throughout the procedure. Through this tunnel, the surgeon accesses the spine, using small instruments inserts any implants necessary for fusion, such as the screws and rods of our Coral® MIS and NewPort MIS solutions. The Coral MIS product offers a mini-open muscle splitting rod delivery option for surgeons new to MIS procedures. The NewPort MIS product features extended tabs for a small incision profile and two rod delivery options for both mini-open and percutaneous approaches. Our MIS portfolio also includes interbody devices and screw systems that facilitate access to the treatment area while providing minimal anatomical disruption. These include our expandable interbody device, which is designed to minimize the amount of implant insertion force needed and an endoscopy system, which includes a complete set of decompression instruments.

Complex Spine and Deformity

[Table of Contents](#)

Our spinal fusion hardware products are used in complex spine and deformity procedures involving multiple spine segments, challenging anatomy, tumors, traumatic injury and revision of previous fusion surgeries. Our complex fusion hardware portfolio allows surgeons to combine various product lines and approaches, offering several treatment options for the most difficult cases. We define deformity as any variation in the natural curvature of the spine, the most common of which is scoliosis, an abnormal lateral curvature of the spine. Our deformity platform consists of several technologies to address the needs of our deformity surgeons and the various derotation techniques that they use to correct the curvature of the spine. For example, our Daytona Deformity System addresses complex deformity cases by utilizing extended tab uniplanar and polyaxial screws with multiple rod options and intuitive instrumentation to create a versatile system adaptable to surgeon preference. Our systems are provided in multiple configurations and materials to address patient requirements, including stainless steel, titanium alloy and cobalt chrome alloy rod options, as well as 5.5 millimeter and 6.35 millimeter rod diameters. The ability to offer products with varying rod diameter and materials provides the surgeon different rod stiffness to treat individual patients. We offer both implant- and instrument-based reduction capabilities with our extended tab and locking cap products as well as our uniplanar and D-planar screws and rapid sequential reduction towers.

Degenerative

Our degenerative products include systems that are typically used in open procedures. Open procedures are still the most common surgical approach and involve a midline incision followed by retraction of the skin and soft tissues. We offer an extensive portfolio of degenerative products that are designed for use in both thoracolumbar and cervical spine cases.

Our Hollywood and Ventura NanoMetalene Interbody Device for TLIF procedures fuse the anterior column of the spine through a posterior approach that starts off to one side of the patient's back and our Cambria NanoMetalene Interbody Device fuses the cervical spine through an anterior approach. These devices are composed of PEEK-OPTIMA® polymer, which has undergone a proprietary process that creates a titanium coating around the entire implant. We believe that this coating process has significant advantages over existing materials as it allows for the surface benefits of titanium, which is believed by scientists to encourage bone growth and cell migration, without compromising the mechanical and imaging benefits of PEEK-OPTIMA. In addition, the ultrathin NanoMetalene coating does not impair postoperative imaging, allowing surgeons to view the operative area and determine the extent of fusion of the vertebral bodies. We will continue to introduce new products for thoracolumbar and cervical applications that incorporate this unique NanoMetalene coating technology.

Thoracolumbar

We offer a comprehensive portfolio of products for the thoracic and lumbar regions of the spine, consisting of rods, screws and instrumentation for posterior lumbar fusion and a broad range of anterior, posterior and lateral interbody devices ("IBDs"), including stand-alone, zero-profile and low-profile systems and traditional PEEK-OPTIMA and innovative NanoMetalene-coated devices. Our Malibu and Coral screw and plating systems are our core products used for treating degenerative thoracolumbar spine cases. Both the Malibu and Coral screw and plating systems offer a full range of screw sizes, rod materials and lengths and unique locking caps, which minimize cross-threading and fully capture the rod.

Cervical

We offer a range of devices to treat disorders in the cervical region of the spine. Our degenerative cervical portfolio includes a full range of interbody devices including stand-alone, zero-profile systems, integrated plate interbody devices and traditional PEEK-OPTIMA and innovative NanoMetalene-coated interbody systems. In addition, we offer a variety of screw and plating systems.

Product Pipeline

We are committed to supplementing our portfolio of orthobiologics and spinal fusion hardware products through continuous innovation and bringing next-generation products to the market. We have more than ten products currently in our development pipeline, with a focus on MIS, complex spine, deformity and degenerative procedures, including advanced coating technology, as well as extensions of our orthobiologics products offering to further differentiate this portfolio from those of our competitors.

We are in the process of launching our MIS Facet Screw, a comprehensive system with a variable washer for more bone contact and a locking screwdriver to enhance stability as well as our MIS Spinous Process Clamp, a low profile, small footprint plating system. We are also launching our Smart TLIF device, a sterile packed TLIF cage prefilled with a synthetic graft material (outside the United States only).

[Table of Contents](#)

Over the next 24 months, we plan to continue to build our portfolio and expect to launch a greater number of new products than we did in the past 24 months. Some of the products in our development pipeline include a next generation pedicle screw platform, a consolidated cervical stand-alone system, and our NewPort complex MIS extension. We also plan to add our NanoMetalene coating technology to more of our commercialized PEEK-OPTIMA IBD products including our ALIF and lateral systems as well as hyperlordotic cages, highly angled IBDs, which are used to ensure appropriate spine curvature.

Research and Development

We have an established research and development organization dedicated to advancing our portfolio of orthobiologics and spinal fusion hardware products. Our clinical and regulatory personnel work in parallel with our product engineering personnel to facilitate regulatory clearances of our orthobiologics and spinal fusion hardware products. These teams work in close collaboration with our surgeon customers to design technologies that will aid us in increasing our competitive advantage in the United States and international markets. We have recently invested in, and intend to continue to invest in, additional resources to increase our product development efforts by expanding the size of our current orthobiologics and spinal fusion hardware product development and clinical affairs teams and by integrating both teams together in our new Carlsbad facility to better collaborate to serve the design needs of our surgeon customers and develop market ready next-generation products.

We plan to create new, innovative orthobiologics technologies that will continue to reduce the amount of autologous bone graft needed for spinal fusion procedures by extending the volume of harvested material or replacing the need for such harvesting altogether. Therefore, we are dedicated to developing technologies that have the appropriate balance of osteoinductive, osteoconductive and osteogenic properties. Our orthobiologics research and development team has extensive experience in biomaterial sciences and bringing next generation technologies to market. In addition, we collaborate with surgeons and key opinion leaders to evaluate and design new products to ensure greater acceptance of our products.

We are also committed to developing new spinal fusion hardware products that leverage our innovative NanoMetalene technology and provide next generation solutions for our existing products or extend the range of solutions that we provide. One of our primary focuses in developing new spinal fusion hardware products is to further build out our complex spine and deformity procedures platform. One particular area of effort is developing products for pediatric populations including indications in small stature pediatric deformity as well as technologies that support growth. Our organization is also committed to providing products, such as hyperlordotic cages and additional expandable technology solutions, to achieve appropriate curvature of the spine and that can improve sagittal balance, correcting the patient's spinal alignment so that their head and shoulders are above their hips so that the patient does not lean forward. We also plan to continue to develop next generation technologies that meet global demand, particularly with respect to cost and delivery methods in a manner which supports a scalable commercial model.

Our product development efforts employ an integrated team approach that involves collaboration between surgeons, our highly skilled engineers, our machinists, as well as our regulatory personnel. Our product development team, in consultation with designing surgeons, formulates a design for the product and then our machinists build prototypes for testing in our prototyping development and testing operation at our Vista, California facility. We utilize a broad scope of technologies to allow us to meet the complex engineering related to customer requirements. As part of the development process, spine surgeons test the implantation of the products in our in-house cadaveric laboratory to ensure that all new products meet the needs of both surgeon and patient. Our team refines or redesigns the prototype as necessary based on the results of the product testing, allowing us to perform rapid iterations of the design-prototype-test development cycle. We believe that these product development efforts allow us to provide solutions that respond to the needs of neurosurgeons and orthopedic spine surgeons and their patients.

In 2016, we began the process of moving our cadaveric training laboratory and our prototyping development and testing operation from our Vista, California facility and our orthobiologics product development laboratory from our Irvine, California facility into our new Carlsbad facility. We believe that this investment will provide for better collaboration between our orthobiologics and spinal fusion hardware product development teams and further our mission to provide surgeons with the most advanced and effective spinal surgery technologies to improve the quality of patients' lives. We expect to complete these moves into our Carlsbad facility in the second quarter of 2016.

Global Spine Community Involvement

As a key part of our strategy we continuously educate and collaborate with surgeons globally to develop and market our technologies, as well as maintain active involvement in the global spine surgeon community. We believe surgeon education on the most effective use of our products is critical to our ability to help our customers realize the value potential of our products. We provide remote and on-site cadaver training throughout the year for surgeons. Our Vista, California facility has a cadaveric laboratory which enables us to conduct hands-on training to communicate the safe and most effective use of our products.

In addition to surgeon education, we solicit feedback from surgeons throughout the product development process and during post market evaluation. We also work with healthcare professionals in the area of clinical research in order to support the necessary requirements for product clearances and registrations. Surgeons also actively support the training of sales agents and other salesforce personnel on end-user functionality of our products.

Sales and Distribution

We currently market and sell our products in the United States and in over 30 countries worldwide. Our U.S. sales organization consists of regional business managers who oversee direct orthobiologics sales specialists and a broad network of independent orthobiologics and spine sales agents. Our international sales organization is composed of a sales management team that oversees a network of independent orthobiologics and spine stocking distributors.

In the United States, we typically consign our orthobiologics products and consign or loan our spinal fusion hardware sets to hospitals and independent sales agents, who in turn deliver them to the hospital for a single surgical procedure or leave them with hospitals that are high volume users for use in multiple procedures. The spinal fusion hardware sets typically contain the instruments, including disposables, and spinal implants required to complete a surgery. Our sales are generated by building and maintaining relationships with the neurosurgeons and orthopedic spine surgeons who use our products in surgeries or from the hospitals that order our products directly. In international markets, we predominantly sell complete instrument and implant sets to our independent spine stocking distributors, who consign or loan these sets to surgeons. Our international sales organization is composed of a sales management team that oversees a network of independent orthobiologics and spine stocking distributors in over 30 countries that purchase our products directly from us and independently sell them. We maintain sales and marketing personnel in Switzerland and France to manage and support our stocking distributors in Europe and use third-party distribution facilities in Belgium and The Netherlands to support international distribution efforts.

We recently increased the size of our spinal fusion hardware sales management team and independent sales agents in 2015 and we anticipate adding additional independent sales agents in the United States in 2016. We also plan to invest in additional instrument sets and marketing and education efforts to support this expansion. Internationally, we intend to focus our sales and marketing efforts on expanding our presence in those markets where we currently have relationships with stocking distributors. We believe the expansion of our U.S. sales efforts will provide us with significant opportunity for future growth as we continue to penetrate existing and new markets.

Suppliers and Raw Materials

In general, raw materials essential to our businesses are readily available from multiple sources. For reasons of quality assurance, availability or cost effectiveness, certain components and raw materials are available only from sole suppliers. Our relationships with such suppliers that could not be replaced without a material expense or delay are governed by written contracts which are generally supply agreements. These agreements set forth the process by which we order components or raw materials, as applicable, from such suppliers (which process is either on a purchase order basis or based on quarterly or annual forecasts and in some cases require us to purchase minimum amounts) and the related fees for purchasing such components or raw materials. These agreements have terms from one to five years, but in most instances are terminable by us (and in limited instances the other party) for convenience, subject to a specified notice period, and are also terminable upon mutual agreement by the parties, by either party upon material breach by the other and by either party in the event the other party enters bankruptcy. These agreements also outline the rights of each party with respect to quality assurance, inspection and compliance with applicable law and contain what we believe to be customary indemnification provisions for commercial agreements. Each of these agreements is entered into in the ordinary course of our business, immaterial in amount and significance and not a contract upon which our business is substantially dependent. In addition, our policy is to maintain sufficient inventory of components and raw materials so that our production will not be significantly disrupted even if a particular component or material is not available for a period of time.

Most of our biomaterial products contain material derived from human or bovine tissue. We take great care to provide products that are safe and free of agents that can cause disease. Only donated tissue from FDA-registered and AATB accredited tissue banks is qualified to source for our raw materials. The donors are rigorously screened, tested and processed by the tissue banks in accordance with FDA and AATB requirements. Additionally, each donor must pass all of the FDA-specified bacterial and viral testing before the raw material is distributed to us for further processing. We receive with each donor lot a certification of the safety of the raw material from the tissue bank's medical director. As an added assurance of safety, each lot of bone is released into the manufacturing process only after our staff of quality assurance microbiologists screen the incoming bone and serology test records. During our manufacturing process, the bone particles are subjected to our proprietary process and terminally sterilized. We have demonstrated through our testing that this type of rigorous processing supports the safety and effectiveness of our demineralized bone material products.

[Table of Contents](#)

The collagen used in our collagen ceramic matrix products is derived only from the deep flexor tendon of cattle less than 24 months old from the United States or New Zealand. The World Health Organization classifies different types of cattle tissue for relative risk of BSE transmission. Deep flexor tendon is in the lowest-risk category for BSE transmission (the same category as milk, for example) and is therefore considered to have a negligible risk of containing the agent that causes BSE (an improperly folded protein known as a prion).

Intellectual Property

We seek patent and trademark protection for our key technology, products and product improvements, both in the United States and in selected foreign countries. When determined appropriate, we plan to continue to enforce and defend our patent and trademark rights. In general, however, we do not rely solely on our patent and trademark estate to provide us with any significant competitive advantages as it relates to our existing product lines. We also rely upon trade secrets and continuing technological innovations to develop and maintain our competitive position. In an effort to protect our trade secrets, we have a policy of requiring our employees, consultants and advisors to execute proprietary information and invention assignment agreements upon commencement of employment or consulting relationships with us. These agreements also provide that all confidential information developed or made known to the individual during the course of their relationship with us must be kept confidential, except in specified circumstances.

IsoTis OrthoBiologics, Inc., one of our subsidiaries, owns a group of patents (6 U.S. patents and 9 foreign patents) related to reverse phase medium and the Accell process and materials. This patent group protects the Accell family of demineralized bone matrix products. The patents in this group will expire over a period of time from 2017 to 2023.

SeaSpine has licensed three U.S. patents related to certain of our pedicle screw systems from Dr. Thomas T. Haider. The license agreement, as amended, will expire when the last-to-expire licensed patent expires unless terminated earlier. The licensed patents will all expire in December, 2016. The license agreement may be terminated by either party upon any material breach by the other party, with such termination effective sixty days after giving written notice to the breaching party unless cured by the breaching party within such sixty day period. The products covered under these license agreements constitute approximately 10% of SeaSpine's total revenue.

Our material registered and unregistered trademarks include: Accell[®], Evo3[®], Accell Evo3[®], Accell Evo3[®]C, DynaGraft[®] II, IsoTis[®], IsoTis OrthoBiologics[®], OrthoBlast[®] II, Atoll[™], Capistrano[™], Coral[®], Daytona[®], Hollywood[™], Malibu[™], NanoMetalene[®], NewPort[™], Vu aPOD[™]/Vu aPOD[™] Prime, OsteoSurge[®] 100 (or 300), SeaSpine[®], Sierra[™] and Sonoma[™].

Competition

We participate in the highly competitive global orthobiologics and spine markets. We face significant competition in both of these markets from the spine divisions of large multinational medical device companies as well as smaller, emerging spine players focused on product innovation. These competitors are focused on bringing new technologies to market and acquiring technologies and technology licenses that directly compete with our products or have potential product advantages that could render our products obsolete or noncompetitive.

Our primary competitors in the combined orthobiologics and spinal fusion hardware markets include Alphatec, XTANT Medical, Baxter, Biomet, DePuy Synthes Spine (a Johnson & Johnson company) Globus Medical, Medtronic, NuVasive, K2M, LDR, Orthofix, RTI Surgical, Stryker and Zimmer and several smaller, biologically focused companies.

We anticipate that our currently marketed products and any future products will be subject to intense competition. Many of our current competitors have significantly greater financial, manufacturing and marketing resources than we do, which could make the ability to scale our business challenging. As a result, these competitors have more tenured relationships with distribution channels and we anticipate they will continue to dedicate significant resources to marketing and distributing their products. Our ability to compete will depend on our ability to launch innovative new products, garner strong relationships with surgeons, partner with key opinion leaders and demonstrate superior clinical outcomes. Because of the size of the spine market, we expect that companies will continue to dedicate significant resources to developing and commercializing competing products.

Regulation

We are a manufacturer and marketer of medical devices and a tissue bank, and therefore are subject to extensive regulation by the FDA and the Center for Medicare Services of the U.S. Department of Health and Human Services and other federal governmental agencies and, in some jurisdictions, by state and foreign governmental authorities. These regulations govern the introduction of new medical devices, the observance of certain standards with respect to the design, manufacture, testing, labeling (such as issuing a final rule in 2013 for a UDI for virtually all medical devices), promotion and sales of the devices, the maintenance

of certain records, the ability to track devices, the reporting of potential product defects, the import and export of devices, and other matters.

The regulatory process of obtaining product approvals and clearances can be onerous and costly. The FDA requires, as a condition to marketing a medical device in the United States that we secure a Premarket Notification clearance pursuant to Section 510(k) of the FDCA or an approved PMA application (or PMA supplement). Obtaining these approvals and clearances can take up to several years and may involve preclinical studies and clinical trials. The FDA may also require a post-approval clinical trial as a condition of approval.

To perform clinical trials for significant risk devices in the United States on an unapproved product, we are required to obtain an Investigational Device Exemption from the FDA. The FDA may also require a filing for FDA approval prior to marketing products that are modifications of existing products or new indications for existing products. Moreover, after clearance/approval is given, if the product is shown to be hazardous or defective, the FDA and foreign regulatory agencies have the power to withdraw the clearance or require us to change the device, its manufacturing process or its labeling, to supply additional proof of its safety and effectiveness or to recall, repair, replace or refund the cost of the medical device.

The FDA Safety and Innovation Act of 2012 (the “FDASIA”), which includes the Medical Device User Fee Amendments of 2012, as well as other medical device provisions, went into effect October 1, 2012. This includes performance goals and user fees paid to the FDA by medical device companies when they register and list with the FDA and when they submit an application to market a device in the United States. The FDASIA also imposes some additional requirements regarding FDA Establishment Registration and Listing of Medical Devices. All U.S. and foreign manufacturers must have a FDA Establishment Registration and complete Medical Device listings for sales in the United States.

SeaSpine manufactures medical devices derived from human tissue (demineralized bone tissue). The FDA has specific regulations governing HCT/Ps. An HCT/P is a product containing, or consisting of, human cells or tissue intended for transplantation into a human patient. Examples include bone, ligament, skin and cornea. Some HCT/Ps fall within the definition of a biological product, medical device or drug regulated under the FDCA. These biologic, device or drug HCT/Ps must comply both with the requirements exclusively applicable to HCT/Ps and, in addition, with requirements applicable to biologics, devices or drugs, including premarket clearance or approval from the FDA.

Section 361 of the Public Health Service Act, authorizes the FDA to issue regulations to prevent the introduction, transmission or spread of communicable disease. HCT/Ps regulated as 361 HCT/Ps are subject to requirements relating to registering facilities and listing products with the FDA, screening and testing for tissue donor eligibility, Good Tissue Practice when processing, storing, labeling, and distributing HCT/Ps, including required labeling information, stringent record keeping, and adverse event reporting.

The AATB has issued operating standards for tissue banking. Accreditation is voluntary, but compliance with these standards is a requirement in order to become an AATB-accredited tissue establishment. In addition, some states have their own tissue banking regulations. We are licensed or have permits for tissue banking in California, Florida, New York, Maryland, and other states that require specific licensing or registration.

National Organ Transplant Act. Procurement of certain human organs and tissue for transplantation is subject to the restrictions of the NOTA, which prohibits the transfer of certain human organs, including skin and related tissue for valuable consideration, but permits the reasonable payment associated with the removal, transportation, implantation, processing, preservation, quality control and storage of human tissue and skin. We reimburse tissue banks for their expenses associated with the recovery, storage and transportation of donated human tissue that they provide to us for processing. We include in our pricing structure amounts paid to tissue banks to reimburse them for their expenses associated with the recovery and transportation of the tissue, in addition to certain costs associated with processing, preservation, quality control and storage of the tissue, marketing and medical education expenses, and costs associated with development of tissue processing technologies. NOTA payment allowances may be interpreted to limit the amount of costs and expenses that we may recover in our pricing for our products, thereby reducing our future revenue and profitability.

Postmarket Requirements. After a device is cleared or approved for commercial distribution, numerous regulatory requirements apply. These include, but are not limited to, the FDA’s Quality System Regulations which cover the procedures and documentation of the design, testing, production processes, controls, quality assurance, labeling, packaging, storage and shipping of medical devices; the FDA’s general prohibition against promoting products for off-label uses; the Federal Medical Device Reporting regulation, which requires that manufacturers provide information to the FDA whenever there is evidence that reasonably suggests that a device may have caused or contributed to a death or serious injury or that a malfunction occurred which would be likely to cause or contribute to a death or serious injury upon recurrence; and the Reports of Corrections and Removals regulation,

which requires manufacturers to report recalls and field corrective actions to the FDA if initiated to reduce a risk to health posed by the device or to remedy a violation of the FDCA.

We are also required to register with the FDA as a medical device manufacturer. As such, our manufacturing sites are subject to periodic inspection by the FDA for compliance with the FDA's Quality System Regulations. These regulations require that we manufacture our products and maintain our documents in a prescribed manner with respect to design, manufacturing, testing and control activities. Further, we are required to comply with various FDA requirements and other legal requirements for labeling and promotion. If the FDA believes that a company is not in compliance with applicable regulations, it may issue a warning letter, institute proceedings to detain or seize products, issue a recall order, impose operating restrictions, enjoin future violations and assess civil penalties against that company, its officers or its employees and may recommend criminal prosecution to the U.S. Department of Justice (DOJ).

Medical device regulations also are in effect in many of the countries in which we do business outside the United States. These laws range from comprehensive medical device approval and Quality System requirements for some or all of our medical device products to simpler requests for product data or certifications. The number and scope of these requirements are increasing. Under the EU Medical Devices Directive, medical devices must meet the Medical Devices Directive requirements and receive CE Mark Certification prior to marketing in the EU. CE Mark Certification requires a comprehensive Quality System program, comprehensive technical documentation and data on the product, which are then reviewed by a Notified Body. A Notified Body is an organization designated by the national governments of the EU member states to make independent judgments about whether a product complies with the requirements established by each CE marking directive. The Medical Devices Directive, ISO 9000 series and ISO 13485 are recognized international quality standards that are designed to ensure that we develop and manufacture quality medical devices. Other countries are also instituting regulations regarding medical devices. Compliance with these regulations requires extensive documentation and clinical reports for all of our products, revisions to labeling, and other requirements such as facility inspections to comply with the registration requirements. A recognized Notified Body audits our facilities annually to verify our compliance with these standards.

In the EU, our products that contain human-derived tissue, including demineralized bone material, are not medical devices as defined in the Medical Devices Directive (93/42/EC). They are also not medicinal products as defined in Directive 2001/83/EC. Today, regulations, if applicable, are different from one EU member state to the next. Because of the absence of a harmonized regulatory framework and the proposed regulation for advanced therapy medicinal products in the EU, the approval process for human-derived cell or tissue-based medical products may be extensive, lengthy, expensive, and unpredictable.

Certain countries, as well as the EU, have issued regulations that govern products that contain materials derived from animal sources. Regulatory authorities are particularly concerned with materials infected with the agent that causes BSE. These regulations affect our biomaterial products for the spine, which contain material derived from bovine tissue. Although we take great care to provide that our products are safe and free of agents that can cause disease, products that contain materials derived from animals, including our products, may become subject to additional regulation, or even be banned in certain countries, because of concern over the potential for prion transmission. Significant new regulations, a ban of our products, or a movement away from bovine-derived products because of an outbreak of BSE could have a material and adverse effect on our current business or our ability to expand our business. See "Risk Factors-Risks Relating to Our Regulatory Environment-Certain of our products contain materials derived from animal sources and may become subject to additional regulation."

We are subject to laws and regulations pertaining to healthcare fraud and abuse, including anti-kickback laws and physician self-referral laws that regulate the means by which companies in the health care industry may market their products to hospitals and health care professionals and may compete by discounting the prices of their products. The delivery of our products is subject to regulation regarding reimbursement, and federal healthcare laws apply when a customer submits a claim for a product that is reimbursed under a federally funded healthcare program. These rules require that we exercise care in structuring our sales and marketing practices and customer discount arrangements. See "Risk Factors-Risks Relating to Our Regulatory Environment-Oversight of the medical device industry might affect the manner in which we may sell medical devices and compete in the marketplace."

Our international operations subject us to laws regarding sanctioned countries, entities and persons, customs, import-export, laws regarding transactions in foreign countries, the FCPA and local anti-bribery and other laws regarding interactions with healthcare professionals. Among other things, these laws restrict, and in some cases prohibit, United States companies from directly or indirectly selling goods, technology or services to people or entities in certain countries. In addition, these laws require that we exercise care in structuring our sales and marketing practices in foreign countries.

Our research, development and manufacturing processes involve the controlled use of certain hazardous materials. We are subject to country-specific, federal, state and local laws and regulations governing the use, manufacture, storage, handling and

[Table of Contents](#)

disposal of these materials and certain waste products. We believe that our environmental, health and safety (“EHS”) procedures for handling and disposing of these materials comply with the standards prescribed by the controlling laws and regulations. However, risk of accidental releases or injury from these materials is possible. These risks are managed to minimize or eliminate associated business impacts. In the event of this type of accident, we could be held liable for damages that may result, and any liability could exceed our resources. We could be subject to a regulatory shutdown of a facility that could prevent the distribution and sale of products manufactured there for a significant period of time and we could suffer a casualty loss that could require a shutdown of the facility in order to repair it, any of which could have a material and adverse effect on our business. Although we continuously strive to maintain full compliance with respect to all applicable global EHS laws and regulations, we could incur substantial costs to fully comply with future laws and regulations, and our operations, business or assets may be impacted.

In addition to the above regulations, we are and may be subject to regulation under country-specific federal and state laws, including, but not limited to, requirements regarding record keeping, and the maintenance of personal information, including personal health information. As a public company, we are subject to the securities laws and regulations, including the Sarbanes-Oxley Act. We also are subject to other present, and could be subject to possible future, local, state, federal and foreign regulations.

Reimbursement Overview

Healthcare providers that purchase medical devices generally rely on third-party payors, including the Medicare and Medicaid programs and private payors, such as indemnity insurers, employer group health insurance programs and managed care plans, to reimburse all or part of the cost of the products. As a result, demand for our products is and will continue to be dependent in part on the coverage and reimbursement policies of these payors. The manner in which reimbursement is sought and obtained varies based upon the type of payor involved and the setting in which the product is furnished and utilized. Reimbursement from Medicare, Medicaid and other third-party payors may be subject to periodic adjustments as a result of legislative, regulatory and policy changes as well as budgetary pressures. Possible reductions in, or eliminations of, coverage or reimbursement by third-party payors, or denial of, or provision of uneconomical reimbursement for new products, as a result of these changes may affect our customers’ revenue and ability to purchase our products. Any changes in the healthcare regulatory, payment or enforcement landscape relative to our customers’ healthcare services has the potential to significantly affect our operations and revenue.

Employees

As of February 29, 2016 we had approximately 300 employees, 33 of whom were engaged in research and development, 108 in manufacturing, 109 in sales and marketing and 50 in general and administrative activities.

Available Information

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended, (the “Exchange Act”). In accordance with the Exchange Act, we file annual, quarterly and special reports, proxy statements and other information with the Securities and Exchange Commission. We make these reports available free of charge on our website at www.seaspine.com under the investor relations page as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Commission. All such reports were made available in this fashion during 2015.

The public can also obtain any documents that we file with the Commission at www.sec.gov. The public may read and copy any materials that we file with the Commission at the Commission’s Public Reference Room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. The public may obtain information on the operation of the Public Reference Room by calling the Commission at 1-800-SEC-0330.

ITEM 1A. RISK FACTORS

You should carefully consider the risks described below, together with all of the other information included in this Form 10-K, in evaluating the Company and our common stock. If any of the risks described below actually occurs, our business, financial results, financial condition and stock price could be materially and adversely affected.

Risks Relating to our Business

We expect to incur losses for the foreseeable future and cannot assure you that we will be able to generate sufficient sales to achieve or sustain profitability.

We expect to incur losses for the foreseeable future as we dedicate significant resources to our marketing and product development strategy, as well as incur increased general and administrative expenses due to operating as an independent public company following the spin-off. We intend to increase our operating expenses substantially relative to prior periods as we: (i) develop new and next generation products and product line extensions (all of which we refer to as “new products”); (ii) develop new medical techniques designed to enhance the utility of our products; (iii) collect clinical data and conduct clinical studies to differentiate our products from those of our competitors and to demonstrate the value of our products to current and prospective customers and payors; (iv) add independent sales agents and stocking distributors to increase our geographic sales coverage and penetration; (v) increase product inventory to raise the likelihood of success of new product launches; and (vi) expand our marketing campaigns and surgeon education and training programs. We cannot assure you that we will ever generate sufficient revenues from our operations to achieve profitability and, even if we achieve profitability, we cannot assure you that we will remain profitable over time. Our failure to achieve or maintain profitability could negatively affect the value of our securities and our ability to attract and retain personnel, raise capital, execute our business strategy or continue operations.

The industry and market segments in which we operate are highly competitive and, unless we successfully demonstrate to our neurosurgeon and orthopedic spine surgeon customers the merits of our products compared to those of our competitors, we may be unable to compete successfully.

There is intense competition among medical device companies that serve the spinal surgery market. We compete with established medical technology companies, as well as earlier-stage companies that often have differentiated technology and potentially superior solutions for the challenges facing our neurosurgeon and orthopedic spine surgeon customers and their patients. Many of our competitors may have access to greater financial, technical, research and development, marketing, manufacturing, sales, distribution, administrative, consulting and other resources than we do. Our competitors may be more effective at developing products, at differentiating their products from our and other competitor products and at designing, executing, analyzing the results of and publishing data from clinical studies, and they may have more established distribution networks, entrenched relationships with surgeons or greater experience in launching, marketing and selling products than we do. Our primary competitors include Alphatec, Bacterin, Baxter, Biomet, DePuy Synthes Spine (a Johnson & Johnson company), Globus Medical, Medtronic, NuVasive, K2M, LDR, Orthofix, RTI Surgical, Stryker and Zimmer, as well as several smaller, biologically-focused companies.

Our competitive position depends on our ability to achieve market acceptance for our current and future products. Market acceptance for any of our products requires, among other things, that we timely secure regulatory approval; demonstrate the value of our products, both to our surgeon customers and payors, which may require that we collect clinical data and/or conduct clinical studies; effectively educate and train surgeons and their staff on the proper use of our products; obtain and maintain coverage and adequate reimbursement for our products, both within and outside the U.S., including under Medicare and Medicaid and from private payors; attract and retain a network of independent sales agents and stocking distributors focused on neurosurgeons and orthopedic spine surgeons; develop and execute an effective marketing strategy; protect the proprietary positions of our products, including through patent protection; and consistently produce quality products in sufficient quantities to meet demand. There are significant risks associated with each of these activities and other activities required to achieve market acceptance of both our current and future products, some of which are more fully described elsewhere in this “Risk Factors” section.

Neurosurgeons and orthopedic spine surgeons play a significant role in determining the course of treatment and, ultimately, the product used to treat a patient. As a result, our success depends, in large part, on demonstrating to these surgeons the value of our products in the treatment of their patients. To do so requires that we, along with our independent sales agents and stocking distributors, demonstrate the merits of our products and underlying technology compared to those of our competitors. Surgeons who do not use our products may be hesitant to do so for the following or other reasons:

- lack of experience with our products, techniques or technologies;
- existing relationships with those who sell competitive products;
- the time required for surgeon and medical staff education and training on new products, techniques and equipment;
- lack or perceived lack of clinical evidence supporting patient benefit relative to competing products;
- our products not being included on hospital formularies or integrated delivery network or group purchasing organization preferred vendor lists;
- less attractive coverage and/or reimbursement within healthcare payment systems for our products and procedures compared to other products and procedures;
- other costs associated with the introduction of new products and the equipment necessary to use new products; and

- perceived risk of liability that could be associated with the use of new products and techniques.

If we are not successful in convincing surgeons of the merits of our products, or educating and training them and their staff on the proper use of our products, they may not use our products and, as a result, we may be unable to maintain or grow our sales or achieve or sustain profitability.

Changes in third-party payment systems and in the healthcare industry may require us to decrease the selling price for our products, may reduce the size of the market for our products, or may eliminate a market, any of which could have a material and adverse effect on our financial performance.

Our operations may be substantially affected by fundamental changes in the political, economic and regulatory landscape of the healthcare industry. Government and private sector initiatives to limit the growth of healthcare costs are continuing in the U.S., and in many other countries where we do business, causing the marketplace to put increased emphasis on the delivery of more cost-effective treatments. These initiatives include price regulation, competitive pricing, coverage and payment policies, comparative effectiveness of therapies, technology assessments and managed-care arrangements.

Maintaining and growing sales of our products depends on the availability of adequate coverage and reimbursement from third-party payors, both within and outside the U.S., including government programs such as Medicare and Medicaid, private insurance plans and managed care organizations. Hospitals and other healthcare providers that purchase our products generally rely on third-party payors to cover all or part of the costs associated with the procedures performed with our products, including the cost to purchase our product. Both the patients' and our customers' access to adequate coverage and reimbursement for the procedures performed with our products by government and private insurance plans is central to the acceptance of our current and future products. We may be unable to sell our products on a profitable basis, or at all, if third-party payors deny coverage or reduce their levels of payment. In addition, if our cost of production increases at a greater rate than increases in reimbursement levels for our products, our profitability may be adversely affected.

The healthcare industry, both within and outside the U.S., has experienced a trend toward cost containment as government and private insurers seek to control rising healthcare costs by imposing lower payment and negotiating reduced contract rates with service providers. Third-party payors continually review their coverage and reimbursement policies for procedures involving the use of our products and can, without notice, eliminate or reduce coverage or reimbursement for our products. For example, a major national third-party insurer in the U.S. recently reduced coverage (from all or most cases to limited indications) for biomechanical devices (e.g., spine cages) used in cervical fusion procedures, stating that the devices had not been shown to be more effective than bone graft. In addition, certain insurers have limited coverage for vertebral fusions in the lumbar spine and other insurers may adopt similar coverage decisions in the future. Patients covered by these insurers may be unwilling or unable to afford lumbar fusion surgeries to treat their conditions, which could materially harm or limit our ability to sell our products designed for such surgeries. Further, third-party payors of hospital services and hospital outpatient services annually revise their payment methodologies, which could result in stricter standards for or the elimination of reimbursement of hospital charges for certain medical procedures.

To the extent we sell our products internationally, market acceptance may depend, in part, upon the availability of coverage and reimbursement within prevailing healthcare payment systems. Reimbursement and healthcare payment systems in international markets vary significantly by country. As in the U.S., our products may not obtain coverage and reimbursement approvals in a timely manner, if at all, in a particular foreign market. In addition, even if we are able to obtain country-specific coverage and reimbursement approvals, we could incur considerable expense to do so. Our failure to obtain such coverage and approvals would negatively affect market acceptance of our products in the international markets in which such failure occurs and the expenses incurred in connection with obtaining such coverage and approvals could outweigh the benefits of obtaining them.

If the trend by governmental agencies and other third-party payors to reduce coverage of and/or reimbursement for procedures using our products continues, our business, results of operations and financial condition could be materially and adversely affected. Further, we cannot be certain that, under current and future payment systems, the cost of our products will be adequately incorporated into the overall cost of the procedure and, accordingly, we cannot be certain that the procedures performed with our products will be reimbursed at a cost-effective level, or at all.

Industry trends have resulted in increased downward pricing pressure on medical services and products, which may affect our ability to sell our products at prices necessary to support our current business strategy.

The trend toward healthcare cost containment and the growth of managed care organizations is placing increased emphasis on the delivery of more cost-effective medical therapies. For example:

[Table of Contents](#)

- There has been consolidation among healthcare facilities and purchasers of medical devices, particularly in the U.S. One of the results of such consolidation is that group purchasing organizations, integrated delivery networks and large single accounts use their market power to consolidate purchasing decisions, which in turn intensifies competition to provide products and services to healthcare providers and other industry participants, resulting in greater pricing pressures and the exclusion of certain suppliers from important market segments. For example, some group purchasing organizations negotiate pricing for its member hospitals and require us to discount, or limit our ability to raise, prices for certain of our products.
- Surgeons increasingly have moved from independent, out-patient practice settings toward employment by hospitals and other healthcare entities, which align surgeons' product choices with their employers' price sensitivities and adds to pricing pressures. Hospitals have introduced and may continue to introduce new pricing structures into their contracts to contain healthcare costs, including fixed price formulas and capitated and construct pricing.
- Certain hospitals provide financial incentives to doctors for reducing hospital costs (known as gainsharing), rewarding physician efficiency (known as physician profiling) and encouraging partnerships with healthcare service and goods providers to reduce prices.
- Existing and proposed laws, regulations and industry policies, in both domestic and international markets, regulate or seek to increase regulation of sales and marketing practices and the pricing and profitability of companies in the healthcare industry.

More broadly, other provisions of the Affordable Care Act could meaningfully change the way healthcare is developed and delivered in the U.S., and may adversely affect our business and results of operations. For example, the Affordable Care Act encourages hospitals and physicians to work collaboratively through shared savings programs, such as accountable care organizations, as well as other bundled payment initiatives, which may ultimately result in the reduction of medical device purchases and the consolidation of medical device suppliers used by hospitals. There are many programs and requirements for which the details have not yet been fully established or consequences not fully understood, and it is unclear what the full impact of the legislation will be. We cannot predict accurately what healthcare programs and regulations will ultimately be implemented at the U.S. federal or state level, or the effect of any future legislation or regulation in the U.S. or elsewhere. However, any changes that lower reimbursements for our products or reduce medical procedure volumes could have a material and adverse effect on our business, financial condition and results of operations.

Further, the proliferation of medical device distributors that are owned, directly or indirectly, by physicians (commonly referred to as physician-owned distributorships, or PODs) could result in increased pricing pressure on our products or harm our ability to sell our products to physicians who own or are affiliated with these distributors. These physicians derive a proportion of their revenue from selling or arranging for the sale of medical devices for use in procedures they perform on their own patients at hospitals that agree to purchase from or through the POD, or that otherwise furnish ordering physicians with income that is based, directly or indirectly, on those orders of medical devices. The number of PODs in the spine industry may continue to grow as economic pressures increase throughout the industry and as hospitals, insurers and physicians search for ways to reduce costs and, in the case of the physicians, search for ways to increase their incomes. PODs and the physicians who own, or partially own, them have significant market knowledge and access to the surgeons who use our products and the hospitals that purchase our products. Growth in the number of PODs may reduce our ability to compete effectively for business from surgeons who own them, which could have a material and adverse effect on our business, results of operations and financial condition.

In addition, the largest device companies with multiple product franchises have increased their effort to leverage and contract broadly with customers across franchises by providing volume discounts and multi-year arrangements that could prevent our access to these customers or make it difficult (or impossible) to compete on price.

We may be unable to develop new products in a timely and consistent manner, and failure to do so may adversely affect the attractiveness of our overall product portfolio to our surgeon customers and negatively impact our sales and market share.

To be and remain competitive, we need to develop new products on a regular basis and respond to technological advances. Doing so is technologically challenging and involves significant risks and uncertainty. Despite substantial investments of time and resources, our research and development efforts may not result in technically feasible new products. Even if technically feasible, the anticipated time and cost of obtaining regulatory approval and/or commercializing a new product may be too great to justify continued development. Even if we determine to continue development, competitors could develop similar products that are more effective, are less expensive to manufacture, are priced more competitively or are ready for commercial introduction before our products. If we are unable to develop technically and commercially viable products on a consistent basis and before our competitors, our future prospects could be materially and adversely affected.

If we are unable to maintain and expand our network of independent sales agents and stocking distributors, we may not be able to maintain or grow our revenue.

Our ability to generate revenue depends on the sales and marketing efforts of independent sales agents and stocking distributors. Some of our independent sales agents account for a significant portion of our sales volume. If our independent sales agents and stocking distributors fail to adequately promote, market and sell our products, our sales could significantly decrease.

Further, we face significant challenges and risks in managing our geographically dispersed distribution network and retaining the independent sales agents and stocking distributors who make up that network, and as we launch new products and increase our marketing efforts with respect to existing products, we plan to expand the reach of our marketing and sales networks and may need to hire new independent sales agents and stocking distributors. Independent sales agents and stocking distributors require significant technical expertise in various areas-such as spinal care practices, spine injuries and disease and spinal health-and they require training and time to achieve full productivity. Because of the intense competition for their services, we may be unable to attract or retain additional qualified independent sales agents or stocking distributors or be able to enter into agreements with them on favorable or commercially reasonable terms, if at all. Our success will depend largely on our ability to continue to hire, train, retain and motivate qualified independent sales agents and stocking distributors. If we are unable to expand our sales and marketing capabilities domestically and internationally, if we fail to train new independent sales agents and stocking distributors adequately, or if we experience high turnover in our sales network, we may not be able to commercialize our products adequately, or at all, which would adversely affect our business, results of operations and financial condition.

Moreover, our independent sales agents and stocking distributors are not our employees, we have limited control over their activities and, generally, we do not enter into exclusive relationships with them. If one or more of them were to be retained by a competitor, whether on an exclusive or non-exclusive basis, they may divert business from us to our competitor, which could materially and adversely affect our sales.

Sales of, or the price at which we sell, our products may be adversely affected unless the safety and efficacy of our products, alone and relative to competitive products, is demonstrated in clinical studies.

Generally, we have obtained 510(k) clearance to manufacture, market and sell the products we market in the U.S. and the right to affix the CE mark to the products we market in the European Economic Area, or EEA. However, to date, we have not been required to generate new clinical data to support our current 510(k) clearances, CE marks, or product registrations in other countries and, accordingly, we do not have our own clinical data regarding our currently marketed products. Certain of our competitors have clinical data supporting the safety and efficacy of their products, which may place our products at a competitive disadvantage and materially and adversely impact our revenues.

In part due to the increased emphasis on the delivery of more cost-effective treatments, purchasing decisions of our customers increasingly will be based on clinical data that demonstrates the value of our products or the effectiveness of our products relative to others. Conducting clinical studies is expensive and time-consuming and outcomes are uncertain. See “*Risks Relating to Our Regulatory Environment-Clinical studies are expensive and subject to extensive regulation and their results may not support our product candidate claims or may result in the discovery of adverse effects,*” below. We may elect not to, or may be unable to, fund the clinical studies necessary to generate the data required for all of our products to compete effectively, in part due to the breadth of our product portfolio. Currently, we do not expect to undertake such clinical studies for all of our products and will only do so where we anticipate the benefits will outweigh the costs on a risk-adjusted basis. However, even when we elect and are able to fund such clinical studies on one or more of our products, they may not be successful. Data we generate may not be consistent with our existing data and may demonstrate less favorable safety or efficacy, which could reduce demand for our products and negatively impact future sales. Neurosurgeons and orthopedic spine surgeons may be less likely to use our products if more robust, or any, clinical data supporting the safety and efficacy of competing products is available. If we are unable to or unwilling to generate clinical data supporting the safety and efficacy of our products, our business, results of operations and financial condition could be materially and adversely affected.

If any of our manufacturing, development or research facilities are damaged and/or our manufacturing processes are interrupted, we could experience supply disruptions, lost revenues and our business could be seriously harmed.

Damage to our manufacturing, development or research facilities or disruption to our business operations for any reason, including natural disaster (such as earthquake, wildfires and other fires or extreme weather), power loss, communications failure, unauthorized entry or other events, such as a flu or other health epidemic, could cause us to discontinue development and/or manufacturing of some or all of our products for an undetermined period of time. In addition, our facilities would be difficult to replace and would require substantial lead time to repair or replace. The property damage and business interruption insurance coverage on these facilities that we maintain might not cover all losses under such circumstances, and we may not be able to renew

or obtain such insurance in the future on acceptable terms with adequate coverage or at reasonable costs. In particular, we manufacture our orthobiologics products in one facility located in Irvine, California and any damage to that facility could adversely affect our ability to timely satisfy demand for those products. Any significant disruption to our manufacturing operations and to our ability to meet market demand likely would have an adverse impact on our sales and revenues as key stakeholders, including our independent sales agents and stocking distributors and surgeon customers, transition to what they perceive as more reliable sources of products.

We are dependent on a limited number of third-party suppliers for components and raw materials and the loss of any of these suppliers, or their inability to provide us with an adequate supply of materials that meet our quality and other requirements, could harm our business.

Outside suppliers, some of whom are sole-source suppliers, provide us with spine hardware products and raw materials and components used in the manufacture of our orthobiologics and hardware products. We strive to maintain sufficient inventory of spine hardware products, raw materials and components so that our production will not be significantly disrupted if a particular product, raw material or component is not available to us for a period of time. Although we believe there are alternative supply sources, replacing our current suppliers may be impractical or difficult in many instances. For example, we could have difficulty obtaining similar products from other suppliers that are acceptable to the U.S. Food and Drug Administration, or the FDA, or other foreign regulatory authorities. If we are unable to obtain sufficient quantities of spine hardware products, raw materials or components that meet our quality and other requirements on a timely basis for any reason, we may not be able to produce sufficient quantities of our products to meet market demand until a new or alternative supply source is identified and qualified and, as a result, we could lose customers, our reputation could be harmed and our business could suffer. In 2013, we experienced supply shortages in collagen ceramic matrix bone void fillers, which adversely affected sales of our orthobiologics products, even after the supply shortage was resolved.

Further, the FDA Safety and Innovation Act of 2012, or the FDASIA, which includes the Medical Device User Fee Amendments of 2012, as well as other medical device provisions, went into effect October 1, 2012. Under FDASIA, all U.S. and foreign manufacturers must have a FDA Establishment Registration and complete Medical Device listings for sales in the U.S. While our facilities materially comply with these requirements, we also source products from foreign contract manufacturers. It is possible that some of our foreign contract manufacturers will not comply with applicable requirements and choose not to register with the FDA. In such an event, we will need to determine if there are alternative foreign contract manufacturers who comply with the FDA Establishment Registration requirements. If such a foreign contract manufacturer is a sole supplier of one of our products, there is a risk that we may not be able to source another supplier.

Furthermore, an uncorrected defect or supplier's variation in a component or raw material that is incompatible with our manufacturing, unknown to us, could harm our ability to manufacture products.

In addition, we rely on a small number of tissue banks accredited by the American Association of Tissue Banks for the supply of human tissue, a crucial component of our orthobiologics products that serve as bone graft substitutes. We cannot be certain that these tissue banks will be able to fulfill our requirements or that we will be able to successfully negotiate with other accredited tissue facilities on commercially reasonable terms.

We are dependent on information technology and if our information technology fails to operate adequately or fails to properly maintain the integrity of our data, our business could be materially and adversely affected.

We depend significantly on sophisticated information technology, or IT, for our infrastructure and to support business decisions. As a result of technology initiatives and changes in our system platforms due, in part, to our relatively recently becoming an independent public company, we are in the process of consolidating and integrating our systems. Our IT needs require an ongoing commitment of significant resources to maintain, protect and enhance existing systems and develop new systems to keep pace with new technology, evolving regulatory standards, the increasing need to protect patient and customer information and changing customer patterns. Currently, we do not have an IT disaster recovery plan. Any significant breakdown, intrusion, interruption, corruption or destruction of these systems could have a material and adverse effect on our business, financial condition and results of operations.

In addition, although our computer and information systems are protected through physical and software safeguards, they are still vulnerable to system malfunction, computer viruses, and cyber-attacks. These events could lead to the unauthorized access and result in the misappropriation or unauthorized disclosure of confidential information belonging to us or to our employees, partners, customers or suppliers. The techniques used by criminal elements to attack computer systems are sophisticated, change frequently and may originate from less regulated and remote areas of the world. As a result, we may not be able to address these techniques proactively or implement adequate preventative measures. If our IT systems are compromised, due to a data breach or

otherwise, we could be subject to fines, damages, litigation and enforcement actions and we could lose trade secrets or other confidential information, the occurrence of which could harm our business and could have a material and adverse effect on our business, financial condition and results of operations.

We expend substantial resources to comply with laws and regulations relating to public companies, and any failure to maintain compliance could subject us to regulatory scrutiny and cause investors to lose confidence in our company, which could harm our business and have a material adverse effect on our stock price.

Laws and regulations affecting public companies, including provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the Sarbanes-Oxley Act of 2002, or SOX, and the related rules and regulations adopted by the U.S. Securities and Exchange Commission, or SEC, and by the NASDAQ Global Market have resulted in, and will continue to result in, significant costs to us as we evaluate the implications of these rules and respond to their requirements. For example, compliance with Section 404 of SOX, including performing the system and process documentation and evaluation necessary to issue our annual report on the effectiveness of our internal control over financial reporting and, if applicable, obtain the required attestation report from our independent registered public accounting firm, requires us to incur substantial expense and expend significant management time. Further, we (through our former parent company) have in the past discovered, and in the future may discover, areas of internal controls that need improvement. If we identify deficiencies in our internal controls that are deemed to be material weaknesses, we could become subject to scrutiny by regulatory authorities and lose investor confidence in the accuracy and completeness of our financial reports, which could have a material adverse effect on our stock price. Internal control over financial reporting cannot provide absolute assurance of achieving financial reporting objectives because of its inherent limitations, including the possibility of human error and circumvention by collusion or overriding of controls. Accordingly, even an effective internal control system may not prevent or detect material misstatements on a timely basis, or at all. Also, previously effective controls may become inadequate over time as a result of changes in our business or operating structure, and we may fail to take measures to evaluate the adequacy of and update these controls, as necessary, which could lead to a material misstatement.

In addition, new laws and regulations could make it more difficult or more costly for us to obtain certain types of insurance, including director and officer liability insurance, and we may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the coverage that is the same or similar to our current coverage. The impact of these events could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors or board committees, and as our executive officers. We cannot predict or estimate with any reasonable accuracy the total amount or timing of the costs we may incur to comply with these laws and regulations.

Our business could suffer if we lose the services of key members of our senior management or fail to hire and retain other personnel on whom our business relies.

Our ability to execute our business strategy and compete in the highly competitive medical device industry depends, in part, on our ability to attract and retain highly qualified personnel. Companies in the medical device industry in general have experienced a high rate of personnel turnover. Loss of key employees, including any of our scientific, technical and managerial personnel, could adversely affect our ability to successfully execute our current business strategy, which could have a material and adverse effect on our business, results of operations and financial condition. Moreover, replacing key employees may be a difficult, costly and protracted process, and we may not have other personnel with the capacity to assume all of the responsibilities of a departing employee. Competition for qualified personnel, particularly for key positions, is intense among companies in our industry, particularly in the San Diego, California area, and many of the organizations against which we compete for qualified personnel have greater financial and other resources and different risk profiles than our company, which may make them more attractive employers. All of our employees, including our management personnel, may terminate their employment with us at any time without notice. If we cannot attract and retain skilled personnel, as needed, we may not achieve our financial and other goals.

Moreover, future internal growth could impose significant added responsibilities on our management, and we will need to identify, recruit, maintain, motivate and integrate additional employees to manage growth effectively. If we are unable to effectively manage such growth, our expenses may increase more than expected, we may not be able to achieve our goals, and our ability to generate and/or grow revenue could be diminished.

We may have significant product liability exposure and our insurance may not cover all potential claims.

We are exposed to product liability and other claims if our products are alleged to have caused harm. For example, the development of allograft implants and technologies for human tissue repair and treatment may entail particular risk of transmitting diseases to human recipients, and any such transmission could result in the assertion of product liability claims against us. Further, successful product liability claims made against one or more of our competitors could cause claims to be made against us or expose us to a perception that we are vulnerable to similar claims. Product liability claims are expensive to defend, divert our management's

attention and, if we are not successful in defending the claim, can result in substantial damages awarded against us.

In addition, we may not be able to obtain or renew insurance on acceptable terms with adequate coverage or at reasonable cost. Even if we obtain insurance, a claim could exceed the amount of our insurance coverage or it may be excluded from coverage under the terms of the policy. If we do not have adequate insurance coverage, products liability claims could have a material and adverse effect on our ability to successfully market our products and on our financial condition and results of operations.

Even if a product liability claim is not successful or is not fully pursued, the adverse publicity surrounding any assertion that our products caused harm could have a material and adverse effect on our reputation with existing and potential customers and on our business, financial condition and results of operations.

Our strategy could involve growth through acquisitions, which would require us to incur substantial costs and potential liabilities for which we may never realize the anticipated benefits.

We may grow our business through acquisitions, a strategy which ultimately could prove unsuccessful. Any new acquisition could result in material transaction expenses, increased interest and amortization expense, increased depreciation expense, increased operating expense and possible in-process research and development charges for acquisitions that do not meet the definition of a “business,” any of which could have a material and adverse effect on our operating results.

In addition, businesses that we acquire may not have adequate financial, disclosure, regulatory, quality or other compliance controls in place at the time we acquire them, which may create uncertainty regarding the actual condition and financial results of the acquired business and our assumptions regarding synergies and future results. Following any acquisition, we must integrate the new business, which includes incorporating it into our financial, compliance, regulatory and quality systems. Failure to timely and successfully integrate acquired businesses may result in non-compliance with regulatory or other requirements and may result in unexpected costs, including as a result of inadequate cost containment and unrealized economies of scale. In addition, acquisitions involve other risks, including diversion of management resources, risks associated with entering markets in which our marketing and sales personnel may have limited experience and disruption to existing relationships with employees, suppliers, customers and sales agents, both with respect to us and the acquired company. As a result of any of the foregoing, we may not realize the expected benefit from any acquisition. If we cannot integrate acquired businesses, products or technologies, our business, financial conditions and results of operations could be materially and adversely affected.

Furthermore, as a result of acquisitions of other healthcare businesses, we may be subject to the risk of unanticipated business uncertainties, regulatory and other compliance matters or legal liabilities relating to those acquired businesses for which the sellers of the acquired businesses may not indemnify us, for which we may not be able to obtain insurance (or adequate insurance) or for which the indemnification may not be sufficient to cover the ultimate liabilities.

We are exposed to a variety of risks relating to our international sales and operations, including fluctuations in exchange rates, delays in collection of accounts receivable and local economic conditions.

As a result of our international sales and operations, we generate revenues in various foreign currencies including euros, British pounds, Swiss francs and New Zealand dollars, and in U.S. dollar-denominated transactions conducted with customers who generate revenue in currencies other than the U.S. dollar. We also incur operating expenses in euros. We cannot predict accurately the consolidated effects of exchange rate fluctuations upon our future operating results because of the variability of currency exposure in our revenues and operating expenses and the potential volatility of currency exchange rates. Although we address currency risk management through regular operating and financing activities, those actions may not prove to be fully effective.

In addition, for those foreign customers who purchase our products in U.S. dollars, currency exchange rate fluctuations between the U.S. dollar and the currencies in which those customers do business may have a negative effect on the demand for our products in foreign countries where the U.S. dollar has increased in value compared to the local currency.

Converting our earnings from international operations to U.S. dollars for use in the U.S. can also raise challenges, including problems moving funds out of the countries in which the funds were earned and difficulties in collecting accounts receivable in foreign countries where the usual accounts receivable payment cycle is longer.

Local economic conditions, legal, regulatory or political considerations, disruptions from strikes, the effectiveness of our independent stocking distributors, local competition, in-country reimbursement methodologies and changes in local medical practice could also affect our sales in foreign markets.

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

Many of our employees were previously employed at other medical device companies, including our competitors or potential competitors, in some cases immediately prior to joining us. In addition, many of our independent sales agents and stocking distributors sell, or in the past have sold, products of our competitors. See “*If we are unable to maintain and expand our network of independent sales agents and stocking distributors, we may not be able to maintain or grow our revenue,*” and “*Our business could suffer if we lose the services of key members of our senior management or fail to hire and retain other personnel on whom our business relies,*” above. We may be subject to claims that we, our employees or our independent sales agents or stocking distributors have intentionally, inadvertently or otherwise used or disclosed trade secrets or other proprietary information of former employers or competitors. In addition, we have been and may in the future be subject to claims that we caused an employee to breach the terms of his or her non-competition or non-solicitation agreement. Litigation may be necessary to defend against these claims. Litigation is expensive, time-consuming and could divert management attention and resources away from our business. Even if we prevail, the cost of litigation could affect our profitability. If we do not prevail, in addition to any damages we might have to pay, we may lose valuable intellectual property rights or employees, independent sales agents or stocking distributors. There can be no assurance that this type of litigation or the threat thereof will not adversely affect our ability to engage and retain key employees, sales agents or stocking distributors.

We might not be able to engage in desirable strategic transactions and equity issuances because of certain restrictions relating to requirements for tax-free distributions.

Our ability to engage in significant equity transactions could be limited or restricted in order to preserve, for U.S. federal income tax purposes, the tax-free nature of the distribution and related activities associated with our separation from Integra LifeSciences Holdings Corporation, or Integra, our former parent. Even if the distribution and related activities otherwise qualify for tax-free treatment under Section 355 of the Internal Revenue Code of 1986, as amended, or the Code, they may result in corporate-level taxable gain to Integra under Section 355(e) of the Code if there is a 50% or greater change in ownership, by vote or value, of shares of our stock or Integra’s stock occurring as part of a plan or series of related transactions that includes the distribution. Any acquisitions or issuances of our stock or Integra’s stock within two years after the distribution are generally presumed to be part of such a plan, although we or Integra may be able to rebut that presumption.

Under the Tax Matters Agreement we entered into with Integra, we are prohibited from taking or failing to take any action that prevents distribution activities from being tax-free. Further, during the two-year period following the distribution, without obtaining the consent of Integra, a private letter ruling from the Internal Revenue Service or an unqualified opinion of a nationally recognized law firm, we are prohibited from taking certain specified actions that could affect the treatment of the distribution.

These restrictions may limit our ability to pursue strategic transactions or engage in new business or other transactions that may maximize the value of our business. Moreover, the Tax Matters Agreement also provides that we are responsible for any taxes imposed on Integra or any of its affiliates as a result of the failure of the distribution to qualify for favorable treatment under the Code if such failure is attributable to certain actions taken after the distribution by or in respect of us, any of our affiliates or our stockholders.

We are subject to continuing contingent liabilities of Integra.

Even after our separation from Integra, there are several significant areas where Integra’s liabilities may become our obligations. For example, under the Code and the related rules and regulations, each corporation that was a member of the Integra consolidated U.S. federal income tax reporting group during any taxable period or portion of any taxable period ending on or before the effective time of the distribution is jointly and severally liable for the U.S. federal income tax liability of the entire Integra consolidated tax reporting group for that taxable period. In addition, the Tax Matters Agreement allocates the responsibility for prior period taxes of the Integra consolidated tax reporting group between us and Integra. Pursuant to this allocation, we may be responsible for taxes that we would not have otherwise incurred, or that we would have incurred but in different amounts and/or at different times, on a standalone basis outside of the Integra consolidated group, and the amount of such taxes could be significant. If Integra is unable to pay any prior period taxes for which it is responsible, we could be required to pay the entire amount of such taxes.

We have overlapping board membership with Integra, which may lead to conflicting interests, and one of our directors continues to own a substantial amount of Integra common stock and equity awards covering Integra stock.

Several of our board members also serve as board members of Integra. Our directors who are members of Integra’s board

of directors have fiduciary duties to Integra's stockholders, as well as fiduciary duties to our stockholders. In addition, several of our directors own or have rights to acquire Integra common stock (in at least one case, a substantial amount).

As a result of the foregoing, there may be the appearance of a conflict of interest and there is the potential for a conflict of interest with respect to matters involving or affecting both companies, such as when we or Integra consider acquisitions and other corporate opportunities that may be suitable for each company. In addition, potential conflicts of interest could arise in connection with the resolution of any dispute that may arise between Integra and us regarding the terms of the agreements governing our separation from Integra, the Tax Matters Agreement or under other agreements between Integra and us, including with respect to indemnification matters. From time to time, we may enter into transactions with Integra and/or its subsidiaries or other affiliates. There can be no assurance that the terms of any such transactions will be as favorable to us, Integra or any of our or their subsidiaries or affiliates as would be the case were there no overlapping board membership or ownership interest.

Risks Relating to Our Financial Results and Need for Financing

Our sales volumes and our operating results may fluctuate.

Our sales volumes and our operating results, including components of operating results, such as gross margin and cost of goods sold, may fluctuate from time to time, including over the course of a fiscal year, and such fluctuations could affect our stock price. Our operating results have fluctuated in the past and can be expected to fluctuate from time to time in the future. Some of the factors that may cause these fluctuations include:

- economic conditions worldwide, which could affect the ability of hospitals and other customers to purchase our products and could result in a reduction in elective and non-reimbursed operative procedures;
- increased competition;
- market acceptance of our existing products, as well as products in development, and the demand for, and pricing of, our products and the products of our competitors;
- costs, benefits and timing of new product introductions;
- the timing of or failure to obtain regulatory clearances or approvals for new products;
- lost sales and other expenses resulting from stoppages in our or third parties' production, including as a result of product recalls or field corrective actions;
- the availability and cost of components and materials, including raw materials such as human tissue;
- our ability to purchase or manufacture and ship our products efficiently and in sufficient quantities to meet sales demands;
- the timing of our research and development expenditures;
- expenditures for major initiatives;
- reimbursement, changes in reimbursement or denials in coverage for our products by third-party payors, such as Medicare, Medicaid, private and public health insurers and foreign governmental health systems;
- the ability of our independent sales agents and stocking distributors to achieve expected sales targets and for new agents and distributors to become familiar with our products in a timely manner;
- peer-reviewed publications discussing the clinical effectiveness of our products;
- inspections of our manufacturing facilities for compliance with Quality System Regulations (Good Manufacturing Practices), which could result in Form 483 observations, warning letters, injunctions or other adverse findings from the FDA or equivalent foreign regulatory bodies, and corrective actions, procedural changes and other actions, including product recalls, that we determine are necessary or appropriate to address the results of those inspections, any of which may affect production and our ability to supply our customers with our products;
- the costs to comply with new regulations from the FDA or equivalent foreign regulatory bodies, such as the requirements to establish a unique device identification system to adequately identify medical devices through their distribution and use;
- the increased regulatory scrutiny of certain of our products, including products we manufacture for others, which could result in their being removed from the market;
- fluctuations in foreign currency exchange rates; and
- the impact of acquisitions, including the impact of goodwill and intangible asset impairment charges, if future operating results of the acquired businesses are significantly less than the results anticipated at the time of the acquisitions.

In addition, we may experience meaningful variability in our sales and gross profit among quarters, as well as within each quarter, as a result of a number of factors, including but not limited to (and in addition to those listed above):

[Table of Contents](#)

- the number of products sold in the quarter;
- the unpredictability of sales of full sets of spinal implants and instruments to our international stocking distributors; and
- the number of selling days in the quarter.

Our future capital needs are uncertain and we may need to raise additional funds in the future, and such funds may not be available on acceptable terms or at all.

We believe that our cash and the borrowing capacity that we have under the credit facility that we entered into in December 2015 will be sufficient to meet our projected operating requirements over the next 12 months. That said, continued expansion of our business will be expensive, and we may seek additional capital. Our capital requirements will depend on many factors, including, but not limited to:

- the revenue generated by sales of our products;
- the costs associated with expanding our sales and marketing efforts;
- the expenses we incur in procuring, manufacturing and selling our products;
- the scope, rate of progress and cost of our clinical studies;
- the cost of obtaining and maintaining regulatory approval or clearance of our products and products in development;
- the costs associated with complying with state, federal and international laws and regulations;
- the cost of filing and prosecuting patent applications and defending and enforcing our patent and other intellectual property rights;
- the cost of defending, in litigation or otherwise, any claims that we infringe third-party patent or other intellectual property rights;
- the cost of enforcing or defending against non-competition claims;
- the number and timing of acquisitions and other strategic transactions;
- the costs associated with increased capital expenditures, including fixed asset purchases of instrument sets which we consign to hospitals and independent sales agents to support surgeries; and
- anticipated and unanticipated general and administrative expenses, including insurance expenses.

As a result of these factors, we may seek to raise additional capital to:

- maintain, and, where necessary, increase appropriate product inventory levels;
- fund our operations and clinical studies;
- continue, and, where appropriate, increase our research and development activities;
- file, prosecute and defend our intellectual property rights, and defend, in litigation or otherwise, any claims that we infringe third-party patents or other intellectual property rights;
- address the FDA or other governmental, legal or enforcement actions and remediate underlying problems and address investigations or inquiries into sales and marketing practices from governmental agencies worldwide;
- commercialize our new products, if any such products receive regulatory clearance or approval for sale; and
- acquire companies new products, technology or intellectual property.

Such capital, which we may seek to raise through public or private equity offerings, issuing debt or existing, expanded or new credit facilities, or other sources, may not be available to us on favorable terms, or at all. In addition, our December 2015 credit agreement prohibits us from incurring indebtedness without the lender's consent. If we issue equity securities to raise additional capital, our existing stockholders may experience dilution, and the new equity securities may have rights, preferences and privileges senior to those of our existing stockholders. See "*Risks Relating to Owning Our Common Stock-Your percentage of ownership in us may be diluted in the future and issuances of substantial amounts of our common stock, or the perception that such issuances may occur, could cause the market price of our common stock to decline significantly, even if our business is performing well.*," and "*Risks Relating to Owning Our Common Stock-We may issue preferred stock with terms that could dilute the voting power or reduce the value of our common stock.*," below. If we raise additional capital through collaboration, licensing or other similar arrangements, it may be necessary to relinquish valuable rights to our products, potential products or proprietary technologies, or grant licenses on terms that are not favorable to us. If we cannot raise capital on acceptable terms, we may not be able to develop or enhance our products, execute our business plan, take advantage of future opportunities or respond to competitive pressures, changes in our supplier relationships or unanticipated customer requirements. Any of these events could adversely affect our ability to achieve our business and financial goals or to achieve or maintain profitability, and could have a material and adverse effect on our business, results of operations and financial condition.

Our future financial results could be adversely affected by impairments or other charges, including as a result of the high levels of inventory we maintain, which could consume a significant amount of our resources and reduce our cash flows.

Because we maintain substantial inventory levels to meet the needs of our customers, we are subject to the risk of inventory excess, obsolescence and shelf-life expiration. Many of our spine hardware products come in sets. Each set includes a significant number of components in various sizes so that the surgeon may select the appropriate spinal implant based on the patient's needs. In a typical surgery, not all of the implants in the set are used, and therefore certain sizes of implants placed in the set or that we purchase for replenishment inventory may become obsolete before they can be used. In addition, in order to market our products effectively, we often must provide hospitals and independent sales agents with consigned sets that typically consist of spinal implants and instruments, including products to ensure redundancy and products of different sizes. Further, the use of our orthobiologics products is limited by the sterilization expiration date, which ranges from one to five years. Therefore, these products may expire before they can be used. If a substantial portion of our inventory is deemed excess, becomes obsolete or expires, we may be required to incur impairment charges that could have a material and adverse effect on our financial results.

Further, we assess periodically impairment of our long-lived assets, including finite-lived intangible assets, whenever events or changes in circumstances indicate that the carrying value may not be recoverable. As of December 31, 2015, we had \$39.6 million of net finite-lived intangible assets, consisting of technology and customer relationships. In addition, we continually assess the profitability of our product lines and, after such assessment, may discontinue certain products or product lines in the future. As a result, we may record impairment charges or accelerate amortization on certain technology-related intangible assets in the future. Impairment charges as a result of any of the foregoing could be significant and could have a material and adverse effect on our reported financial results for the period in which the charge is taken, which could have a material and adverse effect on the market price of our common stock.

Certain of our historical financial information may not be representative of the results we would have achieved as an independent public company and may not be a reliable indicator of our future results.

For periods prior to our separation from Integra, financial information included in this Form 10-K may not necessarily reflect what our financial position, results of operations or cash flows would have been had we been an independent entity during the periods presented or those that we will achieve in the future. The costs and expenses reflected in these prior periods include an allocation for certain corporate functions historically provided by Integra, including shared services and infrastructure provided by Integra to us, such as costs for IT, including the costs of a multi-year global implementation of an enterprise resource planning system, accounting and legal services, real estate and facilities, corporate advertising, insurance services and related treasury, and other corporate and infrastructure services that may be different from the comparable expenses that we would have incurred had we operated as an independent public company. Financial data presented as of and for these periods does not reflect changes in our cost structure and operations as a result of operating as an independent public company, including changes in our employee base, increased costs associated with reduced economies of scale and increased costs associated with SEC reporting and requirements. Accordingly, financial data as of and for these periods should not be assumed to be indicative of what our financial condition or results of operations actually would have been as an independent public company or to be a reliable indicator of what our financial condition or results of operations actually could be in the future.

Continuing economic instability, including challenges faced by European countries, may adversely affect the ability of hospitals and other customers to access funds or otherwise have available liquidity, which could reduce orders for our products or impede our ability to obtain new customers, particularly in European markets.

Continuing economic instability, including challenges faced by European countries, may adversely affect the ability of hospitals and other customers to access funds to enable them to fund their operating budgets. As a result, hospitals and other customers may reduce budgets or put all or part of their budgets on hold or close their operations, which could have a negative effect on our sales and could impede our ability to obtain new customers, particularly in European markets. Governmental austerity policies in Europe and other markets have reduced and could continue to reduce the amount of money available to purchase medical products, including our products. If such conditions persist, they could have a material and adverse effect on our business, financial condition and results of operations.

Risks Relating to Our Regulatory Environment

We are subject to stringent domestic and foreign medical device regulation and any adverse regulatory action may materially and adversely affect our financial condition and business operations.

Our products, development activities and manufacturing processes are subject to extensive and rigorous regulation by numerous federal and state government agencies, including the FDA and comparable foreign agencies. To varying degrees, each

[Table of Contents](#)

of these agencies monitors and enforces our compliance with laws and regulations governing the development, testing, manufacturing, labeling, marketing and distribution of our products. For example, we are required to comply with the FDA's Quality System Regulation, which mandates that manufacturers of medical devices adhere to certain quality assurance standards pertaining to, among other things, validation of manufacturing processes, controls for purchasing product components and documentation practices.

In addition, we must engage in extensive recordkeeping and reporting. For example, the Federal Medical Device Reporting regulation requires us to provide information to the FDA whenever there is evidence that reasonably suggests that a device may have caused or contributed to a death or serious injury or that a malfunction occurred that would be likely to cause or contribute to a death or serious injury upon recurrence.

Compliance with applicable regulatory requirements is subject to continual review and we must make our manufacturing facilities and records available for periodic unscheduled inspections by governmental agencies, including the FDA, state authorities and comparable agencies in other countries. If we fail to pass an FDA Quality System Regulation inspection or to comply with applicable regulatory requirements, we may receive a notice of a violation in the form of inspectional observations on Form FDA 483, a warning letter, or could otherwise be required to take corrective action and, in severe cases, we could suffer a disruption of our operations and manufacturing delays. If we fail to take adequate corrective actions, we could be subject to enforcement actions, including significant fines, suspension of approvals, seizures or recalls of products, operating restrictions and criminal prosecutions.

The FDA has been increasing its scrutiny of the medical device industry and the government is expected to continue to scrutinize the industry closely. Moreover, allegations may be made against us or against our suppliers, including donor recovery groups or tissue banks, claiming that the acquisition or processing of biomaterials products does not comply with applicable FDA regulations or other relevant statutes and regulations. Allegations like these could cause regulators or other authorities to investigate or take other action against us or our suppliers, or could cause negative publicity for us or our industry generally. If the FDA were to investigate us, because of an allegation or otherwise, and if the FDA were to conclude that we are not in compliance with applicable laws or regulations, or that any of our medical devices are ineffective or pose an unreasonable health risk, the FDA could ban such medical devices, detain or seize such medical devices, order a recall, repair, replacement or refund of such devices, require us to notify health professionals and others that the devices present unreasonable risks of substantial harm to the public health, restrict manufacturing and impose other operating restrictions, enjoin and restrain certain violations of applicable law pertaining to medical devices and assess civil or criminal penalties against our officers, employees or us. The FDA may also recommend prosecution to the U.S. Department of Justice. Any notice or communication from the FDA regarding a failure to comply with applicable requirements, or negative publicity or product liability claims resulting from any adverse regulatory action, could materially and adversely affect our product sales and overall business.

Further, our suppliers also are subject to a wide array of regulatory and other requirements, including quality control, quality assurance and the maintenance of records and documentation. Our suppliers may be unable to comply with these requirements and with other FDA, state and foreign regulatory requirements. We have little control over their ongoing compliance with these regulations. Their failure to comply may expose us to regulatory action and other liability, including fines and civil penalties, suspension of production, suspension or delay in new product approval or clearance, product seizure or recall, or withdrawal of product approval or clearance.

Foreign governmental regulations have become increasingly stringent and more common, and we may become subject to even more rigorous regulation by foreign governmental authorities in the future. Penalties for a company's noncompliance with foreign governmental regulation could be severe, including revocation or suspension of a company's business license and criminal sanctions. Any domestic or foreign governmental medical device law or regulation imposed in the future may have a material and adverse effect on our financial condition and business operations.

There is no guarantee that the FDA will grant 510(k) clearance or premarket approval, or that equivalent foreign regulatory authorities will grant the foreign equivalent, of our future products, and failure to obtain necessary clearances or approvals for our future products would adversely affect our ability to grow our business.

In general, unless an exemption applies, a medical device and modifications to the device or its indications must receive either premarket approval or premarket clearance from the FDA before it can be marketed in the U.S. While in the past we have received such clearances, we may not be successful in the future in receiving approvals and clearances in a timely manner, or at all. The process of obtaining approval or clearance from the FDA and comparable foreign regulatory agencies for new products, or for enhancements or modifications to existing products, could:

- take a significant amount of time;

[Table of Contents](#)

- require the expenditure of substantial resources;
- involve rigorous and expensive pre-clinical and clinical testing, as well as post-market surveillance;
- involve modifications, repairs or replacements of our products; and
- result in limitations on the indicated uses of our products.

Some of our new products will require FDA 510(k) clearance or approval of a premarket approval application, or PMA, prior to being marketed. Any modification to a 510(k)-cleared device that could significantly affect its safety or effectiveness, including significant design and manufacturing changes, or that would constitute a major change in its intended use, design or manufacture, requires a new 510(k) clearance or, possibly, approval of a PMA. Similarly, modifications to PMA-approved products may require submission and approval of a supplement PMA. The FDA requires every manufacturer to determine whether a new 510(k) or supplement PMA is needed in the first instance, and the FDA has issued guidance on assessing modifications to 510(k)-cleared and PMA-approved devices to assist manufacturers with making these determinations. However, the FDA may review any such determination and the FDA may not agree with our determinations regarding whether new clearances or approvals are necessary. We have modified some of our 510(k)-cleared products and have determined, based on our understanding of FDA guidance, that certain changes did not require new 510(k) clearances. If the FDA disagrees with our determination and requires us to seek new 510(k) clearances, or PMA approval, for modifications to our previously cleared products, we may be required to stop marketing or distributing our products, we may need to recall the modified product until we obtain clearance or approval, and we may be subject to significant regulatory fines or penalties. Significant delays in receiving clearance or approval, or the failure to receive clearance or approval for our new products would have a material and adverse effect on our ability to expand our business.

Outside the U.S., clearance or approval procedures can vary among countries and can involve additional product testing and validation and additional administrative review periods. The time required to obtain clearance or approval in other countries might differ from that required to obtain FDA clearance or approval. The regulatory process in other countries may include all of the risks to which we are exposed in the U.S., as well as other risks. Favorable regulatory action in one country does not ensure favorable regulatory action in another, but a failure or delay in obtaining regulatory clearance or approval in one country may have a negative effect on the regulatory process in others. Failure to obtain clearance or approval in other countries or any delay or setback in obtaining such clearance or approval have a material and adverse effect on our business, including that our products may not be cleared or approved for all indications requested, which could limit the uses of our products and have an adverse effect on product sales.

In the EEA, we must inform the Notified Body that carried out the conformity assessment of the medical devices we market or sell in the EEA of any planned substantial change to our quality system or any change to our devices that could affect compliance with the Essential Requirements laid down in Annex I to the Medical Devices Directive or the devices' intended purpose. The Notified Body will then assess the change and verify whether it affects the products' conformity with the Essential Requirements or the conditions for the use of the device. If the assessment is favorable, the Notified Body will issue a new CE Certificate of Conformity or an addendum to the existing CE Certificate of Conformity attesting compliance with the Essential Requirements. If it is not, we may not be able to continue to market and sell the applicable product in the EEA, which could have a material and adverse effect on our business, results of operations and financial condition.

We cannot be certain that we will receive required approval or clearance from the FDA and foreign regulatory agencies for new products, including modifications to existing products, on a timely basis, or at all. The failure to receive approval or clearance for new on a timely basis would have a material and adverse effect on our financial condition and results of operations.

Certain of our products are derived from human tissue and are or could be subject to additional regulations and requirements.

Some of our orthobiologics products are derived from human bone tissue, and as a result are also subject to FDA and certain state regulations regarding human cells, tissues and cellular or tissue-based products, or HCT/Ps. An HCT/P is a product containing or consisting of human cells or tissue intended for transplantation into a human patient. Examples include bone, ligament, skin and cornea.

Some HCT/Ps also meet the definition of a biological product, medical device or drug regulated under the Federal Food, Drug and Cosmetic Act. Section 361 of the Public Health Service Act authorizes the FDA to issue regulations to prevent the introduction, transmission or spread of communicable disease. HCT/Ps regulated as "361 HCT/Ps" are subject to requirements relating to registering facilities and listing products with the FDA, screening and testing for tissue donor eligibility, Good Tissue Practice when processing, storing, labeling and distributing HCT/Ps, including required labeling information, stringent record keeping and adverse event reporting. These biologic, device or drug HCT/Ps must comply both with the requirements exclusively applicable to 361 HCT/Ps and, in addition, with requirements applicable to biologics, devices or drugs, including premarket clearance or approval. We have received required approvals for our products that are regulated as 361 HCT/Ps. However, there

have been occasions in the past, and there could be occasions in the future, when the FDA requires us to obtain a 510(k) clearance for our products that are regulated as 361 HCT/Ps. The process of obtaining a 510(k) clearance could take time and consume resources, and the failure to receive such a clearance would render us unable to market and sell such products, which could have a material and adverse effect on our business.

The American Association of Tissue Banks has issued operating standards for tissue banking. Accreditation is voluntary, but compliance with these standards is a requirement in order to become a licensed tissue bank. In addition, some states have their own tissue banking regulations. In addition, procurement of certain human organs and tissue for transplantation is subject to the National Organ Transplant Act, or NOTA, which prohibits the transfer of certain human organs, including skin and related tissue, for valuable consideration, but permits the reasonable payment associated with the removal, transportation, implantation, processing, preservation, quality control and storage of human tissue and skin. We reimburse tissue banks for their expenses associated with the recovery, storage and transportation of donated human tissue that they provide to us for processing. We include in our pricing structure amounts paid to tissue banks to reimburse them for their expenses associated with the recovery and transportation of the tissue, in addition to certain costs associated with processing, preservation, quality control and storage of the tissue, marketing and medical education expenses and costs associated with development of tissue processing technologies. NOTA payment allowances may be interpreted to limit the amount of costs and expenses that we can recover in our pricing for our products, thereby reducing our future revenue and profitability. If we were to be found to have violated NOTA's prohibition on the sale or transfer of human tissue for valuable consideration, we would potentially be subject to criminal enforcement sanctions, which could materially and adversely affect our results of operations.

Because of the absence of a harmonized regulatory framework and the proposed regulation for advanced therapy medicinal products in the European Union, or EU, as well as for other countries, the approval process in the EU for human-derived cell or tissue-based medical products could be extensive, lengthy, expensive and unpredictable. Among others, some of our orthobiologics products are subject to EU member states' regulations that govern the donation, procurement, testing, coding, traceability, processing, preservation, storage and distribution of HCT/Ps. These EU member states' regulations include requirements for registration, listing, labeling, adverse-event reporting and inspection and enforcement. Some EU member states have their own tissue banking regulations. Non-compliance with various regulations governing our products in any EU member state could result in the banning of our products in such member state or enforcement actions being brought against us, which could have a material and adverse effect on our business, results of operations and financial condition.

Certain of our products contain materials derived from animal sources and may become subject to additional regulation.

Certain of our products contain material derived from bovine tissue. Products that contain materials derived from animal sources, including food, pharmaceuticals and medical devices, are subject to scrutiny in the media and by regulatory authorities. Regulatory authorities are concerned about the potential for the transmission of disease from animals to humans via those materials. This public scrutiny has been particularly acute in Japan and Western Europe with respect to products derived from animal sources, largely due to concern that materials infected with the agent that causes bovine spongiform encephalopathy, or BSE, otherwise known as mad cow disease, may, if ingested or implanted, cause a variant of the human Creutzfeldt-Jakob disease, an ultimately fatal disease with no known cure. Cases of BSE in cattle discovered in Canada and the U.S. have increased awareness of the issue in North America.

We take steps designed to minimize the risk that our products contain agents that can cause disease, such as obtaining our collagen from countries considered to be BSE-free. Nevertheless, products that contain materials derived from animals, including our products, could become subject to additional regulation, or even be banned in certain countries, because of concern over the potential for the transmission of infectious or other agents. Significant new regulation, or a ban of our products, could have a material and adverse effect on our current business or our ability to expand our business.

Certain countries, such as Japan, China, Taiwan and Argentina, have already issued regulations that require our collagen products be processed from bovine tendon sourced from countries where no cases of BSE have occurred. The collagen raw material we use in our products is sourced from New Zealand. Our supplier has obtained approval from certain countries, including the U.S., the European Union, Japan, Taiwan, China and Argentina, for the use of such collagen raw material in products sold in those countries. If we cannot continue to obtain collagen raw material from a qualified source of tendon from a country that has never had a case of BSE, we will not be permitted to sell our collagen products in certain countries, which could have a material and adverse effect on our business, results of operations and financial condition.

Clinical studies are expensive and subject to extensive regulation and their results may not support our product candidate claims or may result in the discovery of adverse effects.

In the development of new products or new indications for, or modifications to, existing products, we may conduct or sponsor

pre-clinical testing, clinical studies or other clinical research. We are currently conducting post-market clinical studies of some of our products to gather information about their performance or optimal use. The data collected from these clinical studies may ultimately be used to support additional market clearance or approval for these products or future products. If any of our new products require premarket clinical studies, these studies are expensive, the outcomes are inherently uncertain and they are subject to extensive regulation and review by numerous governmental authorities both in the U.S. and abroad, including by the FDA and, if federal funds are involved or if an investigator or site has signed a federal assurance, are subject to further regulation by the Office for Human Research Protections and the National Institutes of Health. For example, clinical studies must be conducted in compliance with FDA regulations, local regulations, and according to principles and standards collectively referred to as “Good Clinical Practices.” Failure to comply with applicable regulations could result in regulatory and legal enforcement action, including fines, penalties, suspension of studies, and also could invalidate the data and make it unusable to support a FDA submission.

Even if any of our future premarket clinical studies are completed as planned, we cannot be certain that their results will support our product candidates and/or proposed claims or that the FDA or foreign authorities and Notified Bodies will agree with our interpretation and conclusions regarding the data they generate. Success in pre-clinical studies and early clinical studies does not ensure that later clinical studies will be successful, and we cannot be sure that the results of later studies will replicate those of earlier or prior studies. The clinical study process may fail to demonstrate that our product candidates are safe and effective for the proposed indicated uses, which could cause us to abandon a product candidate and may delay development of others. Any delay or termination of our clinical studies will delay the filing of our product submissions and, ultimately, our ability to commercialize our product candidates and generate revenues. It is also possible that patient subjects enrolled in our clinical studies of our marketed products will experience adverse side effects that are not currently part of the product candidate’s profile and, if so, these findings may result in lower market acceptance, which could have a material and adverse effect on our business, results of operations and financial condition.

If the third parties on which we rely to conduct our clinical studies and to assist us with pre-clinical development do not perform as contractually required or expected, we may not be able to obtain regulatory clearance, approval or a CE Certificate of Conformity for or commercialize our products.

We often must rely on third parties, such as contract research organizations, medical institutions, clinical investigators and contract laboratories, to assist in conducting our clinical studies and other development activities. If these third parties do not successfully carry out their contractual duties, comply with applicable regulatory obligations or meet expected deadlines, or if these third parties need to be replaced, or if the quality or accuracy of the data they obtain is compromised due to the failure to adhere to clinical protocols, to applicable regulatory requirements or otherwise, our pre-clinical development activities and clinical studies may be extended, delayed, suspended or terminated. Under these circumstances we may not be able to obtain regulatory clearance/approval or a CE Certificate of Conformity for, or successfully commercialize, our products on a timely basis, if at all, and our business, operating results and prospects may be materially and adversely affected.

Oversight of the medical device industry might affect the manner in which we may sell medical devices and compete in the marketplace.

The U.S. Office of the Inspector General for the U.S. Department of Health and Human Services, the FDA, the U.S. Department of Justice and other regulatory agencies actively enforce regulations prohibiting the promotion of a medical device for a use that has not been cleared or approved by the FDA. Use of a device outside its cleared or approved indications is known as “off-label” use. Physicians may prescribe our products for off-label uses, as the FDA does not restrict or regulate a physician’s choice of treatment within the practice of medicine. However, if a regulatory agency determines that our promotional materials, training or activities constitute improper promotion of an off-label use, the regulatory agency could request that we modify our promotional materials, training or activities, or subject us to regulatory enforcement actions, including the issuance of a warning letter, injunction, seizure, civil fine and/or criminal penalties. Although our policy is to refrain from statements and activities that could be considered off-label promotion of our products, any regulatory agency could disagree and conclude that we have engaged in off-label promotion and, potentially, caused the submission of false claims. In addition, the off-label use of our products may increase the risk of injury to patients, and, in turn, the risk of product liability claims. See “*Risks Relating to our Business-We may have significant product liability exposure and our insurance may not cover all potential claims,*” above.

There are also multiple other laws and regulations that govern the means by which companies in the healthcare industry may market their products to healthcare professionals and may compete by discounting the prices of their products, including, for example, the federal Anti-Kickback Statute, the federal False Claims Act, the federal Health Insurance Portability and Accountability Act of 1996, state law equivalents to these federal laws that are meant to protect against fraud and abuse, the Foreign Corrupt Practices Act of 1977 and analogous laws in foreign countries. Violations of these laws are punishable by criminal and civil sanctions, including, but not limited to, penalties, fines and exclusion from participation in federal and state healthcare programs, including Medicare and Medicaid, and imprisonment. Federal and state government agencies, as well as private

whistleblowers, have significantly increased investigations and enforcement activity under these laws. Although we exercise care in structuring our sales and marketing practices, customer discount arrangements and interactions with healthcare professionals to comply with these laws and regulations, we cannot provide assurance that government officials will not assert that our practices are in compliance or that government regulators or courts will interpret those laws or regulations in a manner consistent with our interpretation. Even if an investigation is not successful or is not fully pursued, we may spend considerable time and resources defending ourselves and the adverse publicity surrounding any assertion that we may have engaged in violative conduct could have a material and adverse effect on our reputation with existing and potential customers and on our business, financial condition and results of operations.

Federal and state laws are also sometimes open to interpretation, and from time to time we may find ourselves at a competitive disadvantage if our interpretation differs from that of our competitors. AdvaMed (U.S.), EucoMed (Europe), MEDEC (Canada) and MTAA (Australia), some of the principal trade associations for the medical device industry, have promulgated model codes of ethics that set forth standards by which its members should (and non-member companies may) abide in the promotion of their products in various regions. We have implemented policies and procedures for compliance consistent with those promulgated by these associations, and we train our sales and marketing personnel on our policies regarding sales and marketing practices. Nevertheless, the sales and marketing practices of our industry have been the subject of increased scrutiny from federal and state government agencies, we believe this trend will continue and that it could affect our ability to retain customers and other relationships important to our business.

For example, prosecutorial scrutiny and governmental oversight, at both the state and federal levels, over some major device companies regarding the retention of healthcare professionals have limited the manner in which medical device companies may retain healthcare professionals as consultants. Various hospital organizations, medical societies and trade associations are establishing their own practices that may require detailed disclosures of relationships between healthcare professionals and medical device companies or ban or restrict certain marketing and sales practices, such as gifts and business meals. In addition, the Affordable Care Act, as well as certain state laws, require detailed disclosure of certain financial relationships, gifts and other remuneration made to certain healthcare professionals and teaching hospitals, the publicity surrounding which could have a negative impact on our relationships with our customers and ability to seek input on product design or involvement in research. As a result of laws, rules and regulations or our own or third-party policies that prohibit or restrict interactions, or the growing perception that any interaction between healthcare professionals and industry are tainted, we may be unable to engage with our healthcare professional customers in the same manner or to the same degree, or at all, as would otherwise be the case, which may adversely affect our ability to understand our customer's needs and to incorporate into our development programs feedback that addresses these needs. If we are unable to develop and commercialize new products that address the needs of our surgeon customers and their patients, our products may not be broadly accepted in the marketplace, or at all, which would have a negative effect on our business, results of operations and financial condition.

Unfavorable media reports or other negative publicity concerning both alleged improper methods of tissue recovery from donors and disease transmission from donated tissue could limit widespread acceptance of some of our products.

Unfavorable reports of improper or illegal tissue recovery practices, both in the U.S. and internationally, as well as incidents of improperly processed tissue leading to the transmission of disease, may affect the rate of future tissue donation and market acceptance of technologies incorporating human tissue. In addition, negative publicity could cause the families of potential donors to become reluctant to agree to donate tissue to for-profit tissue processors. For example, the media has reported examples of alleged illegal harvesting of body parts from cadavers and resulting recalls conducted by certain companies selling human tissue based products affected by the alleged illegal harvesting. These reports and others could have a negative effect on our tissue regeneration business.

Our international operations subject us to laws regarding sanctioned countries, entities and persons, customs and import-export practices, laws regarding transactions in foreign countries, the Foreign Corrupt Practices Act of 1977 and local anti-bribery and other laws regarding interactions with healthcare professionals, and product registration requirements.

Numerous laws restrict, and in some cases prohibit, U.S. companies from directly or indirectly selling goods, technology or services to people or entities in certain countries. In addition, these laws require that we exercise care in structuring our sales and marketing practices and effecting product registrations in foreign countries. Compliance with these regulations is costly. Any failure to comply with applicable foreign legal and regulatory obligations could adversely affect us in a variety of ways, including the suspension or withdrawal of our CE Certificates of Conformity; the imposition of significant criminal, civil and administrative penalties, including imprisonment of individuals and fines; disrupting our shipping activities, including denial of export privileges and seizure of shipments; requiring us to recall or withdraw products; imposing restrictions on our business activities; and disrupting our sales activities and adversely affect our overall business.

New regulations related to “conflict minerals” may force us to incur additional expenses, may make our supply chain more complex and may result in damage to our reputation with customers.

We are subject to SEC regulations that require us to determine whether our products contain certain specified minerals, referred to under the regulations as “conflict minerals,” and, if so, to perform an extensive inquiry into our supply chain, in an effort to determine whether or not such conflict minerals originate from the Democratic Republic of Congo (“DRC”) or an adjoining country. Compliance with these regulations has increased our costs, and we expect our costs may increase in the future. We have determined that certain of our products contain such specified minerals. We are continuing to conduct inquiries into our supply chain in connection with the preparation of our conflict minerals report for 2016. Compliance with these requirements has been time-consuming for management and our supply chain personnel (as well as time-consuming for our suppliers), and we expect that compliance will continue to require the expenditure of significant amounts of time and money by us and them. In addition, to the extent any of our disclosures are perceived by the market to be “negative,” it may cause customers to refuse to purchase our products. Further, if we determine to make any changes to products, processes, or sources of supply, it may result in additional costs, which may adversely affect our business, financial condition and results of operations.”

We are subject to requirements relating to hazardous materials which may impose significant compliance or other costs on us.

Our research, development and manufacturing processes involve the controlled use of certain hazardous materials. In addition, we lease facilities at which hazardous materials could have been used in the past. For these reasons, we are subject to federal, state, foreign and local laws and regulations governing the use, manufacture, storage, handling, treatment, remediation and disposal of hazardous materials and certain waste products. For example, our allograft bone tissue processing may generate waste materials that in the U.S. are classified as medical waste. Although we believe that our procedures for handling and disposing of hazardous materials comply with applicable laws as currently in effect, new laws may become effective, or existing laws may be amended in ways, that increase our cost of compliance, in some cases materially.

Furthermore, there is a risk that accidental contamination or injury has occurred in connection with one of our facilities. If such accidental contamination or injury occurred, we could be held liable for any damages that result and any related liability could exceed the limits or fall outside the coverage of our insurance and could exceed our resources. We may not be able to maintain insurance on acceptable terms or at all, which could have a material and adverse effect on our business, results of operations and financial condition.

Risks Relating to Our Intellectual Property

Our intellectual property rights may not provide meaningful commercial protection for our products, potentially enabling third parties to use our technology or very similar technology in ways that could reduce our ability to compete in the marketplace.

Our success will depend in part on our ability to obtain and maintain patent and other exclusivity with respect to our products; prevent third parties from infringing upon our proprietary rights; maintain proprietary know-how and trade secrets; operate without infringing upon the patents and proprietary rights of others; and obtain appropriate licenses to patents or proprietary rights held by third parties if infringement would otherwise occur, both in the U.S. and in foreign countries.

We own or have licensed patents that cover aspects of some of our product lines. Our patents, however, may not provide us with any significant competitive advantage. Others may challenge our patents and, as a result, our patents could be narrowed, invalidated or rendered unenforceable. Competitors may develop products similar to ours that our patents do not cover. In addition, our current and future patent applications may not result in the issuance of patents in the U.S. or foreign countries. Further, there is a substantial backlog of patent applications at the U.S. Patent and Trademark Office, and the approval or rejection of patent applications may take several years.

In an effort to protect our trade secrets, we require our employees, consultants and advisors to execute confidentiality and invention assignment agreements upon commencement of employment or consulting relationships with us. These agreements provide that, except in specified circumstances, all confidential information developed or made known to the individual during the course of their relationship with us must be kept confidential. We cannot assure you, however, that these agreements will provide meaningful protection for our trade secrets or other proprietary information in the event of the unauthorized use or disclosure of confidential information. In addition, we cannot assure you that others will not independently develop substantially equivalent proprietary information and procedures or otherwise gain access to our trade secrets, that our trade secrets will not be disclosed or that we can otherwise protect our rights to unpatented trade secrets.

If we are unable to obtain, protect and enforce patents on our technology and to protect our trade secrets, such inability could have a material and adverse effect on our business, results of operations and financial condition.

Our success will depend partly on our ability to operate without infringing or misappropriating the proprietary rights of others.

To protect or enforce our intellectual property rights, we may have to initiate or defend litigation against or by third parties, such as infringement suits, opposition proceedings or seeking a court declaration that we do not infringe the proprietary rights of others or that their rights are invalid or unenforceable. Litigation is expensive, time-consuming and could divert management attention and resources away from our business. Even if we prevail, the cost of litigation could affect our profitability.

If we do not prevail in any litigation, in addition to any damages we might have to pay, we may be required to stop the infringing activity (which could include requiring us to stop selling the products in question) or obtain a license for the proprietary rights involved. Any required license may be unavailable to us on acceptable terms, if at all. In addition, some licenses may be nonexclusive, in which case our competitors could access the same proprietary rights we license. If we fail to obtain a required license or are unable to design our products so as not to infringe on the proprietary rights of others, we may be unable to sell some of our products, which could have a material and adverse effect on our revenues and profitability.

Risks Relating to Owning Our Common Stock

The market price of our common stock has been and likely will continue to be volatile.

The market price of our common stock is likely to be volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. In addition to the factors discussed in this “Risk Factors” section and elsewhere in this Form 10-K, these factors include:

- actual or anticipated fluctuations in our quarterly financial condition and operating performance;
- introduction of new products by us or our competitors;
- announcements by us or our competitors of significant acquisitions or dispositions;
- our ability to obtain financing as needed;
- a shift in our investor base, including sales of our shares by existing stockholders;;
- any major change in our board of directors or management;
- threatened or actual litigation or governmental investigations;
- the number of shares of our common stock publicly owned and available for trading;
- the operating and stock price performance of similar companies;
- changes in earnings estimates by securities analysts or our ability to meet earnings guidance;
- publication of research reports about us or our industry or changes in recommendations or withdrawal of research coverage by securities analysts;
- changes in laws or regulations affecting our business, including tax legislation;
- the success or failure of our business strategy;
- investor perception of us and our industry;
- changes in accounting standards, policies, guidance, interpretations or principles;
- the overall performance of the equity markets;
- general political and economic conditions, and other external factors.

In addition, the stock market in general, and the market for medical device companies in particular, have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. This could limit or prevent investors from readily selling their shares and may otherwise negatively affect the liquidity of our common stock. Securities class action litigation has often been instituted against companies following periods of volatility in the overall market and in the market price of a company’s securities. This litigation, if instituted against us, could result in very substantial costs, divert our management’s attention and resources, and harm our business, financial condition and results of operation.

Your percentage of ownership in us may be diluted in the future and issuances of substantial amounts of our common stock, or the perception that such issuances may occur, could cause the market price of our common stock to decline significantly, even if our business is performing well.

As with any public company, your percentage ownership in us may be diluted in the future because of equity issuances for acquisitions and investments, capital-raising transactions or otherwise, including equity awards that we have granted and we expect to grant to our directors, officers and employees. For example, in connection with our separation from Integra, we granted to certain Integra directors and officers equity awards equivalent to approximately 1.9% of our then-outstanding common stock and granted to our directors stock option awards equivalent to approximately 2.6% of our then-outstanding common stock. Further, the market price of our common stock could decline as a result of the issuance, including sale, of a large number of shares of our

[Table of Contents](#)

common stock, and the perception that these sales could occur may also depress the market price of our common stock. A decline in the price of our common stock might impede our ability to raise capital through the issuance of additional shares of our common stock or other equity securities.

We are an “emerging growth company” and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies will make our common stock less attractive to investors.

We are an “emerging growth company,” as defined in the JOBS Act, and we are taking advantage of certain exemptions and relief from various reporting requirements that are applicable to public companies that are not emerging growth companies. In particular, while we are an emerging growth company: (i) we will not be required to comply with the auditor attestation requirements of Section 404(b) of SOX; (ii) we will be exempt from any rules that may be adopted by the Public Company Accounting Oversight Board requiring mandatory audit firm rotations or a supplement to the auditor’s report on financial statements; (iii) we will be subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements; and (iv) we will not be required to hold nonbinding advisory votes on executive compensation or stockholder approval of any golden parachute payments not previously approved.

In addition, as an emerging growth company we are not required to comply with any new or revised accounting standard applicable to public companies until such date that a private company is required to comply with such standard. We elected not to comply with such new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies, therefore our financial statements may not be comparable to the financial statements of public companies that are not emerging growth companies.

We will remain an emerging growth company until the earliest of: (i) December 31, 2020 (the fiscal year-end following the fifth anniversary of the completion of the spin-off); (ii) the end of the fiscal year in which the market value of our common stock that is held by non-affiliates exceeds \$700.0 million as of the last business day of the second fiscal quarter of that year; (iii) the end of the fiscal year in which our annual revenues exceed \$1.0 billion; and (iv) the date on which we issue more than \$1.0 billion in nonconvertible debt in any three-year period.

The exact implications of the JOBS Act are still subject to interpretations and guidance by the SEC and other regulatory agencies, and we cannot assure you that we will be able to take advantage of all of the benefits of the JOBS Act. In addition, investors may find our common stock less attractive because we rely on the exemptions available to, and relief granted to, emerging growth companies by the JOBS Act. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may decline and/or become more volatile.

If, once we are no longer an emerging growth company, our independent registered public accounting firm cannot provide an unqualified attestation report on the effectiveness of our internal control over financial reporting, investor confidence and, in turn, the market price of our common stock, could decline.

We may issue preferred stock with terms that could dilute the voting power or reduce the value of our common stock.

While we have no specific plan to issue preferred stock, our amended and restated certificate of incorporation authorizes us to issue, without stockholder approval, one or more series of preferred stock having such designation, powers, privileges, preferences, including preferences over our common stock respecting dividends and distributions, terms of redemption and relative participation, optional, or other rights, if any, of the shares of each such series of preferred stock and any qualifications, limitations or restrictions thereof, as our board of directors may determine. The terms of one or more series of preferred stock could dilute the voting power or reduce the value of our common stock. For example, the repurchase or redemption rights or liquidation preferences we could assign to holders of preferred stock could affect the residual value of the common stock.

If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our stock price and trading volume could decline.

The trading market for our common stock depends in part on the research and reports that securities or industry analysts publish about us or our business. If current or future analysts who cover us were to downgrade our stock or publish inaccurate or unfavorable research about our business, our stock price would likely decline. If one or more of these analysts were to stop covering us or were to stop regularly publishing reports on us, demand for our stock could decrease, which might cause our stock price and trading volume to decline.

We do not anticipate paying cash dividends, and accordingly, stockholders must rely on stock appreciation for any return on their investment.

We have paid no cash dividends on any of our common stock to date, and we currently intend to retain our future earnings, if any, to fund the development and growth of our business. As a result, with respect to our common stock, we do not expect to pay any cash dividends in the foreseeable future, and payment of cash dividends, if any, will depend on our financial condition, results of operations, capital requirements and other factors and will be at the discretion of our board of directors. Furthermore, we are subject to various laws and regulations that may restrict our ability to pay dividends and are subject to contractual restrictions on, or prohibitions against, the payment of dividends. Due to our intent to retain any future earnings rather than pay cash dividends on our common stock and applicable laws, regulations and contractual obligations that may restrict our ability to pay dividends on our common stock, the success of your investment in our common stock will likely depend entirely upon any future appreciation and our common stock may not appreciate. Investors seeking cash dividends should not invest in our common stock.

Certain provisions in our charter documents and Delaware law could discourage takeover attempts and lead to management entrenchment and, therefore, may depress the market price of our common stock.

Our amended and restated certificate of incorporation and amended and restated bylaws contain provisions that could have the effect of delaying or preventing changes in control or changes in our management without the consent of our board of directors, including, among other things:

- a classified board of directors with three-year staggered terms, which may delay the ability of stockholders to change the membership of a majority of our board of directors;
- no cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- the ability of our board of directors to determine to issue shares of preferred stock and to determine the price and other terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquirer;
- the exclusive right of our board of directors to elect a director to fill a vacancy created by the expansion of our board of directors or by the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors;
- limitations on the removal of directors;
- a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;
- the requirement that a special meeting of stockholders be called only by the chairman of our board of directors, our chief executive officer, our president (in absence of a chief executive officer) or our board of directors, which may delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors;
- the requirement for the affirmative vote of holders of at least 66 2/3% of the voting power of all of the then outstanding shares of our voting stock, voting together as a single class, to amend the provisions of our amended and restated certificate of incorporation relating to the issuance of preferred stock and management of our business or our amended and restated bylaws, which may inhibit the ability of an acquirer from amending our amended and restated certificate of incorporation or amended and restated bylaws to facilitate a hostile acquisition;
- the ability of our board of directors, by majority vote, to amend our amended and restated bylaws, which may allow our board of directors to take additional actions to prevent a hostile acquisition and inhibit the ability of an acquirer from amending our amended and restated bylaws to facilitate a hostile acquisition; and
- advance notice procedures that stockholders must comply with in order to nominate candidates to our board of directors or to propose matters to be acted upon at a stockholders' meeting, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of us.

We believe that these provisions protect our stockholders from coercive or harmful takeover tactics by requiring potential acquirers to negotiate with our board of directors and by providing our board of directors with adequate time to assess any acquisition proposal. However, these provisions may discourage, delay or prevent a transaction involving a change in control that is in the best interest of our stockholders. Even in the absence of a takeover attempt, the existence of these provisions may adversely affect the prevailing market price of our common stock if they are viewed as discouraging future takeover attempts.

We are also subject to certain anti-takeover provisions under the DGCL. Under the DGCL, a corporation may not, in general, engage in a business combination with any holder of 15% or more of its capital stock unless the holder has held the stock for three

years or, among other things, our board of directors has approved the transaction.

Our amended and restated certificate of incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain litigation that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us.

Our amended and restated certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for: (i) any derivative action or proceeding brought on our behalf; (ii) any action asserting a claim of breach of fiduciary duty owed by any of our directors, officers or other employees or our stockholders; (iii) any action asserting a claim arising pursuant to any provision of the DGCL or our amended and restated certificate of incorporation or amended and restated bylaws; or (iv) any action asserting a claim governed by the internal affairs doctrine. Our amended and restated certificate of incorporation further provides that any person or entity purchasing or acquiring any interest in shares of our capital stock shall be deemed to have notice of and to have consented to the provisions described above. These provisions may limit our stockholders' ability to obtain a favorable judicial forum for disputes with us.

ITEM 1B. UNRESOLVED STAFF COMMENTS

As of the filing of this Annual Report on Form 10-K, we had no unresolved comments from the staff of the Securities and Exchange Commission that were received not less than 180 days before the end of our 2015 fiscal year.

ITEM 2. PROPERTIES

Our principal executive offices are located in Carlsbad, California, effective October, 1, 2015. We design, develop and market most of our orthobiologics and spinal fusion hardware products at the 82,000 square foot Carlsbad facility. We also operate out of facilities in Vista and Irvine, California. We procure, inspect, kit and distribute spinal fusion hardware products and we currently maintain our cadaveric training laboratory and our prototyping development and testing operation in two adjacent buildings in Vista that are 22,000 and 18,000 square feet, respectively. We design, develop, manufacture and distribute virtually all of our orthobiologics products in our 70,000 square foot Irvine facility. We conduct sales, marketing, corporate, and general and administrative functions from the Carlsbad facility. Our Carlsbad, Vista and Irvine facilities are all leased, with the lease term expiring for the Carlsbad facility in 2027, for the Vista facility in 2016, and for the Irvine facility in 2023. All current operations at the Vista facility will be transitioned to the Carlsbad facility or other locations before the end of the lease term. We believe that our facilities are sufficient to meet our current needs and that renewal of this space will be available when needed on acceptable terms.

Our manufacturing facilities are registered with the FDA. Our facilities are subject to FDA inspection to ensure compliance with Quality System regulations. For further information regarding the status of FDA inspections, see the "Regulation" section in this Form 10-K.

ITEM 3. LEGAL PROCEEDINGS

From time to time, we are subject to legal proceedings and claims in the ordinary course of business. While management presently believes that the ultimate outcome of these proceedings, individually and in the aggregate, will not materially harm our financial position, cash flows, or overall trends in results of operations, legal proceedings are subject to inherent uncertainties, and unfavorable rulings or outcomes could occur that have individually or in aggregate, a material adverse effect on our business, financial condition or operating results. The Company is not currently subject to any pending material litigation, other than ordinary routine litigation incidental to our business, as described above.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

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

Market Information, Holders and Dividends

Our common stock is listed on the NASDAQ Global Select Market (“NASDAQ”) under the symbol “SPNE.” SeaSpine’s common stock began trading on NASDAQ on a “when-issued” basis on June 17, 2015, prior to SeaSpine’s separation from Integra, and on a “regular way” basis on July 2, 2015, which was the day following the separation from Integra. There was no public market for SeaSpine common stock prior to July 2, 2015. The following table lists the high and low sales prices for our common stock for each quarter since July 2, 2015:

	2015	
	High	Low
Fourth Quarter	17.18	14.66
Third Quarter	19.11	13.93

We have not paid any cash dividends on our common stock since our formation. Any future determinations to pay cash dividends on the common stock will be at the discretion of our Board of Directors and will depend upon our results of operations, cash flows, and financial condition and other factors deemed relevant by the Board of Directors. We did not repurchase any of our common stock during 2015.

The number of stockholders of record as of February 29, 2016 was approximately 394, which includes stockholders whose shares were held in nominee name.

Equity Compensation Plan Information

Information about our equity compensation plan is incorporated herein by reference to Part III, Item 12 of this Annual Report.

Sales of Unregistered Securities

There were no sales of unregistered securities during the years ended December 31, 2015.

Sale of Registered Securities

On July 1, 2015, Integra distributed, as a dividend, approximately 11.0 million shares of our common stock to Integra shareholders as part of the spin-off. Each holder of Integra common stock received one share of SeaSpine common stock for every three shares of Integra common stock held by such holder as of the record date for the dividend.

ITEM 6. SELECTED FINANCIAL DATA

The following table summarizes certain selected financial data derived from our audited financial statements. The information presented should be read in conjunction with “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our audited financial statements and notes thereto appearing elsewhere in this Annual Report on Form 10-K. For periods prior to the spin-off, the consolidated statements of operations data for the years ended December 31, 2014, 2013 and 2012 were derived from the audited consolidated financial statements of the orthobiologics and spinal fusion hardware business of Integra. Subsequent to the spin-off, the Company’s financial statements are presented on a consolidated basis, as the Company became a separate publicly-traded company on July 1, 2015. As a result, the consolidated financial results and balance sheet data for certain of the periods presented below may not be directly comparable.

	Year Ended December 31,			
	2015	2014	2013	2012
(In thousands, except per share data)				
Consolidated Statements of Operations Data:				
Total revenue, net	\$ 133,178	\$ 138,695	\$ 146,586	\$ 147,510
Cost of goods sold	61,119	56,714	55,532	54,856
Gross profit	72,059	81,981	91,054	92,654
Operating expenses:				
Selling, general and administrative	110,551	88,213	93,009	94,747
Research and development	8,353	8,527	9,893	12,269
Intangible amortization	5,331	5,590	5,598	5,716
Total operating expenses	124,235	102,330	108,500	112,732
Operating loss	(52,176)	(20,349)	(17,446)	(20,078)
Other expense, net	(877)	(269)	(4,556)	(8,194)
Loss before income taxes	(53,053)	(20,618)	(22,002)	(28,272)
Provision for income taxes	2,479	3,927	3,744	2,152
Net loss	\$ (55,532)	\$ (24,545)	\$ (25,746)	\$ (30,424)
Net loss per share (basic and diluted)	\$ (4.99)	\$ (2.22)	\$ (2.33)	\$ (2.75)

	As of December 31,			
	2015	2014	2013	2012
(In thousands)				
Consolidated Balance Sheets Data:				
Working capital	\$ 87,687	\$ 28,664	\$ 37,857	\$ 36,871
Total assets	176,389	139,642	153,493	157,387
Long term debt (1)	328	—	—	126,963
Stockholders' equity	147,339	91,284	111,495	(5,624)

(1) In December 2015, the Company entered into a three year, maximum borrowing capacity of \$30.0 million credit facility with Wells Fargo Capital Finance. The 2012 long term debt was related to a related-party loan from Integra arising from a prior acquisition. See Note 4 to the Consolidated Financial Statements for detailed discussion.

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

This Management's Discussion and Analysis of Financial Condition and Results of Operations contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. The matters discussed in these forward-looking statements are subject to risk and uncertainties that could cause actual results to differ materially from those made, projected or implied in the forward-looking statements. Such risks and uncertainties may also give rise to future claims and increase exposure to contingent liabilities. Please see the "Risk Factors" section for a discussion of the uncertainties, risks and assumptions associated with these statements. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

You can identify these forward-looking statements by forward-looking words such as "believe," "may," "could," "will," "estimate," "continue," "anticipate," "intend," "seek," "plan," "expect," "should," "would" and similar expressions.

These risks and uncertainties arise from (among other factors) the following:

- *general economic and business conditions, in both domestic and international markets;*
- *our expectations and estimates concerning future financial performance, financing plans and the impact of competition;*

[Table of Contents](#)

- *anticipated trends in our business, including healthcare reform in the United States, increased pricing pressure from our competitors or hospitals and changes in third-party payment systems;*
- *physicians' willingness to adopt our recently launched and planned products, customers' continued willingness to pay for our products and third-party payors' willingness to provide or continue coverage and appropriate reimbursement for any of our products and our ability to secure regulatory approval for products in development;*
- *existing and future regulations affecting our business, both in the United States and internationally, and enforcement of those regulations;*
- *anticipated demand for our products and our ability to produce our products in sufficient quantities to meet customer demand;*
- *our ability to manage timelines and costs related to manufacturing our products;*
- *our ability to maintain and expand our marketing and sales networks and the costs related thereto;*
- *our ability to successfully develop new products and the costs associated with designing and developing those new products;*
- *our ability to support the safety and efficacy of our products with long-term clinical data;*
- *our ability to obtain additional debt and equity financing to fund capital expenditures and working capital requirements and acquisitions;*
- *our dependence on a limited number of third-party suppliers for components and raw materials;*
- *our ability to protect our intellectual property, including unpatented trade secrets, and to operate without infringing or misappropriating the proprietary rights of others;*
- *our ability to complete acquisitions, integrate operations post-acquisition and maintain relationships with customers of acquired entities; and*
- *other risk factors described in the section entitled "Risk Factors."*

These factors should not be construed as exhaustive and should be read in conjunction with the other cautionary statements that are included in this report.

Spin-off from Integra

SeaSpine was incorporated in Delaware on February 12, 2015 in connection with the spin-off of Integra's spinal fusion hardware and orthobiologics business from Integra's diversified medical technology business on July 1, 2015.

For periods prior to the spin-off, our consolidated financial statements were prepared on a stand-alone basis and were derived from Integra's consolidated financial statements and accounting records. Therefore, these financial statements reflected, in conformity with accounting principles generally accepted in the United States, the financial position, results of operations, comprehensive loss and cash flows as the orthobiologics and spinal fusion hardware business was historically operated as part of Integra. They may not be indicative of our future performance and do not necessarily reflect what our consolidated results of operations, financial condition and cash flows would have been had we operated as a separate, publicly-traded company during the periods presented, particularly because we implemented many changes in our operations and capitalization after the spin-off from Integra.

The consolidated financial statements included the attribution of certain assets and liabilities that were historically held at the Integra corporate level but which were specifically identified or attributable to us. However, cash held by Integra was not attributed to us. Integra's debt and related interest expense also were not allocated to us for any of the periods presented since we were not the legal obligor of the debt and Integra's borrowings were not directly attributable to us. Integra managed cash centrally and substantially all cash generated by our business through May 4, 2015, the date we implemented a separate

enterprise resource planning ("ERP") system for SeaSpine, was assumed to be remitted to Integra. All significant related party transactions between us and Integra were included in the consolidated financial statements and, prior to the spin-off, were considered to be effectively settled for cash at the time the transaction was recorded, with the exception of the purchases from Integra of Mozaik raw materials and finished goods for all periods presented. Prior to the spin-off, SeaSpine purchased a portion of raw materials and finished goods from Integra for the Mozaik family of products, and SeaSpine contract manufactured certain finished goods for Integra. The total net effect of the settlement of the transactions considered to be effectively settled for cash was reflected in the consolidated statements of cash flows as a financing activity and in the consolidated balance sheet as Integra net investment.

Our consolidated statements of operations included our direct expenses for cost of goods sold, research and development, sales and marketing, distribution, and administration as well as allocations of expenses arising from shared services and infrastructure provided by Integra to us, such as costs of information technology, including the costs of a multi-year global ERP implementation, accounting and legal services, real estate and facilities, corporate advertising, insurance services and related treasury, and other corporate and infrastructure services. In addition, other costs allocated to us include restructuring costs, share-based compensation expense and retirement plan expenses related to Integra's corporate and shared services employees. These operating expenses were allocated to us using estimates that we considered to be a reasonable reflection of the utilization of services provided to or benefits received by us. We expect, however, that the actual expenses that we would have incurred had we been operating as a separate, publicly-traded company for the periods presented would have been lower, in the aggregate, as they would not include the allocation of the multi-year ERP implementation and other corporate strategic initiatives of Integra in place at the time. The allocation methods include pro-rata basis of revenue, standard cost of sales or other measures.

Integra continues to provide some of the services related to these functions to us after the spin-off on a transitional basis for a fee under a transition services agreement. In addition, costs associated with supply agreements with Integra for our Mozaik product line are expected to be at materially different terms than those that were incurred while the business was part of Integra. Also, we are incurring costs as an independent, publicly-traded company that are different from the costs historically allocated to us by Integra. We currently estimate the total operating costs will be \$14.0 million to \$15.0 million on an annual pre-tax basis for the year ended December 31, 2016.

Subsequent to the spin-off, our financial statements as of and for the year ended December 31, 2015 are presented on a consolidated basis, as we became a separate publicly-traded company on July 1, 2015.

We incurred \$20.1 million of non-recurring transaction and spin-off related costs and transition service fees from Integra in the year ended December 31, 2015, including \$5.2 million incurred on or after the July 1, 2015 spin-off. These costs include, among other things, branding, legal, accounting and other advisory fees and other costs to separate and transition from Integra.

Overview

We are a global medical technology company focused on the design, development and commercialization of surgical solutions for the treatment of patients suffering from spinal disorders. We have a comprehensive portfolio of orthobiologics and spinal fusion hardware solutions to meet the varying combinations of products that neurosurgeons and orthopedic spine surgeons need to perform fusion procedures in the lumbar, thoracic and cervical spine. We believe this broad combined portfolio of orthobiologics and spinal fusion hardware products is essential to meet the "complete solution" requirements of neurosurgeons and orthopedic spine surgeons.

We report revenue in two product categories: orthobiologics and spinal fusion hardware. Our orthobiologics products consist of a broad range of advanced and traditional bone graft substitutes that are designed to improve bone fusion rates following a wide range of orthopedic surgeries, including spine, hip, and extremities procedures. Our spinal fusion hardware portfolio consists of an extensive line of products to facilitate spinal fusion in MIS, complex spine, deformity and degenerative procedures.

Our U.S. sales organization consists of regional business managers who oversee a broad network of direct orthobiologics sales specialist and independent orthobiologics and spinal fusion hardware sales agents, to whom we consign and loan our products and pay commissions based on the sales of our products that they generate. These sales are generated by building and maintaining relationships with the neurosurgeons and orthopedic spine surgeons who use our products in surgeries or from the hospitals that order our products directly. Our international sales organization is composed of a sales management team that oversees a network of independent orthobiologics and spinal fusion hardware stocking distributors in over 30 countries that purchase products directly from us and independently sell them. For the year ended December 31, 2015, international sales accounted for approximately 10% of our revenue. Our policy is not to sell our products through or participate in physician-owned distributorships.

[Table of Contents](#)

For the year ended December 31, 2015, our total revenue, net was \$133.2 million and our net loss was \$55.5 million. For the same period, our orthobiologics sales were \$67.3 million, and our spinal fusion hardware sales were \$65.9 million. We expect to continue to incur losses as we further invest in the expansion of our business, primarily in sales, marketing and research and development, and from the general and administrative expenses we expect to incur due to our operation as an independent, publicly-traded company. As of December 31, 2015, our cash balance was \$33.4 million. In connection with the spin-off, Integra contributed \$34.0 million in cash to us.

As of February 29, 2016, we had approximately 300 employees.

Components of Our Results of Operations

Revenue

Our net revenue is derived primarily from the sale of orthobiologics and spinal fusion hardware products across North America, Europe, Asia Pacific and Latin America. Sales are reported net of returns, group purchasing organization fees and other customer allowances.

In the United States, we generate most of our revenue by consigning our orthobiologics products and consigning or loaning our spinal fusion hardware sets to hospitals and independent sales agents, who in turn deliver them to hospitals for a single surgical procedure, after which they are returned to us, or leave them with hospitals that are high volume users for multiple procedures. The spinal fusion hardware sets typically contain the instruments, including disposables, and spinal implants required to complete a surgery. We ship replacement inventory to independent sales agents to replace the consigned inventory used in surgeries and maintain and replenish loaned sets at our facility, and return them to a hospital or independent sales agent for the next procedure. We recognize revenue on these consigned or loaned products when they have been used or implanted in a surgical procedure.

For all other transactions, including sales to international stocking distributors and private label partners, we recognize revenue when the products are shipped to the customer or stocking distributor and the transfer of title and risk of loss occurs. There is generally no customer acceptance or other condition that prevents us from recognizing revenue in accordance with the delivery terms.

We entered into certain supply agreements with Integra prior to the spin-off, pursuant to which Integra provides us with certain raw materials and we will provide each other with finished product for further sale in the operation of each other's business. These supply agreements reflect new pricing compared to our historical related party arrangements.

Cost of Goods Sold

Cost of goods sold primarily consists of the costs of finished goods purchased directly from third parties and raw materials used in the manufacture of our products, plant and equipment overhead, labor costs, packaging costs, amortization of technology-related intangible assets and freight. The majority of our orthobiologics products are designed and manufactured internally. The cost of human tissue and fixed manufacturing overhead costs are significant drivers of the costs of goods sold and consequently our orthobiologics products, at current production volumes, generate lower gross margin than our spinal fusion hardware products. We rely on third-party suppliers to manufacture our spinal fusion hardware products, and we assemble them into surgical sets in-house. Other costs included in cost of goods sold include royalties, shipping, inspection and charges for expired, excess and obsolete inventory. We expect our cost of goods sold to continue to increase in absolute dollars due primarily to increased sales volume.

Selling, General and Administrative Expense

Our selling, general and administrative ("SG&A") expenses consist primarily of sales commissions to independent sales agents, cost of medical education and training, payroll and other headcount related expenses, depreciation and other expenses recorded against instrument sets, stock-based compensation, the medical device excise tax, marketing expenses, supply chain and distribution expenses, and expenses for information technology, legal, human resources, insurance, finance, facilities, and management, the substantial majority of which were allocated from Integra prior to the spin-off. Subsequent to the spin-off, we are incurring these administrative expenses directly as an independent, publicly-traded company.

We expect our SG&A expenses, excluding allocations from Integra incurred prior to the spin-off, to increase as we continue to hire additional personnel to support the growth of our business, expand our product portfolio and add related sales and marketing personnel, and as a result of being an independent, publicly-traded company.

Research and Development Expense

Our research and development (“R&D”) expenses primarily consist of expenses related to the headcount for engineering, product development, clinical affairs and regulatory functions as well as consulting services, third-party prototyping services, outside research and clinical studies activities, and materials, production and other costs associated with development of our products. We expense R&D costs as they are incurred.

While our R&D expenses fluctuate from period to period based on the timing of specific initiatives, we expect that these costs will increase over time as we continue to design and commercialize new products and expand our product portfolio, add related personnel and conduct additional clinical activities.

Intangible Amortization

Our intangible amortization, including the amounts reported in cost of goods sold, consists of acquisition-related amortization and impairments related to product discontinuations. We expect total annual amortization expense (including amounts reported in cost of goods sold) to be approximately \$7.0 million in 2016, \$5.8 million in 2017, \$5.5 million in 2018, \$4.8 million in 2019 and \$3.9 million in 2020.

Other Expense, Net

Other expense, net consists of non-operating items such as interest income and expense, and foreign exchange transaction gains and losses on related party transactions and balances.

RESULTS OF OPERATIONS

(In thousands, except percentages)	Year Ended December 31,		
	2015	2014	2013
Total revenue, net	\$ 133,178	\$ 138,695	\$ 146,586
Cost of goods sold	61,119	56,714	55,532
Gross profit	72,059	81,981	91,054
Gross margin	54.1%	59.1%	62.1%
Operating expenses:			
Selling, general and administrative	110,551	88,213	93,009
Research and development	8,353	8,527	9,893
Intangible amortization	5,331	5,590	5,598
Total operating expenses	124,235	102,330	108,500
Operating loss	(52,176)	(20,349)	(17,446)
Other expense, net	(877)	(269)	(4,556)
Loss before income taxes	(53,053)	(20,618)	(22,002)
Provision for income taxes	2,479	3,927	3,744
Net loss	\$ (55,532)	\$ (24,545)	\$ (25,746)

Year Ended December 31, 2015 Compared to Year Ended December 31, 2014**Revenue**

Total revenue, net decreased in 2015 by \$5.5 million, or 4%, to \$133.2 million compared to \$138.7 million for the prior year.

	Year Ended December 31,	
	2015	2014
	(In millions)	
Orthobiologics	\$ 67.3	67.6
% of total revenue, net	51%	49%
Spinal Fusion Hardware	65.9	71.1
% of total revenue, net	49%	51%
Total revenue, net	<u>\$ 133.2</u>	<u>\$ 138.7</u>

Orthobiologics revenues totaled \$67.3 million in 2015, roughly flat compared to the prior year. Sales in the United States increased 2% in 2015 to \$59.9 million primarily because of increased demand for demineralized bone matrix products, especially our third-generation products. This growth was somewhat offset by lower sales of our synthetic bone matrix products. A decrease of \$1.0 million in international orthobiologics revenues compared to the prior year period further offset the increase in domestic orthobiologics revenues. Supply shortages in our third-generation demineralized bone matrix products limited growth in the orthobiologics portfolio in 2015. However, we expect that recent increases in production capacity and output have alleviated these supply issues and do not expect supply to limit revenue growth in 2016.

Spinal fusion hardware revenues totaled \$65.9 million in 2015, a decrease of 7% from the prior year. The decrease was mostly due to declined sales of \$5.0 million in the U.S. market. The U.S. hardware business continued to face pricing pressures and lower demand for our older product lines (in aggregate 108,000 items were sold in 2015 as compared to 136,000 in 2014), while delays in introducing some of our new products in 2015 negatively impacted revenue in the current year. However, the decline in sales of U.S. spinal fusion hardware products decelerated in the second half of 2015, with fourth quarter of 2015 sales roughly flat vs. the prior year, as sales of new and recently launched products began to accelerate. We expect sales of these new and recently launched products to continue to accelerate in 2016 and offset the anticipated continued decline in sales our older spinal fusion hardware product lines. Sales of our spinal hardware fusion products internationally totaled \$5.5 million in 2015, roughly flat compared to the prior year.

The following table sets forth our total revenue, net by geography:

	Year Ended December 31,	
	2015	2014
	(In millions)	
United States	\$ 120.3	\$ 124.4
International	12.9	14.3
Total revenue, net	<u>\$ 133.2</u>	<u>\$ 138.7</u>

Cost of Goods Sold and Gross Margin

Cost of goods sold in 2015 increased \$4.4 million to \$61.1 million. Gross margin was 54.1% in 2015 and 59.1% for the prior year. The decrease in gross margin was mainly driven by a higher percentage of sales in 2015 being derived from orthobiologics products, which have lower gross margin than our hardware products, and by additional charges for excess and obsolete spinal fusion hardware inventory recorded in 2015, a large portion of which relates to a shift in our international strategy after the spin-off. During the third quarter of 2015, we assessed our growth strategy for international markets and determined that we will deploy and invest our limited sales and marketing resources dedicated to international markets in a more targeted manner in fewer countries. As we introduce more new products in the future, we expect to leverage those new product launches to lead our international expansion activities. As a result of this shift in international strategy, we recorded \$2.6 million of excess and obsolete charges in the third quarter of 2015 against certain inventory targeted for international distribution that that we no longer expect that we will be able to sell. The higher costs were partially offset by total lower manufacturing costs in 2015 resulting from increased production volumes and more efficient production of our orthobiologics product portfolio, and a \$1.0 million charge recorded in 2014 related to a discontinued product line. Cost of goods sold included \$2.7 million and \$2.6 million of amortization for technology-based intangible assets in 2015 and 2014, respectively. Allocations from Integra accounted for \$0.5 million of expense in 2015 compared to \$1.3 million for the prior year.

In December 2015, we began to manufacture the majority of our collagen ceramic matrix product supply needs in our Irvine facility. Prior to that, we purchased most of our supply of collagen ceramic matrix products from Integra either a) subsequent to

[Table of Contents](#)

the spin-off under our supply agreement with Integra or b) prior to the spin-off at a calculated transfer price. We typically manufacture those products internally at a lower cost than the price that we purchased those products from Integra. Accordingly, as we begin to sell in 2016 those products we manufacture internally, we expect our gross margin to increase.

Selling, General and Administrative

SG&A expenses increased \$22.3 million to \$110.6 million in 2015. The increase in SG&A expenses was mainly driven by an increase of \$17.1 million of nonrecurring spin-off related charges, \$1.9 million of fees incurred under a transition services agreement with Integra, and an approximately \$14.8 million increase in direct operating expenses after the spin-off that were previously accounted for in the allocation from Integra, including higher salary costs due to increased sales, marketing and administrative headcount, and increased costs associated with being an independent, publicly-traded company, such as higher stock-based compensation expense, higher salary costs due to the hiring of an executive management team, medical device exercise tax expenses, and increased audit, legal, insurance, and information technology-related fees. These increases were offset by a \$9.0 million reduction in allocations from Integra, \$0.6 million lower sales commissions resulting from the decrease in domestic sales, and \$1.0 million of lower instrument set depreciation as more of our older spinal fusion hardware product lines became fully depreciated. Allocations from Integra accounted for \$8.6 million of expense in 2015 compared to \$17.6 million for the prior year.

Research and Development

R&D expenses decreased \$0.2 million to \$8.4 million, or 6% of revenue, in 2015. The decrease in R&D expenses in 2015 was primarily the result of \$0.2 million lower allocations from Integra in 2015 as the spin-off was completed on July 1, 2015. Allocations from Integra totaled \$0.3 million and \$0.5 million in 2015 and 2014, respectively. In 2016, we plan to increase our investment in R&D to between 7%-9% of revenues as we continue to add personnel and accelerate the design and commercialization of new products to expand our product portfolio and conduct additional clinical activities.

Intangible Amortization

Intangible amortization expense, excluding \$2.7 million of reported in cost of goods sold for technology-based intangible assets, decreased \$0.3 million to \$5.3 million in 2015, primarily due to non-compete agreements that were fully amortized during the second quarter of 2015.

Other Expense, Net

Other expense, net increased \$0.6 million to \$0.9 million in 2015, primarily due to foreign exchange remeasurement losses offset by the positive impact of foreign exchange rates on related party loans.

Income Taxes

	Year Ended December 31,	
	2015	2014
	(In thousands)	
Loss before income taxes	\$ (53,053)	\$ (20,618)
Provision for income taxes	2,479	3,927
Effective tax rate	(4.7)%	(19.0)%

The primary drivers of the effective tax rate in 2015 and 2014 were pretax losses incurred by the consolidated U.S. tax group that received no corresponding tax benefit and pretax income incurred by a U.S. subsidiary not included in the Company's U.S. consolidated federal income tax return prior to September 1, 2015.

We reported income tax expense in 2015 and 2014 related to the taxable income generated by a U.S. subsidiary that was not part of the U.S. consolidated tax group through August 31, 2015. As such, despite the losses before income taxes reported in those periods, the taxable income generated by such U.S. subsidiary was not allowed to be offset against the taxable losses generated by our other U.S. subsidiaries through August 31, 2015. Effective September 1, 2015, we made an election that allows us to offset any future taxable losses generated by our U.S. subsidiaries against any future taxable income generated by our U.S. subsidiaries.

[Table of Contents](#)

The income tax provision in the consolidated statements of operations for periods prior to the spin-off was calculated using the separate return method, as if we had filed a separate tax return and operated as a stand-alone business. However, because Integra historically generated taxable income in excess of our pretax losses incurred prior to the spinoff and all of our U.S. subsidiaries that incurred these pretax losses were included in Integra's U.S. consolidated tax group, those pretax losses were more than offset by Integra's taxable income. Therefore, there were no U.S. net operating losses available to us for future use at the date of the spin-off.

In addition, for any pretax losses incurred subsequent to the spin-off by the consolidated U.S. tax group or otherwise, we recorded no corresponding tax benefit because we have concluded that it is more-likely-than-not that we will be unable to realize the benefit from any resulting deferred tax assets. We will continue to assess our position in future periods to determine if it is appropriate to reduce a portion of our valuation allowance in the future.

Year Ended December 31, 2014 Compared to Year Ended December 31, 2013**Revenue**

Total revenue, net decreased by \$7.9 million, or 5.4%, to 138.7 million in 2014 compared to \$146.6 million in 2013.

	Year Ended December 31,	
	2014	2013
	(In millions)	
Orthobiologics	\$ 67.6	\$ 66.7
% of total revenue, net	49%	45%
Spinal Fusion Hardware	71.1	79.9
% of total revenue, net	51%	55%
Total revenue, net	<u>\$ 138.7</u>	<u>\$ 146.6</u>

Orthobiologics revenues totaled \$67.6 million in 2014, an increase of 1.4% compared to 2013. Sales in the United States increased 3% in 2014 to \$58.9 million and were led by increased demand for demineralized bone matrix products, especially our third-generation products. Sales of our orthobiologics products decreased internationally in 2014 compared to 2013, primarily as a result of the discontinuation of a product line in early 2014.

Spinal fusion hardware revenues totaled \$71.1 million in 2014, a decrease of 11% compared to 2013. Sales in the United States decreased 8.3% compared to the prior year. The U.S. hardware business continued to face pricing pressures and lower demand for our older product lines. International sales decreased as a result of large stocking orders from new stocking distributors in 2013 that did not recur in 2014.

The following table sets forth our total revenue, net by geography:

	Year Ended December 31,	
	2014	2013
	(In millions)	
United States	\$ 124.4	\$ 128.7
International	14.3	17.9
Total revenue, net	<u>\$ 138.7</u>	<u>\$ 146.6</u>

Cost of Goods Sold and Gross Margin

Costs of goods sold increased by \$1.2 million, or 2.1%, to \$56.7 million in 2014 compared to \$55.5 million in 2013. Gross margin was 59.1% in 2014 and 62.1% in 2013. The decrease in gross margin from 2013 to 2014 resulted primarily from increased manufacturing costs and because our lower-margin orthobiologics products represented a greater percentage of our revenues.

Cost of goods sold in 2014 and 2013 included \$0.3 million and \$0.8 million, respectively, in fair value inventory purchase accounting adjustments recorded in connection with acquisitions and \$2.6 million of amortization for technology-based

intangible assets in both 2014 and 2013. Allocations from Integra accounted for \$1.3 million of expense in 2014 as compared to \$1.2 million in 2013.

Selling, General and Administrative

SG&A expenses decreased by \$4.8 million, or 5.2%, to \$88.2 million in 2014 compared to \$93.0 million in 2013, driven by lower sales commissions from fewer domestic sales, decreased instrument set depreciation and the impact of costs for structural optimization incurred in 2013 arising from the closure of our facilities in northeast Ohio. Allocations from Integra accounted for \$17.6 million of expense in 2014 as compared to \$17.4 million in 2013.

Research and Development

R&D expenses decreased by 13.8% to \$8.5 million in 2014 compared to \$9.9 million in 2013. The decrease in R&D expenses from 2013 to 2014 resulted mostly from a reduction in compensation-related costs because of planned and unplanned turnover in headcount and decreased external spending and project delays, in part because Integra decided to prioritize R&D spending in other areas of its business. Allocations from Integra accounted for \$0.5 million of expense in 2014 compared to \$0.4 million in 2013.

Intangible Amortization

Amortization expense, excluding \$2.6 million reported in cost of goods sold for technology-based intangible assets, was \$5.6 million in 2014 and 2013.

Other Expense, Net

Other expense, net was \$0.3 million in 2014 compared to \$4.6 million in 2013. Related-party interest expense decreased \$4.6 million in 2014 primarily as a result of the capitalization of related-party loan activity in July 2013.

Income Taxes

We recorded income tax expense of \$3.9 million and \$3.7 million in 2014 and 2013, respectively. Our effective income tax rate was (19.0)% and (17.0)% of loss before income taxes in 2014 and 2013, respectively. We reported income tax expense in 2014 and 2013, despite the fact that we reported losses before income taxes, because our legal entity structure at that time did not permit us to offset taxable losses generated by certain U.S. subsidiaries against the taxable income generated by another of our U.S. subsidiaries. Effective September 1, 2015, we made an election that will allow us to offset any future taxable losses generated by our U.S. subsidiaries against any future taxable income generated by our U.S. subsidiaries. There is no future tax benefit for such prior year losses because we have no assurance that future taxable income will be generated to allow for the recognition of such losses.

The income tax provision in the consolidated statements of operations for periods prior to the spin-off was calculated using the separate return method, as if we had filed a separate tax return and operated as a stand-alone business. However, because Integra historically generated taxable income in excess of our pretax losses incurred prior to the spin-off and all of our U.S. subsidiaries that incurred these pretax losses were included in Integra's U.S. consolidated tax group, those pretax losses were more than offset by Integra's taxable income. Therefore, there were no U.S. net operating losses available to us for future use at the date of the spin-off.

In addition, for any pretax losses incurred subsequent to the spin-off by the consolidated U.S. tax group or otherwise, we recorded no corresponding tax benefit because we have concluded that it is more-likely-than-not that we will be unable to realize the value of any resulting deferred tax assets. We will continue to assess our position in future periods to determine if it is appropriate to reduce a portion of our valuation allowance in the future.

Business Factors Affecting the Results of Operations**Special Charges**

We define special charges as expenses for which the amount or timing can vary significantly from period to period, and for which the amounts are non-cash in nature, or the amounts are not expected to recur at the same magnitude.

We believe that identification of these special charges provides important supplemental information to investors regarding financial and business trends relating to our financial condition and results of operations. Investors may find this information useful in assessing comparability of our operating performance from period to period, against the business model objectives that management has established, and against other companies in our industry. We provide this information to investors so that they can analyze our operating results in the same way that management does and use this information in their assessment of the core business and valuation of SeaSpine.

Loss before income taxes includes the following special charges:

	Year Ended December 31,		
	2015	2014	2013
(In thousands)			
SeaSpine spin-off related charges	\$ 17,278	\$ 2,310	\$ —
Transition services agreement charges	2,809	—	—
Discontinued product line charges	—	860	—
Structural optimization charges	—	—	3,462
Acquisition-related charges	—	257	796
Total	<u>\$ 20,087</u>	<u>\$ 3,427</u>	<u>\$ 4,258</u>

The items reported above are reflected in the consolidated statements of operations as follows:

	Year Ended December 31,		
	2015	2014	2013
(In thousands)			
Cost of goods sold	\$ 648	\$ 1,117	\$ 796
Selling, general and administrative	19,439	2,310	3,462
Total	<u>\$ 20,087</u>	<u>\$ 3,427</u>	<u>\$ 4,258</u>

These special charges are directly related to the SeaSpine business and do not include allocations from Integra. SeaSpine spin-off related charges include legal, accounting, program management and outside consulting expenses incurred as part of the spin-off from Integra, and incremental personnel costs associated with becoming an independent, publicly-traded company. Discontinued product line charges are related to the exit of one of our product lines sold internationally. Acquisition-related charges include transaction fees and the amortization of inventory fair value adjustments related to acquisitions.

Liquidity and Capital Resources**Overview**

Prior to the spin-off, Integra provided financing, cash management and other treasury services to us, and we transferred the majority of cash from operations to Integra; accordingly we generally had no significant cash. With the implementation of our own global ERP system on May 4, 2015, we began to collect against our own accounts receivable, including accounts receivable with Integra, and to directly pay some of our obligations. Effective with the spin-off, we no longer transfer any of our cash to Integra and began to directly pay all of our obligations. Cash historically transferred to and from Integra prior to the spin-off has been reflected in the consolidated statement of cash flows as Integra net investment and in the consolidated balance sheet through Integra net investment.

We believe that our cash and cash equivalents in the U.S., and the maximum of \$30.0 million borrowing capacity that we have under a credit facility that we entered into in December 2015, will be sufficient to fund our operations for at least the next twelve months.

Cash and Cash Equivalents

[Table of Contents](#)

We had cash and cash equivalents totaling approximately \$33.4 million and \$0.7 million at December 31, 2015 and December 31, 2014, respectively.

Cash Flows

	Year Ended December 31,		
	2015	2014	2013
	(In thousands)		
Net cash (used in) provided by operating activities	\$ (32,566)	\$ 806	\$ (7,480)
Net cash used in investing activities	(11,705)	(3,804)	(5,550)
Net cash provided by financing activities	77,130	3,012	13,581
Effect of exchange rate fluctuations on cash	(82)	(8)	4
Net increase in cash and cash equivalents	<u>\$ 32,777</u>	<u>\$ 6</u>	<u>\$ 555</u>

Net Cash Flows (Used in) Provided by Operating Activities

We used \$32.6 million and generated operating cash flows of \$0.8 million in 2015 and 2014, respectively.

Operating cash outflows for the year ended December 31, 2015 increased by \$33.4 million compared to the year ended December 31, 2014. Net loss plus adjustments to reconcile net loss to net cash (used in) provided by operating activities decreased cash flows by \$24.9 million, largely driven by spin-off related charges, and higher operating expenses related to being a separate, publicly traded entity after the spin-off. Among the changes in working capital, purchases of inventory used \$3.2 million more cash and the increase in accounts receivable decreased operating cash flow activities by \$5.0 million in 2015.

Operating cash flows for 2014 improved as compared to the same period in 2013. Cash generated by working capital changes increased by \$8.7 million. Net loss plus items included in that loss for non-cash expenses were flat compared to the prior year. The main driver of the change in working capital was a \$7.5 million reduction in inventory builds in 2014 compared to 2013. In 2013, we invested a substantial amount in inventory to support new product launches in Europe and to achieve safety stock levels more appropriate for the business.

Net Cash Flows Used in Investing Activities

Net cash used in investing activities was \$11.7 million for in 2015 compared to \$3.8 million in 2014. The increased use of cash was primarily attributable to the implementation of a global ERP system and new hardware and software required to meet our needs after the spin-off and \$4.6 million of purchases of spinal fusion hardware sets and instruments related to existing products and new product launches.

Net cash used in investing activities was \$3.8 million in 2014 compared to \$5.6 million in 2013. The decrease in cash used was attributable to fewer purchases of spine hardware sets and instruments in 2014.

Net Cash Flows Provided by Financing Activities

Net cash provided by financing activities was \$77.1 million in 2015 compared to net cash provided by financing activities of \$3.0 million in 2014. The increase in cash resulted from a higher investment from Integra and the \$34 million cash contribution from Integra in connection with the spin-off.

Net cash provided by financing activities was \$3.0 million in 2014 compared to net cash provided by financing activities of \$13.6 million in 2013. The decrease in cash resulted from a decrease in investment from Integra because of improved cash flows in 2014 compared to 2013.

Credit Facility

On December 24, 2015, we entered into a three-year credit facility (the "Credit Facility") with Wells Fargo Capital Finance, as Administrative Agent and as a Lender. The Credit Facility provides a revolving line of credit of up to \$30.0 million in borrowing capacity with a maturity date of December 24, 2018, which maturity date is subject to a one-time one-year extension at our election. In connection with the Credit Facility, we were required to become guarantors and to provide a security interest in substantially all our assets for the benefit of Agent and the Lender.

[Table of Contents](#)

Our borrowings under the Credit Facility shall accrue interest at the rate then applicable to the Base Rate (as customarily defined) Loans, unless and until converted into LIBOR Rate Loans in accordance with the terms of the Credit Facility. Borrowings bear interest at a floating annual rate equal to (a) during any month for which our average excess availability (as customarily defined) is greater than \$20.0 million, base rate plus (i) 1.25 percentage points for base rate loans and (ii) LIBOR rate plus 2.25 percentage points for LIBOR loans, (b) during any month for which our average excess availability is greater than \$10.0 million but less than or equal to \$20.0 million, (i) base rate plus 1.50 percentage points for base rate loans and (ii) LIBOR rate plus 2.50 percentage points for LIBOR loans and (c) during any month for which our average excess availability is less than or equal to \$10.0 million, (i) base rate plus 1.75 percentage points for base rate loans and (ii) LIBOR rate plus 2.75 percentage points for LIBOR loans.

We will also pay an annual unused line fee in an amount equal to 0.375% times the unused Credit Facility amount. The unused line fee is due and payable on the first day of each month. At December 31, 2015, there was \$0.3 million outstanding under the Credit Facility. Debt issuance costs and legal fees related to the financing totaling \$0.4 million were recorded as a deferred asset and are subsequently being amortized ratably over the term of the Credit Facility.

The Credit Facility contains various customary affirmative and negative covenants agreed to by us, including prohibiting us from incurring indebtedness without the lender's consent. The Credit Facility also includes a financial covenant that requires us to maintain a minimum fixed charge coverage ratio of 1.10 to 1.00 for the applicable measurement period if our Total Liquidity (as defined in the Credit Facility) is less than \$5.0 million. We were in compliance with all such covenants at December 31, 2015.

The Credit Facility also includes customary events of default, including events of default relating to non-payment of amounts due under the Credit Facility, material inaccuracy of representations and warranties, violation of covenants, bankruptcy and insolvency, failure to comply with health care laws, violation of certain of our existing agreements, and the occurrence of a change of control. Under the Credit Facility, if an event of default occurs, lenders holding a majority of the revolving commitments will have the right to terminate the commitments and accelerate the maturity of any loans outstanding.

Off-Balance Sheet Arrangements

There were no off-balance sheet arrangements as of December 31, 2015 that have or are reasonably likely to have, a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to our business.

Contractual Obligations and Commitments

As of December 31, 2015, we were obligated to pay the following amounts under various agreements:

	Total	Less than 1 Year	1-3 Years	4-5 Years	More than 5 Years
	(In millions)				
Employment Agreements	\$ 1.6	\$ 0.5	\$ 1.1	\$ —	\$ —
Operating Leases	23.3	2.3	4.4	4.6	12.0
Purchase Obligations	6.7	6.7	—	—	—
Credit Facility	0.3	—	0.3	—	—
Other	2.2	0.3	0.9	1.0	—
Total	<u>\$ 34.1</u>	<u>\$ 9.8</u>	<u>\$ 6.7</u>	<u>\$ 5.6</u>	<u>\$ 12.0</u>

Excluded from the table is the liability for uncertain tax benefits, including interest and penalties, totaling approximately \$0.3 million. This liability for uncertain tax benefits has been excluded because we cannot make a reliable estimate of the period in which such liability may be realized. "Other" includes minimum royalties and milestone payments for certain license agreements.

Critical Accounting Policies and the Use of Estimates

Our discussion and analysis of financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of

[Table of Contents](#)

assets and liabilities, the disclosure of contingent liabilities, and the reported amounts of revenues and expenses. Significant estimates affecting amounts reported or disclosed in the consolidated financial statements include revenue recognition, allowances for doubtful accounts receivable and sales returns and allowances, net realizable value of inventories, amortization periods for acquired intangible assets, estimates of projected cash flows and discount rates used to value intangible assets and test them for impairment, estimates of projected cash flows and depreciation and amortization periods for long-lived assets, valuation of stock-based compensation, computation of taxes and valuation allowances recorded against deferred tax assets, and loss contingencies. These estimates are based on historical experience and on various other assumptions that are believed to be reasonable under the current circumstances. Actual results could differ from these estimates.

We believe that the following accounting policies, which form the basis for developing these estimates, are those that are most critical to the presentation of our consolidated financial statements and require the more difficult subjective and complex judgments:

Revenue Recognition

Our net sales are derived primarily from the sale of orthobiologics and spinal fusion hardware products globally. Sales are reported net of returns, group purchasing organization fees and other customer allowances.

Revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred, title and risk of loss have passed to the customer, there is a fixed or determinable sales price and collectability of that sales price is reasonably assured.

In the United States, we generate most of our revenue by consigning our orthobiologics products and consigning or loaning our spinal fusion hardware sets to hospitals and independent sales agents, who in turn deliver them to the hospital for a single surgical procedure or leave them with hospitals that are high volume users for use in multiple procedures. The spinal fusion hardware sets typically contain the instruments, including disposables, and spinal implants required to complete a surgery. We ship replacement inventory to independent sales agents to replace the consigned inventory used in surgeries and maintain and replenish the loaned sets and return them to a hospital or independent sales agent for the next procedure. We recognize revenue on these consigned or loaned products when they have been used or implanted in a surgical procedure.

For all other transactions, including sales to international stocking distributors, we recognize revenue when the products are shipped to the customer or stocking distributor and the transfer of title and risk of loss occurs. There are generally no customer acceptance or other conditions that prevent us from recognizing revenue in accordance with the delivery terms.

Product royalties are estimated and recognized in the same period that the royalty-based products are sold by licensees. We estimate and recognize royalty revenue based upon communication with licensees, historical information and expected sales trends. Differences between actual revenues and estimated royalty revenues are adjusted in the period in which they become known, which is typically the following quarter. Historically, such adjustments have not been significant.

Allowance for Doubtful Accounts Receivable

We evaluate the collectability of accounts receivable based on a combination of factors. In circumstances where a specific customer is unable to meet its financial obligations to us, we record an allowance to reduce the net recognized receivable to the amount that we reasonably expect to collect. For all other customers, we record allowances for doubtful accounts based on the length of time the receivables are past due, the current business environment and our historical experience. If the financial condition of customers or the length of time that receivables are past due were to change, we may change the recorded amount of allowances for doubtful accounts in the future through charges or reductions to SG&A expense.

Inventories

Inventories, consisting of purchased materials, direct labor and manufacturing overhead, are stated at the lower of cost, the value determined by the first-in, first-out method, or the market methods. At each balance sheet date, we evaluate ending inventories for excess quantities, obsolescence or shelf-life expiration. Our evaluation includes an analysis of our current and future strategic plans, historical sales levels by product, projections of future demand by product, the risk of technological or competitive obsolescence for our products, general market conditions, a review of the shelf-life expiration dates for our products, and the feasibility of reworking or using excess or obsolete products or components in the production or assembly of other products that are not obsolete or for which we do not have excess quantities in inventory. To the extent that we determine there are excess or obsolete quantities or quantities with a shelf life that is too near its expiration for us to reasonably expect that we can sell those products prior to their expiration, we adjust their carrying value to estimated net realizable value. If future demand or market conditions are lower than our projections or if we are unable to rework excess or obsolete quantities into

other products, we may record further adjustments to the carrying value of inventory through a charge to cost of goods sold in the period the revision is made. In addition, we capitalize inventory costs associated with certain products prior to regulatory approval, based on management's judgment of probable economic benefit. We could be required to expense previously capitalized costs related to pre-approval inventory upon a change in such judgment, due to, among other potential factors, a denial or delay of approval by necessary regulatory bodies or a decision by management to discontinue the related development program.

Property, Plant and Equipment

Property, plant and equipment is carried at cost less accumulated depreciation. Depreciation is computed using the straight-line method based on an asset's estimated useful life. Effective July 2015, we changed the estimated useful lives for leasehold improvements at our Vista facility to less than one year to align with the lease term expiring on the May 23, 2016 for our leased offices located in Vista. This change was triggered by our execution of a sublease for the new facility located in Carlsbad in July 2015. All current operations at the Vista facility will be transitioned to the Carlsbad facility or other locations before the end of the Vista lease term. Maintenance and repairs on all property and equipment are expensed as incurred.

Valuation of Identifiable Intangible Assets

We review identifiable intangible assets with definite lives for impairment annually. We continually assess whether events or changes in circumstances represent a triggering event that would require us to complete an impairment assessment. Factors that we consider in determining whether a triggering event has occurred include a significant change in the business climate, legal factors, operating performance indicators, competition, sale or disposition of significant assets or products. Application of these impairment tests requires significant judgments, including estimation of future cash flows, which is dependent on internal forecasts, estimation of the long-term rate of growth for our business, the useful life over which cash flows will occur and determination of our weighted-average cost of capital.

Should a triggering event be deemed to occur, we are required to estimate the expected net cash flows to be realized over the life of the asset and/or the asset's fair value. Fair values are determined by a discounted cash flow model. These estimates are also subject to significant management judgment including the determination of many factors such as revenue growth rates, cost growth rates, terminal value assumptions and discount rates. Changes in these estimates can have a significant impact on the determination of cash flows and fair value and could potentially result in future material impairments.

We initially record identifiable intangible assets at fair value at the time of acquisition, generally using an income or cost approach. We capitalize costs incurred to renew or extend the term of recognized intangible assets and amortize those costs over their expected useful lives.

Valuation of Stock-Based Compensation

The estimated fair value of stock-based awards exchanged for employee and non-employee director services are expensed over the requisite service period.

For purposes of calculating stock-based compensation, we estimate the fair value of stock options using a Black-Scholes option-pricing model. The determination of the fair value of stock-based payment awards utilizing the Black-Scholes model is affected by our stock price and a number of assumptions, including expected volatility, expected term, risk-free interest rate and expected dividends. Due to our limited historical data as a separate public company, the expected volatility is calculated based upon the historical volatility of comparable companies in the medical device industry whose share prices are publicly available for a sufficient period of time. The expected term of options is calculated using the simplified method as prescribed by accounting guidance for stock-based compensation. The risk-free interest rates are derived from the U.S. Treasury yield curve in effect on the date of grant for instruments with a remaining term similar to the expected term of the options. We considered that we have never paid cash dividends and do not currently intend to pay cash dividends. The fair value of restricted stock units granted is based on the market price of our common stock on the date of grant. In addition, we apply an expected forfeiture rate when amortizing stock-based compensation expense. The expected forfeiture rate of stock options is based on historical patterns of the employee turnover rate and is estimated to be 10% annually for stock-based compensation expense recorded for the year ended December 31, 2015. As individual grant awards become fully vested, stock-based compensation expense is adjusted to recognize actual forfeitures.

If factors change and we employ different assumptions, stock-based compensation expense may differ significantly from what we have recorded in the past. If there is a difference between the assumptions used in determining stock-based compensation expense and the actual factors which become known over time, specifically with respect to anticipated forfeitures, we may

[Table of Contents](#)

change the input factors used in determining stock-based compensation costs for future grants. These changes, if any, may materially impact our results of operations in the period such changes are made.

Income Taxes

The income tax provision in the consolidated statements of operations for periods prior to the spin off was calculated using the separate return method, as if we filed a separate tax return and operated as a stand-alone business. Therefore, cash tax payments and items of current and deferred taxes may not be reflective of our actual tax balances included in Integra's historical consolidated income tax return. More specifically, the presentation of substantial net operating losses, and any related valuation allowances, presented herein prior to the spin-off do not represent actual net operating losses that have been incurred by us or that are available for carryforward to a future tax year.

We reported income tax expense for the year ended December 31, 2015 related to the taxable income generated by a U.S. subsidiary that was not part of the U.S. consolidated tax group as of August 31, 2015. As such, despite the reported losses before income taxes in those periods, the taxable income generated by such U.S. subsidiary was not allowed to be offset against the taxable losses generated by our other U.S. subsidiaries through August 31, 2015. Effective September 1, 2015, we made an election that will allow us to offset any future taxable losses generated by our U.S. subsidiaries against any future taxable income generated by our U.S. subsidiaries.

Changes in the tax rates of the various jurisdictions in which we operate affect our profits. In addition, we maintain a reserve for uncertain tax benefits, changes to which could impact our effective tax rate in the period such changes are made. The effective tax rate can also be impacted by changes in valuation allowances of deferred tax assets, and tax law changes.

Our provision for income taxes may change period-to-period based on specific events, such as the settlement of income tax audits and changes in tax laws, as well as general factors, including the geographic mix of income before taxes, state and local taxes.

We recognize a tax benefit from an uncertain tax position only if it is more likely than not to be sustained upon examination based on the technical merits of the position. The amount of the accrual for which an exposure exists is not material for any period presented.

We believe that we have identified all reasonably identifiable exposures and the reserve we have established for identifiable exposures is appropriate under the circumstances; however, it is possible that additional exposures exist and that exposures will be settled at amounts different than the amounts reserved. It is also possible that changes in facts and circumstances could cause us to either materially increase or reduce the carrying amount of our tax reserves.

Our deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and their basis for income tax purposes, and also the temporary differences created by the tax effects of capital loss, net operating loss and tax credit carryforwards. We record valuation allowances to reduce deferred tax assets to the amounts that are more likely than not to be realized. We could recognize no benefit from our deferred tax assets or we could recognize some or all of the future benefit depending on the amount and timing of taxable income we generate in the future.

Loss Contingencies

We are subject to claims and lawsuits in the ordinary course of our business, with respect to our products, our current or former employees, and involving commercial disputes. We accrue for loss contingencies when it is deemed probable that a loss has been incurred and that loss is estimable. The amounts accrued are based on the full amount of the estimated loss before considering insurance proceeds, if applicable, and do not include an estimate for legal fees expected to be incurred in connection with the loss contingency. We accrue legal fees expected to be incurred in connection with loss contingencies as those fees are incurred by outside counsel as a period cost. Our financial statements do not reflect any material amounts related to possible unfavorable outcomes of claims and lawsuits to which we are currently a party because we currently believe that such claims and lawsuits are not expected, individually or in the aggregate, to result in a material and adverse effect on our financial condition.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to various market risks, including changes in foreign currency exchange rates and interest rates that could adversely affect our results of operations and financial condition.

Foreign Currency Exchange Risk

We operate on a global basis and are exposed to the risk that changes in foreign currency exchange rates could adversely affect our financial condition, results of operations and cash flows. In 2015, 2014 and 2013, we generated revenues outside the United States in multiple foreign currencies including euros, British pounds, Swiss francs and New Zealand dollars, and in U.S. dollar-denominated transactions conducted with customers who generated revenue in currencies other than the U.S. dollar. We also incur operating expenses in euros. As a result, changes in the exchange rates of any such foreign currency vs. the U.S. dollar may affect our revenues, gross profits and net loss and may also affect the book value of our assets and the amount of stockholders' equity. We cannot predict the consolidated effects of exchange rate fluctuations upon our future operating results because of the variability of foreign currency exposure in our revenues and operating expenses and the potential volatility of currency exchange rates.

Interest Rate Risk

Our primary exposure to market risk is interest expense and interest income sensitivity, which is affected by changes in the general level of U.S. interest rates.

Our cash and cash equivalents as of December 31, 2015 consisted of cash and bank deposit sweep. We are exposed to market risk related to fluctuations in interest rates and market prices. We currently do not hedge interest rate exposure. However, because of the short-term nature of the instruments in our portfolio, a sudden change in market interest rates would not be expected to have a material impact on our financial condition and/or results of operation.

We had outstanding borrowings under the Credit Facility of \$0.3 million as of December 31, 2015. Interest expense is accrued at an annual interest rate plus a margin with a range of 1.25 and 1.75 percentage points. The annual interest rate is equal to the greatest of (a) the Federal Funds Rate plus ½%, (b) the LIBOR Rate (which rate shall be calculated based upon an interest period of 1 month and shall be determined on a daily basis), plus 1 percentage point, and (c) the rate of interest announced within Wells Fargo at its principal office in San Francisco as its "prime rate." A hypothetical 100 basis point change in interest rates would not be expected to have a material effect on our net loss for the period or cash flow.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Financial statements and the financial statement schedules specified by this Item, together with the report thereon of PricewaterhouseCoopers LLP, are presented following Item 15 of this report.

Information on quarterly results of operations is set forth in our financial statements under Note 12, "Selected Quarterly Information — Unaudited," to our consolidated financial statements.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURES

Not applicable.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Under the direction of our Chief Executive Officer and Chief Financial Officer, we evaluated our disclosure controls and procedures and concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

Management's Annual Report on Internal Control Over Financial Reporting

This annual report on Form 10-K does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of our independent registered public accounting firm due to a transition period established by the rules of the SEC for newly public companies.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting identified in connection with the evaluation required by Rules 13a-15(d) and 15d-15(d) under the Securities and Exchange Act of 1934, as amended, that occurred during the quarter ended December 31, 2015 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

Part III

Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE.

Information required by this item will be contained in our definitive proxy statement to be filed with the SEC in connection with our 2016 Annual Meeting of Stockholders, or the Definitive Proxy Statement, which is expected to be filed not later than 120 days after the end of our fiscal year ended December 31, 2015, under the headings “Board of Directors Information,” “Corporate Governance,” “Executive Officers,” and “Section 16(a) Beneficial Ownership Reporting Compliance,” and is incorporated herein by reference.

Item 11. EXECUTIVE COMPENSATION.

The information required by this item will be set forth in the Definitive Proxy Statement and is incorporated in this report by reference.

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

The information required by this item will be set forth in the Definitive Proxy Statement and is incorporated in this report by reference.

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

The information required by this item will be set forth in the Definitive Proxy Statement and is incorporated in this report by reference.

Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES.

The information required by this item will be set forth in the Definitive Proxy Statement and is incorporated in this report by reference.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) Documents filed as a part of this report.

1. Financial Statements.

The following financial statements and financial statement schedules are filed as a part of this report:

[Table of Contents](#)

Report of Independent Registered Public Accounting Firm	F-1
Consolidated Statements of Operations for the years ended December 31, 2015, 2014 and 2013	F-2
Consolidated Statements of Comprehensive Loss for the years ended December 31, 2015, 2014 and 2013	F-3
Consolidated Balance Sheets as of December 31, 2015 and 2014	F-4
Consolidated Statements of Cash Flows for the years ended December 31, 2015, 2014 and 2013	F-5
Consolidated Statements of Stockholders' Equity for the years ended December 31, 2015, 2014 and 2013	F-6
Notes to Consolidated Financial Statements	F-7

2. Financial Statement Schedules.

Schedule II — Valuation and Qualifying Accounts	F-23
---	----------------------

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

3. Exhibits required to be filed by Item 601 of Regulation S-K. See Item 15(b) below.

(b) Exhibits: The following exhibits are filed as a part of this report:

Exhibit No.	Description	Filed Herewith	Incorporated by Reference		
			Form	File/Film No.	Date Filed
2.1	Separation and Distribution Agreement between Integra LifeSciences Holdings Corporation and SeaSpine Holdings Corporation, dated as of June 30, 2015.		Form 8-K	001-36905-15966132	7/1/2015
3.1	Amended and Restated Certificate of Incorporation of SeaSpine Holdings Corporation.		Form 8-K	001-36905-15966132	7/1/2015
3.2	Amended and Restated Bylaws of SeaSpine Holdings Corporation.		Form 8-K	001-36905-15966132	7/1/2015
4.1	Form of Common Stock Certificate of SeaSpine Holdings Corporation.		Form 10	001-36905-15904590	6/1/2015
10.1	Transition Services Agreement between Integra LifeSciences Holdings Corporation and SeaSpine Holdings Corporation, dated as of July 1, 2015.		Form 8-K	001-36905-15966132	7/1/2015
10.2	Tax Matters Agreement between Integra LifeSciences Holdings Corporation and SeaSpine Holdings Corporation, dated as of July 1, 2015.		Form 8-K	001-36905-15966132	7/1/2015
10.3	Employee Matters Agreement between Integra LifeSciences Holdings Corporation and SeaSpine Holdings Corporation, dated as of July 1, 2015.		Form 8-K	001-36905-15966132	7/1/2015

[Table of Contents](#)

10.4	Microfibrillar Collagen Supply Agreement between Integra LifeSciences Holdings Corporation and SeaSpine Holdings Corporation, dated as of July 1, 2015.	Form 8-K	001-36905-15966132	7/1/2015
10.5	Collagen Ceramic Supply Agreement between Integra LifeSciences Holdings Corporation and SeaSpine Holdings Corporation, dated as of July 1, 2015.	Form 8-K	001-36905-15966132	7/1/2015
10.6	Demineralized Bone Matrix and Collagen Ceramic Products Supply Agreement between Integra LifeSciences Holdings Corporation and SeaSpine Holdings Corporation, dated as of July 1, 2015.	Form 8-K	001-36905-15966132	7/1/2015
10.7	Brian Baker Letter Agreement, dated February 25, 2015.	Form 8-K	001-36905-15966132	7/1/2015
10.8	Form of Indemnification Agreement entered into between SeaSpine Holdings Corporation and each of its directors and executive officers.	Form 10	001-36905-15904590	6/1/2015
10.9	SeaSpine Holdings Corporation 2015 Incentive Award Plan.	Form S-8	333-205334-1598733	6/29/2015
10.10	Form of SeaSpine Holdings Corporation 2015 Incentive Award Plan Stock Option Agreement.	Form 10	001-36905-15904590	6/1/2015
10.11	SeaSpine Holdings Corporation 2015 Employee Stock Purchase Plan.	Form 10	001-36905-15904590	6/1/2015
10.12	Employment Agreement, by and between SeaSpine Holdings Corporation, SeaSpine Orthopedics Corporation and Keith Valentine, dated April 28, 2015.	Form 10	001-36905-15904590	6/1/2015
10.13	John Bostjancic Letter Agreement, dated March 30, 2015.	Form 10	001-36905-15904590	6/1/2015
10.14	John Winge Letter Agreement, dated January 22, 2015.	Form 10	001-36905-15904590	6/1/2015
10.15	Amended and Restated Lease between Salma Jason Monica Limited Partnership and SeaSpine, Inc., dated as of May 23, 2011 for property at 2384 La Miranda, Vista, CA.	Form 10	001-36905-15904590	6/1/2015
10.16	Amended and Restated Lease between Salma Jason Monica Limited Partnership and SeaSpine, Inc., dated as of May 23, 2011 for property at 2302 La Miranda, Vista, CA	Form 10	001-36905-15904590	6/1/2015

[Table of Contents](#)

10.17	Amended and Restated Lease between Monarch RRC Properties, LLC (assignee of original landlord, New Goodyear LTD) and IsoTis Orthobiologics, Inc., dated as of February 23, 2006, for property at 2 Goodyear, Irvine, CA (the “Irvine Industrial Real Estate Lease”).	Form 10	001-36905-15904590	6/1/2015
10.18	Amendment No. 1 to Irvine Industrial Real Estate Lease, dated as of May 26, 2011.	Form 10	001-36905-15904590	6/1/2015
10.19	Amendment No. 2 to Irvine Industrial Real Estate Lease, dated as of May 14, 2013.	Form 10	001-36905-15904590	6/1/2015
10.20	Sublease Agreement between SeaSpine Orthopedics Corporation, and SkinMedica, Inc., dated as of July 8, 2015.	Form 8-K	001-36905-151103433	9/11/2015
10.21	SeaSpine Holdings Corporation Senior Leadership Retention and Severance Plan, effective January 27, 2016.	Form 8-K	001-36905-161378936	2/2/2016
10.22	SeaSpine Holdings Corporation 2015 Incentive Award Plan Annual Incentive Program.	Form 8-K	001-36905-161472253	3/1/2016
10.23	SeaSpine Holdings Corporation Non-Employee Director Compensation Program, effective October 13, 2015.	X		
10.24	Credit Agreement between SeaSpine Holdings Corporation, and Wells Fargo Bank, National Association, dated as of December 24, 2015.	X		
21.1	List of subsidiaries of SeaSpine Holdings Corporation.	X		
23.1	Consent of Pricewaterhouse Coopers LLP, Independent Registered Public Accounting Firm.	X		
31.1	Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X		
31.2	Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X		
32.1	Certification of Principal Executive Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X		

[Table of Contents](#)

32.2	Certification of Principal Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X
†101.INS	XBRL Instance Document	X
†101.SCH	XBRL Taxonomy Extension Schema Document	X
†101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document	X
†101.DEF	XBRL Definition Linkbase Document	X
†101.LAB	XBRL Taxonomy Extension Labels Linkbase Document	X
†101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document	X

† The financial information of SeaSpine Holdings Corporation Annual Report on Form 10-K for the year ended December 31, 2015 filed on March 16, 2016 formatted in XBRL (Extensible Business Reporting Language): (i) the Consolidated Statements of Operations, (ii) the Consolidated Statements of Comprehensive Loss, (iii) the Consolidated Balance Sheets, (iv) Parenthetical Data to the Consolidated Balance Sheets, (v) the Consolidated Statements of Cash Flows, (vi) the Consolidated Statements of Equity, and (vii) Notes to Consolidated Financial Statements, is furnished electronically herewith.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SEASPINE HOLDINGS CORPORATION

Date: March 16, 2016

/s/ Keith C. Valentine

Keith C. Valentine
President and Chief Executive Officer

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

[Table of Contents](#)

Date: March 16, 2016

/s/ Keith C. Valentine

Keith C. Valentine
President and Chief Executive Officer

Date: March 16, 2016

/s/ John J. Bostjancic

John J. Bostjancic
Chief Financial Officer

Date: March 16, 2016

/s/ Kirtley Stephenson

Kirtley Stephenson
Chairman of the Board of Directors

James M. Sullivan

James M. Sullivan
Director

Date: March 16, 2016

/s/ Michael Fekete

Michael Fekete
Director

Date: March 16, 2016

/s/ John B. Henneman III

John B. Henneman III
Director

Date: March 16, 2016

/s/ Stuart M. Essig

Stuart M. Essig
Director

Date: March 16, 2016

/s/ Cheryl Blanchard

Cheryl Blanchard
Director

Date: March 16, 2016

/s/ Keith Bradley Ph.D.

Keith Bradley Ph.D.
Director

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors of SeaSpine Holdings Corporation:

In our opinion, the consolidated financial statements listed in the index appearing under Item 15(a)(1) present fairly, in all material respects, the financial position of SeaSpine Holdings Corporation and its subsidiaries at December 31, 2015 and December 31, 2014, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2015 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement Schedule II - Valuation and Qualifying Accounts presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP
San Diego, California
March 16, 2016

SEASPINE HOLDINGS CORPORATION
CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share data)

	Year Ended December 31,		
	2015	2014	2013
Total revenue, net	\$ 133,178	\$ 138,695	\$ 146,586
Cost of goods sold	61,119	56,714	55,532
Gross profit	72,059	81,981	91,054
Operating expenses:			
Selling, general and administrative	110,551	88,213	93,009
Research and development	8,353	8,527	9,893
Intangible amortization	5,331	5,590	5,598
Total operating expenses	124,235	102,330	108,500
Operating loss	(52,176)	(20,349)	(17,446)
Other expense, net	(877)	(269)	(4,556)
Loss before income taxes	(53,053)	(20,618)	(22,002)
Provision for income taxes	2,479	3,927	3,744
Net loss	\$ (55,532)	\$ (24,545)	\$ (25,746)
Net Loss per share, basic and diluted	\$ (4.99)	\$ (2.22)	\$ (2.33)
Weighted average shares used to compute basic and diluted net loss per share	11,139	11,048	11,048

The accompanying notes are an integral part of these consolidated financial statements.

SEASPINE HOLDINGS CORPORATION
CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(In thousands)

	Year Ended December 31,		
	2015	2014	2013
Net loss	\$ (55,532)	\$ (24,545)	\$ (25,746)
Other comprehensive income (loss)			
Change in foreign currency translation adjustments	498	(961)	256
Comprehensive loss	<u>\$ (55,034)</u>	<u>\$ (25,506)</u>	<u>\$ (25,490)</u>

The accompanying notes are an integral part of these consolidated financial statements.

SEASPINE HOLDINGS CORPORATION
CONSOLIDATED BALANCE SHEETS
(In thousands, except par value data)

	<u>December 31, 2015</u>	<u>December 31, 2014</u>
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 33,429	\$ 652
Trade accounts receivable, net of allowances of \$764 and \$558	25,326	22,538
Inventories	51,271	49,862
Prepaid expenses and other current assets	3,696	1,564
Total current assets	113,722	74,616
Property, plant and equipment, net	21,958	16,360
Intangible assets, net	39,632	46,891
Other assets	1,077	1,775
Total assets	<u>\$ 176,389</u>	<u>\$ 139,642</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable, trade	\$ 13,689	\$ 36,637
Income taxes payable	—	608
Accrued compensation	4,177	2,408
Accrued commissions	4,227	3,892
Accrued expenses and other current liabilities	3,942	2,407
Total current liabilities	26,035	45,952
Long-term borrowings under credit facility	328	—
Other liabilities	2,687	2,406
Total liabilities	<u>29,050</u>	<u>48,358</u>
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.01 par value; 15,000 authorized at December 31, 2015; no shares issued and outstanding at December 31, 2015	—	—
Common stock, \$0.01 par value; 60,000 authorized; 11,102 shares issued and outstanding at December 31, 2015, and no shares issued and outstanding at December 31, 2014	111	—
Additional paid-in capital	173,786	—
Integra net investment prior to the spin-off	—	90,391
Accumulated other comprehensive income	1,391	893
Accumulated deficit	(27,949)	—
Total stockholders' equity	<u>147,339</u>	<u>91,284</u>
Total liabilities and stockholders' equity	<u>\$ 176,389</u>	<u>\$ 139,642</u>

The accompanying notes are an integral part of these consolidated financial statements.

SEASPINE HOLDINGS CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	2015	2014	2013
OPERATING ACTIVITIES:			
Net loss	\$ (55,532)	\$ (24,545)	\$ (25,746)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:			
Depreciation and amortization	12,445	12,961	13,579
Instrument replacement expense	1,228	1,732	2,417
Impairment of construction in progress	594	—	—
Provision for excess and obsolete inventories	7,327	2,500	2,431
Loss on disposal of property and equipment	—	292	—
Deferred income tax benefit	(282)	(673)	(697)
Stock-based compensation	3,816	551	706
Amortization of inventory step-up	—	258	795
Allocation of non-cash charges from Integra	563	1,934	1,415
Changes in assets and liabilities			
Accounts receivable	(2,004)	2,997	2,314
Inventories	(8,365)	(5,185)	(12,633)
Prepaid expenses and other current assets	(2,867)	256	754
Other non-current assets	1,335	499	149
Accounts payable	5,818	5,797	7,944
Income taxes payable	(320)	507	101
Accrued commissions	335	344	1,282
Accrued compensation, accrued expenses and other current liabilities	3,316	875	(2,826)
Other non-current liabilities	27	(294)	535
Net cash (used in) provided by operating activities	(32,566)	806	(7,480)
INVESTING ACTIVITIES:			
Purchases of property and equipment	(11,555)	(3,804)	(5,550)
Technology license milestone payment	(150)	—	—
Net cash used in investing activities	(11,705)	(3,804)	(5,550)
FINANCING ACTIVITIES:			
Debt issuance costs	(80)	—	—
Integra net investment prior to the spin-off	77,173	3,012	13,581
Excess tax benefits from stock-based compensation arrangements	37	—	—
Net cash provided by financing activities	77,130	3,012	13,581
Effect of exchange rate changes on cash and cash equivalents	(82)	(8)	4
Net change in cash and cash equivalents	32,777	6	555
Cash and cash equivalents at beginning of period	652	646	91
Cash and cash equivalents at end of period	\$ 33,429	\$ 652	\$ 646
Non-cash financing activities:			
Settlement of related-party payable to Integra net investment	\$ 29,022	\$ —	\$ —
Long-term borrowings under credit facility	\$ 328	\$ —	\$ —
Non-cash investing activities:			
Property and equipment in liabilities	\$ 638	\$ 300	\$ 500
Supplemental cash flow information:			
Income taxes paid	\$ 2,982	\$ 4,200	\$ 3,900

The accompanying notes are an integral part of these consolidated financial statements.

SEASPINE HOLDINGS CORPORATION
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands)

	Common Stock		Additional Paid-In Capital	Integra Net Investment	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Number of Shares	Amount					
Balance December 31, 2012	—	\$ —	\$ —	\$ (7,222)	\$ 1,598	\$ —	\$ (5,624)
Net loss	—	—	—	(25,746)	—	—	(25,746)
Other comprehensive income	—	—	—	—	256	—	256
Net transfers to Integra	—	—	—	142,609	—	—	142,609
Balance December 31, 2013	—	\$ —	\$ —	\$ 109,641	\$ 1,854	\$ —	\$ 111,495
Net loss	—	—	—	(24,545)	—	—	(24,545)
Other comprehensive loss	—	\$ —	—	—	(961)	—	(961)
Net transfers to Integra	—	—	—	5,295	—	—	5,295
Balance December 31, 2014	—	\$ —	\$ —	\$ 90,391	\$ 893	\$ —	\$ 91,284
Net loss	—	—	—	(27,583)	—	(27,949)	(55,532)
Net transfer from Integra	—	—	—	107,433	—	—	107,433
Reclassification of Integra net investment in connection with spin-off	—	—	170,241	(170,241)	—	—	—
Other comprehensive income	—	—	—	—	498	—	498
Issuance of common stock in connection with spin-off	11,048	110	(110)	—	—	—	—
Restricted stock awards issued	66	1	(1)	—	—	—	—
Restricted stock awards forfeited	(12)	—	—	—	—	—	—
Stock-based compensation	—	—	3,619	—	—	—	3,619
Excess tax benefits from stock-based compensation arrangements	—	—	37	—	—	—	37
Balance December 31, 2015	11,102	\$ 111	\$ 173,786	\$ —	\$ 1,391	\$ (27,949)	\$ 147,339

The accompanying notes are an integral part of these consolidated financial statements.

**SEASPINE HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

1. BUSINESS

Spin-off from Integra

As of June 30, 2015, SeaSpine Holdings Corporation ("SeaSpine," or the "Company") was a subsidiary of Integra LifeSciences Holdings Corporation ("Integra"). On July 1, 2015, Integra completed the spin-off of its orthobiologics and spinal fusion hardware business into SeaSpine, which was created to be a separate, independent, publicly-traded medical technology company focused on the design, development and commercialization of surgical solutions for the treatment of patients suffering from spinal disorders. Unless the context indicates otherwise, (i) references to "SeaSpine," the "Company," and the "Business," refer to SeaSpine Holdings Corporation and its orthobiologics and spinal fusion hardware business and (ii) references to "Integra" refer to Integra LifeSciences Holdings Corporation and its subsidiaries other than SeaSpine.

On July 1, 2015 (the "Distribution Date"), SeaSpine common stock was distributed, on a pro rata basis, to Integra's stockholders of record as of 5:00 p.m. Eastern Time on June 19, 2015 (the "Record Date"). On the Distribution Date, each holder of Integra common stock received one share of SeaSpine common stock for every three shares of Integra common stock held by such holder as of the Record Date. The spin-off was completed pursuant to a Separation and Distribution Agreement and several other agreements with Integra or its subsidiaries related to the spin-off, including an Employee Matters Agreement, a Tax Matters Agreement, a Transition Services Agreement and several Supply Agreements, each of which is filed as an Exhibit to the Current Report on Form 8-K filed with the U.S. Securities and Exchange Commission ("SEC") on July 1, 2015 and incorporated by reference herein. These agreements govern the relationship between SeaSpine and Integra following the spin-off and provide for the allocation of various assets, liabilities, rights and obligations. These agreements also include arrangements for transition services, products and raw materials to be provided by Integra to SeaSpine and transition services and products to be provided by SeaSpine to Integra. For a discussion of each agreement, see the section entitled "Certain Relationships and Related Party Transactions" in the SeaSpine Information Statement included as Exhibit 99.1 to the Registration Statement on Form 10, as amended, filed with the SEC on June 9, 2015 (the "Information Statement").

The SeaSpine Registration Statement on Form 10 became effective on June 9, 2015, and SeaSpine common stock began "regular-way" trading on the NASDAQ Global Market on July 2, 2015 under the symbol "SPNE."

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The Company prepared the consolidated financial statements included in this report in accordance with accounting principles generally accepted in the U.S. ("GAAP"). For periods prior to the spin-off, the Company's consolidated financial statements were prepared on a stand-alone basis and derived from Integra's consolidated financial statements and accounting records related to its orthobiologics and spinal fusion hardware business. The Company relied on Integra for a significant portion of its operational and administrative support. The consolidated financial statements included allocations of certain Integra corporate expenses, including information technology resources and support; finance, accounting, auditing services; real estate and facility management services; human resources activities; certain procurement activities; treasury services, legal advisory services and costs for research and development. These costs were allocated to the Company on the basis of direct usage when identifiable, with the remainder allocated on a pro-rata basis of revenue, standard costs of sales, or other measures.

Integra used a centralized approach to cash management and financing of its operations and substantially all cash generated by the Company through May 4, 2015, the date the Company implemented a separate enterprise resource planning ("ERP") system for SeaSpine, was assumed to be remitted to Integra. Prior to the spin-off, cash management and financing transactions relating to the Company were accounted for through the Integra invested equity account. Accordingly, none of the Integra cash and cash equivalents at the corporate level were assigned to SeaSpine in the consolidated financial statements. Integra's debt and related interest expense were not allocated to SeaSpine for any of the periods presented since the Company was not the legal obligor of the debt and Integra's borrowings were not directly attributable to SeaSpine.

Subsequent to the spin-off, the Company's financial statements are presented on a consolidated basis, as the Company became a separate publicly-traded company on July 1, 2015. The Company performs its operational and administrative support using internal resources and purchased services, some of which have been provided by Integra for a fee pursuant to a transition services agreement.

See Note 3, "Transactions with Integra," for further information regarding the relationships the Company has with Integra.

SEASPINE HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

Principles of Consolidation

For periods prior to the spin-off, the consolidated financial statements include certain assets and liabilities that have historically been held at the Integra level but were specifically identifiable or otherwise attributable to the Company. All significant intra-company transactions within Integra's pre-spin off orthobiologics and spinal fusion hardware business have been eliminated. All significant transactions between the Company and other businesses of Integra before the spin-off are included in these consolidated financial statements.

For periods subsequent to the spin-off, the consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. Intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of consolidated financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent liabilities, and the reported amounts of revenues and expenses. Significant estimates affecting amounts reported or disclosed in the consolidated financial statements include allowances for doubtful accounts receivable and sales returns and allowances, net realizable value of inventories, amortization periods for acquired intangible assets, discount rates and estimated projected cash flows used to value and test impairments of long-lived assets, estimates of projected cash flows, depreciation and amortization periods for long-lived assets, computation of taxes, valuation allowances recorded against deferred tax assets, the valuation of stock-based compensation and loss contingencies. These estimates are based on historical experience and on various other assumptions that are believed to be reasonable under the current circumstances. Actual results could differ from these estimates.

Cash and Cash Equivalents

The Company considers all highly liquid investments with a maturity of 90 days or less at the date of purchase to be cash equivalents. Cash and cash equivalents include cash readily available in checking and bank deposit sweep accounts.

Fair Value of Financial Instruments

The carrying amounts of cash, cash equivalents, receivables, accounts payable and accrued expenses at December 31, 2015 and December 31, 2014, are considered to approximate fair value because of the short term nature of those items.

The Company measures certain assets and liabilities in accordance with authoritative guidance which requires fair value measurements to be classified and disclosed in one of the following three categories:

- Level 1: Quoted prices (unadjusted) in active markets that are accessible at the measurement date for assets or liabilities.
- Level 2: Observable prices that are based on inputs not quoted on active markets, but corroborated by market data.
- Level 3: Unobservable inputs are used when little or no market data is available.

The carrying amount of debt outstanding pursuant to the Credit Facility approximates fair value as interest rates on this instrument approximate current market rates. This fair value measurement is categorized within Level 2 of the fair value hierarchy.

Trade Accounts Receivable and Allowances for Doubtful Accounts Receivable

Trade accounts receivable in the accompanying consolidated balance sheets are presented net of allowances for doubtful accounts.

The Company grants credit to customers in the normal course of business, but generally does not require collateral or any other security to support its receivables.

The Company evaluates the collectability of accounts receivable based on a combination of factors. In circumstances where a specific customer is unable to meet its financial obligations to the Company, a provision to the allowances for doubtful accounts is recorded to reduce the net recognized receivable to the amount that is reasonably expected to be collected. For all other customers, a provision to the allowances for doubtful accounts is recorded based on factors including the length of time the receivables are past due, the current business environment and the Company's historical experience. Provisions to the allowances for doubtful accounts are recorded to selling, general and administrative expenses. Account balances are charged off against the allowance when it is probable that the receivable will not be recovered.

Inventories

SEASPINE HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

Inventories, consisting of purchased materials, direct labor and manufacturing overhead, are stated at the lower of cost, the value determined by the first-in, first-out method, or market.

At each balance sheet date, the Company evaluates inventories for excess quantities, obsolescence or shelf life expiration. This evaluation includes analysis of our current and future strategic plans, historical sales levels by product, projections of future demand, the risk of technological or competitive obsolescence for products, general market conditions, a review of the shelf life expiration dates for products, as well as the feasibility of reworking or using excess or obsolete products or components in the production or assembly of other products that are not obsolete or for which there are not excess quantities in inventory. To the extent that management determines there are excess or obsolete inventory or quantities with a shelf life that is too near its expiration for the Company to reasonably expect that it can sell those products prior to their expiration, the Company adjusts the carrying value to estimated net realizable value.

The Company capitalizes inventory costs associated with certain products prior to regulatory approval, based on management's judgment of probable economic benefit. The Company could be required to expense previously capitalized costs related to pre-approval inventory upon a change in such judgment, due to, among other potential factors, a denial or delay of approval by necessary regulatory bodies or a decision by management to discontinue the related development program. No such amounts were capitalized at December 31, 2015 or 2014.

Property, Plant, and Equipment

Property, plant and equipment are stated at historical cost less accumulated depreciation and any impairment charges. The Company provides for depreciation using the straight-line method over the estimated useful lives of the assets. Leasehold improvements are amortized over the lesser of the lease term or the useful life. The cost of major additions and improvements is capitalized, while maintenance and repair costs that do not improve or extend the lives of the respective assets are charged to operations as incurred. The cost of computer software obtained for internal use is accounted for in accordance with the Accounting Standards Codification 350-40, *Internal-Use Software*.

The cost of purchased instruments which the Company consigns to hospitals and independent sales agents to support surgeries is initially capitalized as construction in progress. The amount is then reclassified to instrument sets and depreciation is initiated when instruments are put together in a newly built set with spinal implants, or directly expensed for the instruments that are used to replace damaged instruments in an existing set. The depreciation expense and direct expense for replacement instruments are recorded in selling, general and administrative expense.

Identifiable Intangible Assets

Identifiable intangible assets are initially recorded at fair value at the time of acquisition generally using an income or cost approach. The Company capitalizes costs incurred to renew or extend the term of recognized intangible assets and amortizes those costs over their expected useful lives.

Long-Lived Assets

Long-lived assets held and used by the Company, including property, plant and equipment and intangible assets, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. For purposes of evaluating the recoverability of long-lived assets to be held and used, a recoverability test is performed using projected undiscounted net cash flows applicable to the long-lived assets. If an impairment exists, the amount of such impairment is calculated based on the estimated fair value of the asset. Impairments to long-lived assets to be disposed of are recorded based upon the difference between the carrying value and the fair value of the applicable assets. There was no impairment of intangible or tangible long-lived assets in any of the periods presented.

Foreign Currency

The Company generates revenues outside the United States in multiple foreign currencies including euros, British pounds, Swiss francs and New Zealand dollars, and in U.S. dollar-denominated transactions conducted with customers who generate revenue in currencies other than the U.S. dollar. The Company also incurs operating expenses in euros. All assets and liabilities of foreign subsidiaries which have a functional currency other than the U.S. dollar are translated at the rate of exchange at year-end, while elements of the income statement are translated at the average exchange rates in effect during the year. The net effect of these translation adjustments is shown as a component of accumulated other comprehensive income (loss). These currency translation adjustments are not currently adjusted for income taxes as they relate to permanent investments in non-U.S. subsidiaries. Foreign currency transaction gains and losses are reported in other income (expense), net.

SEASPINE HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

Income Taxes

In the Company's consolidated financial statements prior to the spin-off, income tax expense and deferred tax balances were calculated on a separate return basis although the Company's operations had historically been included in the tax returns filed by the respective Integra entities of which the Company's business was a part.

Prior to the spin-off, the Company maintained an income taxes payable to/from account with Integra. The Company was deemed to settle current tax balances with the Integra tax paying entities in the respective jurisdictions. The Company's current income tax balances were reflected as income taxes payable and settlements, which are deemed to occur in the year following incurrence, were reflected as changes in net Integra investment in the consolidated balance sheets.

We recognize tax benefits in our financial statements when our uncertain tax positions are more likely than not to be sustained upon audit. The amount we recognize is measured as the largest amount of benefit that is greater than 50 percent likely of being realized upon ultimate settlement. We recognize deferred tax assets for deductible temporary differences, operating loss carryforwards and tax credit carryforwards. Deferred tax assets are reduced by valuation allowance if it is more likely than not that some portion, or all, of the deferred tax assets will not be realized.

Revenue Recognition

Our net sales are derived primarily from the sale of orthobiologics and spinal fusion hardware products globally. Sales are reported net of returns, group purchasing organization fees and other customer allowances.

Revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred title and risk of loss have passed to the customer, there is a fixed or determinable sales price and collectability of that sales price is reasonably assured.

In the United States, we generate most of our revenue by consigning our orthobiologics products and consigning or loaning our spinal fusion hardware sets to hospitals and independent sales agents, who in turn deliver them to the hospital for a single surgical procedure or leave them with hospitals that are high volume users for use in multiple procedures. The spinal fusion hardware sets typically contain the instruments, including disposables, and spinal implants required to complete a surgery. We ship replacement inventory to independent sales agents to replace the consigned inventory used in surgeries and maintain and replenish the loaned sets and return them to a hospital or independent sales agent for the next procedure. We recognize revenue on these consigned or loaned products when they have been used or implanted in a surgical procedure.

For all other transactions, including sales to international stocking distributors, we recognize revenue when the products are shipped to the customer or stocking distributor and the transfer of title and risk of loss occurs. There are generally no customer acceptance or other conditions that prevent us from recognizing revenue in accordance with the delivery terms.

Product royalties are estimated and recognized in the same period that the royalty-based products are sold by licensees. The Company estimates and recognizes royalty revenue based upon communication with licensees, historical information and expected sales trends. Differences between actual revenues and estimated royalty revenues are adjusted in the period in which they become known, which is typically the following quarter. Historically, such adjustments have not been significant.

Shipping and Handling Fees and Costs

Amounts billed to customers for shipping and handling are included in revenues. The related shipping and freight charges incurred by the Company are included in cost of goods sold. Shipping and handling costs of \$1.2 million, \$1.0 million, and \$1.1 million were recorded in selling, general and administrative expense during the years ended December 31, 2015, 2014 and 2013, respectively.

Research and Development

Research and development costs, including salaries, depreciation, consultant and other external fees, and facility costs directly attributable to research and development activities, are expensed in the period in which they are incurred.

Stock-Based Compensation

For periods prior to the spin-off, the Company's stock-based compensation was derived from the equity awards granted by Integra to individuals who would become the Company's employees. Stock-based compensation expense has been allocated to the

SEASPINE HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

Company based on the awards and terms previously granted to its employees. As those stock-based compensation plans were Integra's plans, the amounts have been recognized in the consolidated statements of operations and the Integra net investment account on the consolidated balance sheet. For periods after the spin-off, the Company's stock-based compensation has been recognized through the consolidated statement of operations and the Company's additional paid-in capital account on the consolidated balance sheet.

The Company applies the authoritative guidance for stock-based compensation. This guidance requires companies to recognize the expense related to the fair value of their stock-based compensation awards. Stock-based compensation expense for stock option awards granted after January 1, 2006 was based on the fair value on the grant date using the Black-Scholes-Merton option pricing model. The fair value of performance awards of restricted stock granted prior to the spin-off was based on the Integra's stock price at the grant date and the assessed probability of meeting future performance targets. The long form method was used in the determination of the windfall tax benefit in accordance with the guidance.

The stock-based compensation is initially measured at the fair value of the awards on the grant date and is then recognized on a ratable basis in the financial statements over the requisite service period of the award. Stock-based compensation expense was \$4.4 million in 2015, \$0.6 million in 2014, and \$0.7 million in 2013.

Concentration of Credit Risk

Financial instruments, which potentially subject the Company to concentrations of credit risk, consist principally of cash, which is held at major financial institutions, and trade receivables.

The Company's products are sold on an uncollateralized basis and on credit terms based upon a credit risk assessment of each customer. A portion of the Company's trade receivables to customers outside the United States includes sales to foreign distributors, who then sell to government owned or supported healthcare systems. The ongoing economic conditions in certain European countries, especially Greece, Ireland, Italy, Portugal and Spain remain uncertain. Accounts receivable from customers in these countries are not a material amount of the Company's overall receivables.

None of the Company's customers accounted for 10% or more of the combined net sales during the years ended December 31, 2015, 2014 or 2013.

Recently Issued Accounting Standards

In May 2014, the Financial Accounting Standards Board ("FASB") issued Update No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*. The core principle of the guidance is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. To achieve that core principle, an entity should: 1) identify the contract(s) with a customer, 2) identify the performance obligations in the contract, 3) determine the transaction price, 4) allocate the transaction price to the performance obligations in the contract, and 5) recognize revenue when (or as) the entity satisfies a performance obligation. In July 2015, the FASB deferred for one year the effective date of the new revenue standard, but early adoption is permitted. The new standard will be effective for the Company on January 1, 2018. The Company is in the process of evaluating the impact of this standard on its financial statements.

In August 2014, the FASB issued Update No. 2014-15, *Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern*. The amendment requires management to evaluate, for each annual and interim reporting period, whether there are conditions and events, considered in the aggregate, that raise substantial doubt about an entity's ability to continue as a going concern within one year after the date the financial statements are issued or are available to be issued. If substantial doubt is raised, additional disclosures around management's plan to alleviate these doubts are required. This update will become effective for all annual periods and interim reporting periods beginning after December 15, 2016. The implementation of the amended guidance is not expected to have an impact on current disclosures in our financial statements.

In April 2015, the FASB issued Update No. 2015-03, *Simplifying the Presentation of Debt Issuance Costs*. The new standard will require debt issuance costs to be presented on the balance sheet as a direct reduction of the carrying value of the associated debt liability, consistent with the presentation of debt discounts. The recognition and measurement requirements will not change as a result of this guidance. The standard is effective for the annual reporting periods beginning after December 15, 2015 and requires a retrospective application. The guidance in Accounting Standards Update (ASU) 2015-03 does not address presentation or subsequent measurement of debt issuance costs related to line-of-credit arrangements. In August 2015, the FASB issued ASU 2015-15, *Presentation and Subsequent Measurement of Debt Issuance Costs Associated with Line-of-Credit Arrangements*. Under the new standard, the SEC staff will not object to an entity deferring and presenting debt issuance costs as an asset and subsequently

SEASPINE HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

amortizing the deferred debt issuance costs ratably over the term of the line-of-credit arrangement, regardless of whether there are any outstanding borrowings on the line-of-credit arrangement. The implementation of the amended guidance is not expected to have an impact on current disclosures in our financial statements.

In July 2015, the FASB issued Update No. 2015-11, *Simplifying the Measurement of Inventory*. The new guidance requires an entity to measure inventory within the scope of the amendment at the lower of cost and net realizable value. Net realizable value is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. The guidance is effective for fiscal years beginning after December 15, 2016, including interim periods within those fiscal years. The implementation of the amended guidance is not expected to have an impact on our financial statements.

In November 2015, the FASB issued Update No. 2015-17, *Income Taxes - Balance Sheet Reclassification of Deferred Taxes (Topic 740)*. This ASU requires that deferred tax liabilities and assets be classified as non-current in a classified statement of financial position. The current requirement that deferred tax liabilities and assets of a tax-paying component of an entity be offset and presented as a single amount is not affected by the amendments in this update. The amendments in this update are effective for financial statements issued for annual periods beginning after December 15, 2016, and interim periods within those annual periods. Early adoption is permitted and the amendments may be applied either prospectively to all deferred tax liabilities and assets or retrospectively to all periods presented. The Company early adopted this ASU in the fourth quarter of 2015 on a prospective basis and included the current portion of deferred tax assets within the non-current portion of deferred tax assets within the consolidated balance sheet. The Company did not adjust our prior period consolidated balance sheet as a result of the adoption of this ASU.

In February 2016, the FASB issued Update No. 2016-02, *Leases (ASC 842)*, which sets out the principles for the recognition, measurement, presentation and disclosure of leases for both parties to a contract (i.e. lessees and lessors). The new standard requires lessees to apply a dual approach, classifying leases as either finance or operating leases based on the principle of whether or not the lease is effectively a financed purchase by the lessee. This classification will determine whether lease expense is recognized based on an effective interest method or on a straight line basis over the term of the lease, respectively. A lessee is also required to record a right-of-use asset and a lease liability for all leases with a term of greater than 12 months regardless of their classification. Leases with a term of 12 months or less will be accounted for similar to existing guidance for operating leases today. ASC 842 supersedes the previous leases standard, ASC 840 *Leases*. The standard is effective on January 1, 2019, with early adoption permitted. The Company is in the process of evaluating the impact of this new guidance.

Net Loss Per Share

For periods prior to the spin-off, basic and diluted net loss per share was calculated based on the approximately 11.0 million shares of SeaSpine common stock that were distributed to Integra shareholders on July 1, 2015. For periods subsequent to the spin-off, basic and diluted net loss per share was calculated using the weighted-average number of shares of common stock outstanding during the period. The weighted average number of shares used to compute diluted net loss per share excludes any assumed exercise of stock options, and any assumed issuance of common stock under restricted stock units as the effect would be antidilutive. Common stock equivalents of 2.0 million shares for the year ended December 31, 2015 were excluded from the calculation because of their antidilutive effect.

	Year Ended December 31,		
	2015	2014	2013
	(In thousands, except per share data)		
Net loss	\$ (55,532)	\$ (24,545)	\$ (25,746)
Loss Per Share Data			
Loss per share			
Basic and diluted	\$ (4.99)	\$ (2.22)	\$ (2.33)
Weighted average number of shares outstanding			
Basic and diluted	11,139	11,048	11,048

3. TRANSACTIONS WITH INTEGRA

Related-party Transactions

SEASpine HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

Prior to the spin-off, and pursuant to certain supply agreements subsequent to the spin-off, SeaSpine purchased a portion of raw materials and finished goods from Integra for the Company's Mozaik family of products, and SeaSpine contract manufactured certain finished goods for Integra. The Company's purchases of raw materials and Mozaik product finished goods from Integra for the years ended December 31, 2015, 2014 and 2013 totaled \$6.2 million, \$6.2 million and \$7.9 million, respectively. The amount of finished goods sold by SeaSpine to Integra under its contract manufacturing arrangement was immaterial for all periods presented.

Pursuant to a transition services agreement, Integra and SeaSpine will provide certain services following the spin-off, and Integra and SeaSpine will indemnify each other against certain liabilities arising from their respective businesses. Under this agreement, Integra provides us with certain support functions, including information technology, accounting and other financial functions, regulatory affairs and quality assurance, human resources and other administrative support. In addition, SeaSpine provides limited information technology and systems support services to Integra. The Company incurred approximately \$2.8 million of costs under the agreement for the year ended December 31, 2015, of which \$1.5 million was outstanding at December 31, 2015. The amount of services provided by SeaSpine to Integra was immaterial for the year ended December 31, 2015. Subsequent to the spin-off, Integra also collected trade receivables from customers on behalf of the Company, of which \$1.3 million was outstanding as of December 31, 2015 and recorded in Other Current Assets.

Allocated Costs

For periods prior to the spin-off, the consolidated statements of operations included direct expenses for cost of goods sold, research and development, sales and marketing, customer service, and administration as well as allocations of expenses arising from shared services and infrastructure provided by Integra to the Company, such as costs of information technology, including the costs of a multi-year global enterprise resource planning implementation, accounting and legal services, real estate and facilities management, corporate advertising, insurance and treasury services, and other corporate and infrastructure services. These allocations are included in the table below. These expenses were allocated to the Company using estimates that the Company considers to be a reasonable reflection of the utilization of services provided to or benefits received from the Company. The allocation methods include pro-rata basis of revenue, standard cost of sales or other measures.

	Year Ended December 31,		
	2015	2014	2013
Cost of goods sold	\$ 488	\$ 1,304	\$ 1,166
Selling, general and administrative	8,633	17,602	17,408
Research and development	253	490	427
Total Allocated Costs	<u>\$ 9,374</u>	<u>\$ 19,396</u>	<u>\$ 19,001</u>

Included in the above amounts are certain non-cash allocated costs, including stock-based compensation. Such amounts were \$0.6 million, \$1.9 million and \$1.4 million for the years ended December 31, 2015, 2014 and 2013, respectively.

All significant related party transactions between SeaSpine and Integra were included in the consolidated financial statements and, prior to the spin-off, were considered to be effectively settled for cash at the time the transaction was recorded, with the exception of the purchases from Integra of Mozaik raw materials and finished goods for all periods presented. The total net effect of the transactions considered to be effectively settled for cash was reflected in the consolidated statement of cash flows as a financing activity and in the consolidated balance sheet as Integra net investment.

The following table summarizes the components of the net increase (decrease) in Integra net investment for the years ended December 31, 2015, 2014 and 2013:

SEASPIKE HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

	Year Ended December 31,		
	2015	2014	2013
Cash pooling and general financing activities (a)	\$ 68,386	\$ (14,451)	\$ (4,005)
Corporate Allocations (excluding non-cash adjustments)	8,787	17,463	17,586
Total Integra net investment in financing activities within cash flow statement	77,173	3,012	13,581
Non-cash adjustments (b)	29,806	2,485	2,122
Interest on long term loan (c)	—	—	(4,617)
Net capitalization of related-party loan	—	—	131,580
Spin-off related adjustment (d)	161	—	—
Reclassification of Integra net investment in connection with the spin-off	(170,241)	—	—
Foreign exchange impact	293	(202)	(57)
Net (decrease) increase in Integra investment	\$ (62,808)	\$ 5,295	\$ 142,609

(a) Includes financing activities for capital transfers, cash sweeps and other treasury services.

(b) Reflects allocation of non-cash charges from Integra, stock-based compensation and settlement of related-party payable to Integra net investment.

(c) Interest on long-term loan capitalized in 2013.

(d) During the year ended December 31, 2015, certain spin-off related adjustments were recorded in stockholders' equity, to reflect the appropriate opening balances related to SeaSpine's legal entities at the Distribution Date.

4. DEBT AND INTEREST

Related -Party Loans

The Company had \$132.0 million in related-party loans from Integra arising from a prior acquisition. During 2013, those loans and the associated accrued interest were forgiven and capitalized as part of Integra's net investment. The company recorded \$4.6 million of interest expense for the year ended December 31, 2013, which was reflected as interest expense in the Company's consolidated financials.

Credit Agreement

On December 24, 2015, the Company entered into a three-year credit facility (the "Credit Facility") with Wells Fargo Capital Finance, as Administrative Agent and as a Lender. The Credit Facility provides an asset-backed revolving line of credit of up to \$30.0 million in borrowing capacity with a maturity date of December 24, 2018, which maturity date is subject to a one-time one-year extension at the Company's election. In connection with the Credit Facility, the Company was required to become guarantors and to provide a security interest in substantially all its assets for the benefit of Agent and the Lender.

Borrowings under the Credit Facility shall accrue interest at the rate then applicable to the Base Rate (as customarily defined) Loans, unless and until converted into LIBOR Rate Loans in accordance with the terms of the Credit Facility. Borrowings bear interest at a floating annual rate equal to (a) during any month for which the Company's average excess availability (as customarily defined) is greater than \$20.0 million, base rate plus (i) 1.25 percentage points for base rate loans and (ii) LIBOR rate plus 2.25 percentage points for LIBOR loans, (b) during any month for which the Company's average excess availability is greater than \$10.0 million but less than or equal to \$20.0 million, (i) base rate plus 1.50 percentage points for base rate loans and (ii) LIBOR rate plus 2.50 percentage points for LIBOR loans and (c) during any month for which the Company's average excess availability is less than or equal to \$10.0 million, (i) base rate plus 1.75 percentage points for base rate loans and (ii) LIBOR rate plus 2.75 percentage points for LIBOR loans.

The Company will also pay an annual unused line fee in an amount equal to 0.375% times the unused Credit Facility amount. The unused line fee is due and payable on the first day of each month. At December 31, 2015, there was \$0.3 million outstanding under the Credit Facility. Debt issuance costs and legal fees related to the financing totaling \$0.4 million were recorded as a deferred asset and are subsequently being amortized ratably over the term of the Credit Facility.

The Credit Facility contains various customary affirmative and negative covenants agreed to by the Company, including prohibiting the Company from incurring indebtedness without the lender's consent. The Credit Facility also includes a financial covenant, that requires the Company to maintain a minimum fixed charge coverage ratio of 1.10 to 1.00 for the applicable measurement period, if the Company's Total Liquidity (as defined in the Credit Facility) is less than \$5.0 million. The Company was in compliance with all such covenants at December 31, 2015.

SEASPINE HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

The Credit Facility also includes customary events of default, including events of default relating to non-payment of amounts due under the Credit Facility, material inaccuracy of representations and warranties, violation of covenants, bankruptcy and insolvency, failure to comply with health care laws, violation of certain of the Company's existing agreements, and the occurrence of a change of control. Under the Credit Facility, if an event of default occurs, lenders holding a majority of the revolving commitments will have the right to terminate the commitments and accelerate the maturity of any loans outstanding.

5. BALANCE SHEET DETAILS

Inventories. Inventories consisted of the following:

	December 31, 2015	December 31, 2014
	(In thousands)	
Finished goods	\$ 29,845	\$ 32,364
Work in process	15,574	11,675
Raw materials	5,852	5,823
	<u>\$ 51,271</u>	<u>\$ 49,862</u>

Property, Plant and Equipment. Property, plant and equipment, net and corresponding useful lives were as follows:

	December 31, 2015	December 31, 2014	Useful Lives
	(In thousands)		
Leasehold improvement	\$ 4,830	\$ 4,262	Lease term
Machinery and production equipment	6,404	5,810	3-20 years
Spinal fusion hardware instrument sets	25,080	22,122	5 years
Information systems and hardware	6,872	1,720	3-7 years
Furniture and fixtures	944	657	3-15 years
Construction in progress	8,375	8,789	
Total	<u>52,505</u>	<u>43,360</u>	
Less accumulated depreciation and amortization	(30,547)	(27,000)	
Property, plant and equipment, net	<u>\$ 21,958</u>	<u>\$ 16,360</u>	

Depreciation expenses totaled \$4.5 million, \$4.8 million and \$5.4 million for the years ended December 31, 2015, 2014, and 2013, respectively. The cost of purchased instruments used to replace damaged instruments in existing sets and recorded directly to expense totaled \$1.2 million, \$1.7 million and \$2.4 million for the years ended December 31, 2015, 2014 and 2013, respectively.

Identifiable Intangible Assets. The components of the Company's identifiable intangible assets were as follows:

	December 31, 2015			
	Weighted Average Life	Cost	Accumulated Amortization	Net
		(In thousands)		
Completed technology	12 years	\$ 31,169	\$ (19,280)	\$ 11,889
Customer relationships	12 years	56,830	(29,087)	27,743
Trademarks/brand names	—	300	(300)	—
		<u>\$ 88,299</u>	<u>\$ (48,667)</u>	<u>\$ 39,632</u>

SEASPINE HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

	Weighted Average Life	December 31, 2014		
		Cost	Accumulated Amortization	Net
		(In thousands)		
Completed technology	12 years	\$ 30,419	\$ (16,582)	\$ 13,837
Customer relationships	12 years	56,830	(23,963)	32,867
Trademarks/brand names	—	300	(300)	—
Non-Compete agreements	4 years	1,900	(1,713)	187
		<u>\$ 89,449</u>	<u>\$ (42,558)</u>	<u>\$ 46,891</u>

Annual amortization expense (including amounts reported in cost of goods sold) is expected to be approximately, \$7.0 million in 2016, \$5.8 million in 2017, \$5.5 million in 2018, \$4.8 million in 2019, and \$4.0 million in 2020. Amortization of product technology-based intangible assets totaled \$2.7 million, \$2.6 million and \$2.6 million for the years ended December 31, 2015, 2014 and 2013, respectively, and is presented by the Company within cost of goods sold.

6. STOCK-BASED COMPENSATION

Stock-based compensation expense, all related to employees and non-employee directors, was recognized as follows:

	Year Ended December 31,		
	2015	2014	2013
	(In thousands)		
Selling, general and administrative	\$ 3,993	\$ 519	\$ 619
Research and development	242	18	78
Cost of goods sold	168	14	9
Total stock-based compensation expense	4,403	551	706
Total estimated tax benefit related to stock-based compensation expense	37	203	271
Net effect on net income	<u>\$ 4,366</u>	<u>\$ 348</u>	<u>\$ 435</u>

Equity Award Plans

As of June 30, 2015, Integra had stock options, restricted stock awards, performance stock awards, contract stock awards and restricted stock units outstanding under three plans, the 2000 Equity Incentive Plan, the 2001 Equity Incentive Plan, and the 2003 Equity Incentive Plan. In connection with the spin-off, Integra equity awards granted to individuals who became employees of the Company were converted to SeaSpine equity awards. In general, each award is subject to the same terms and conditions as were in effect prior to the spin-off.

In May 2015, the Company adopted a 2015 Incentive Award Plan (the "2015 Plan"), under which the Company can grant its employees and non-employee directors incentive stock options and non-qualified stock options, restricted stock, performance stock, dividend equivalent rights, stock appreciation rights, stock payment awards and other incentive awards. The Company may issue up to 2,000,000 shares of its common stock under the 2015 Plan.

Restricted Stock Awards, Restricted Stock Units and Performance Stock Awards

Performance stock awards, restricted stock awards and restricted stock units generally have requisite service periods of three years. Performance stock awards are subject to graded vesting and the Company expenses their fair value over the requisite service period. The Company expenses the fair value of restricted stock awards and restricted stock units on an accelerated basis over the vesting period or requisite service period, whichever is shorter. Stock-based compensation expense related to restricted stock awards, restricted stock units and performance stock awards includes an estimate for forfeitures. The expected forfeiture rate of all equity based compensation is based on historical patterns of the Company's employees and is estimated to be 10% annually for the twelve months ended December 31, 2015.

The following table summarizes awards of restricted stock awards, restricted stock units and performance stock awards to SeaSpine employees for the year ended December 31, 2015:

SEASPINE HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

	Restricted Stock and Performance Stock Awards	
	Shares (In thousands)	Weighted Average Grant Date Fair Value Per Share
Unvested, January 1, 2015	—	\$—
Granted	138	12.81
Cancellations	(13)	4.40
Released/Vested	(62)	17.88
Unvested, December 31, 2015	<u>63</u>	<u>\$9.58</u>

The total fair value of shares vested in 2015, 2014 and 2013 was \$1.1 million, \$0.7 million, and \$0.6 million, respectively.

The Company recognized \$0.3 million, \$0.6 million and \$0.7 million in expense related to such awards during the years ended December 31, 2015, 2014 and 2013, respectively. As of December 31, 2015, there was approximately \$0.3 million of total unrecognized compensation expense related to unvested awards. This cost is expected to be recognized over a weighted-average period of approximately one year.

Stock Options

Stock option grants to employees generally have requisite service periods of four years, and stock option grants to non-employee directors generally have a requisite service period of one year. Both are subject to graded vesting. The Company records stock-based compensation expense associated with stock options on an accelerated basis over the various vesting periods within each grant and based on their fair value at the date of grant using the Black-Scholes-Merton option pricing model. The following weighted-average assumptions were used in the calculation of fair value for options grants for the year ended December 31, 2015:

	December 31, 2015
Expected dividend yield	0%
Risk-free interest rate	1.55%
Expected volatility	38.17%
Expected term (in years)	5.1

The Company considered that it has never paid cash dividends and does not currently intend to pay cash dividends. The risk-free interest rates are derived from the U.S. Treasury yield curve in effect on the date of grant for instruments with a remaining term similar to the expected term of the options. Due to the Company's limited historical data, the expected volatility is calculated based upon the historical volatility of comparable companies in the medical device industry whose share prices are publicly available for a sufficient period of time. The expected term of options is calculated using the simplified method as prescribed by accounting guidance for stock-based compensation. In addition, the Company applies an expected forfeiture rate when amortizing stock-based compensation expense. The expected forfeiture rate of stock options is based on historical patterns of the employee turnover rate and is estimated to be 10% annually for stock-based compensation expense recorded for the year ended December 31, 2015. As individual grant awards become fully vested, stock-based compensation expense is adjusted to recognize actual forfeitures.

A summary of the options issued during the year ended December 31, 2015 and the total number of options outstanding as of that date and changes since January 1, 2015 are set forth below:

	Number of Shares Outstanding (In thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (In years)	Aggregate Intrinsic Value (In thousands)
Outstanding, January 1, 2015	—	\$ —	—	\$ —
Granted	2,009	14.87	—	—
Exercised	—	—	—	—
Forfeited	(36)	15.61	—	—
Outstanding, December 31, 2015	<u>1,973</u>	<u>\$ 14.86</u>	<u>7.20</u>	<u>\$ 4,585</u>
Vested or expected to vest, December 31, 2015	<u>1,800</u>	<u>\$ 14.78</u>	<u>7.17</u>	<u>\$ 4,314</u>
Exercisable, December 31, 2015	<u>472</u>	<u>\$ 12.46</u>	<u>4.53</u>	<u>\$ 2,230</u>

SEASPINE HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

The weighted average grant date fair value of options granted during the year ended December 31, 2015 was \$5.57. The total fair value of shares vested during the year ended December 31, 2015 was \$0.7 million.

The Company recognized \$4.4 million in expense related to stock options for the year ended December 31, 2015. As of December 31, 2015, there was approximately \$4.7 million of total unrecognized compensation expense related to unvested stock options. These costs are expected to be recognized over a weighted-average period of approximately 1.3 years. As of December 31, 2015, the Company had 388,000 shares remaining in the 2015 Plan available for grant.

Employee Stock Purchase Plan

In May 2015, the Company adopted a 2015 Employee Stock Purchase Plan (the “ESPP”), which was amended in December 2015. The ESPP enables eligible employees to purchase shares of the Company’s common stock through payroll deductions of up to 15% of eligible compensation during an offering period. Generally, each offering will be for a period of twenty-four months as determined by the Company's Board of Directors. There are four six-month purchase periods in each offering period for contributions to be made and to be converted into shares at the end of the purchase period. In no event may an employee invest more than 2,500 shares per purchase period based on the closing price on the first trading date of an offering period or more than \$25,000 worth of stock during each calendar year. The purchase price is 85% of the market price of the stock at the first trading date of an offering period or any purchase date during an offering period (June 30 or December 31), whichever is less.

The ESPP authorizes the issuance of 400,000 shares of common stock pursuant to purchase rights granted to employees. The ESPP is intended to qualify as an “employee stock purchase plan” within the meaning of Section 423 of the Internal Revenue Code of 1986. The first offering period commenced on January 1, 2016 and will end on December 31, 2017. As of December 31, 2015, no shares of common stock have been purchased under the ESPP.

7. LEASE

The Company entered into a sublease agreement for an office located in Carlsbad, California, which became effective September 8, 2015 upon the Company's receipt of the consent to sublease of the landlord. The term of the lease agreement is from October 1, 2015 through April 28, 2027 at an average annual cost of approximately \$1.4 million. The Company leases administrative, manufacturing, research, and distribution facilities and various manufacturing, office and transportation equipment through operating lease agreements. Future minimum lease payments under these operating leases at December 31, 2015 are as follows:

	Payments Due by Calendar Year (In thousands)
2016	\$ 2,287
2017	2,152
2018	2,207
2019	2,262
2020	2,317
Thereafter	12,107
Total minimum lease payments	\$ 23,332

Total rental expense for the years ended December 31, 2015, 2014, and 2013 was \$2.5 million, \$2.1 million and \$2.1 million, respectively.

8. INCOME TAXES

The Company is subject to income taxes in the U.S. and Switzerland. Income taxes are accounted for under the asset and liability method. Deferred income tax assets and liabilities are calculated based on the difference between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases using the enacted income tax rates expected to be in effect during the years in which the temporary differences are expected to reverse. Valuation allowances are recorded to reduce deferred tax assets when it is more likely than not that a tax benefit will not be realized. Significant judgment is required in determining whether a valuation allowance should be recorded against deferred tax assets. In assessing the need for a valuation allowance, management considers all available evidence for each jurisdiction including past operating results, estimates of future taxable

SEASPINE HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

income and the feasibility of ongoing tax planning strategies. In the event that the Company changes its determination as to the amount of deferred tax assets that can be realized, the Company will adjust its valuation allowance with a corresponding impact to income tax expense in the period in which such determination is made.

Prior to the Spin-off

Prior to the spin-off, the income tax provision in the consolidated statements of operations has been calculated using the separate return method, as if the Company filed a separate tax return and operated as a stand-alone business. Therefore, cash tax payments and items of current and deferred taxes may not be reflective of actual tax balances included in Integra's historical consolidated income tax return. More specifically, the presentation of substantial net operating losses, and any related valuation allowances, presented herein do not represent actual net operating losses that have been incurred by the Company or that are available for carryforward to a future tax year.

After the Spin-off

Subsequent to the spin-off on July 1, 2015, the deferred tax balances were adjusted to reflect only those tax attributes that carryforward with the Company. The adjustment to deferred taxes was recorded through stockholders' equity. The Company also made an election to change the tax classification for its foreign entity. This election resulted in both the foreign entity and its U.S. subsidiary to be included in the consolidated federal tax group on September 1, 2015.

Income Tax Provision (Benefit)

The Company reported income tax expense despite the reported losses before income taxes, because the legal entity structure did not permit the Company to offset taxable losses generated by certain U.S. subsidiaries against the taxable income generated by its other U.S. subsidiaries.

Income/(loss) before income taxes consisted of the following:

	Year Ended December 31,		
	2015	2014	2013
	(In thousands)		
United States operations	\$ (51,305)	\$ (22,097)	\$ (22,157)
Foreign operations	(1,748)	1,479	155
	<u>\$ (53,053)</u>	<u>\$ (20,618)</u>	<u>\$ (22,002)</u>

A reconciliation of the U.S. federal statutory rate to the Company's effective tax rate is as follows:

	Year Ended December 31,		
	2015	2014	2013
Federal statutory rate	35.0%	35.0%	35.0%
Increase (decrease) in income taxes resulting from:			
State income taxes, net of federal tax benefit	0.1%	2.3%	2.0%
Foreign operations	(0.7)%	(1.1)%	0.5%
Changes in valuation allowances	(16.7)%	(57.9)%	(56.1)%
Pre-Spin losses with no tax benefit	(22.7)%	—%	—%
Uncertain tax positions	—%	0.4%	0.4%
Research and development credit	—%	0.2%	0.3%
Return to provision	—%	0.6%	(0.4)%
Domestic manufacturing deduction	0.5%	2.0%	1.6%
Other	(0.2)%	(0.5)%	(0.3)%
Effective tax rate	<u>(4.7)%</u>	<u>(19.0)%</u>	<u>(17.0)%</u>

The effective tax rate for 2015 includes pre-spin net operating losses for which the Company will receive no tax benefit as such losses were utilized by Integra prior to the spin-off.

SEASPIKE HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

The provision/(benefit) for income taxes consisted of the following:

	Year Ended December 31,		
	2015	2014	2013
(In thousands)			
Current:			
Federal	\$ 2,655	\$ 3,944	\$ 3,994
State	106	252	294
Foreign	—	404	153
Total current	<u>\$ 2,761</u>	<u>\$ 4,600</u>	<u>\$ 4,441</u>
Deferred:			
Federal	—	(741)	(744)
State	—	(60)	(54)
Foreign	(282)	128	101
Total deferred	<u>\$ (282)</u>	<u>\$ (673)</u>	<u>\$ (697)</u>
Provision for income taxes	<u>\$ 2,479</u>	<u>\$ 3,927</u>	<u>\$ 3,744</u>

The income tax effects of significant temporary differences that give rise to deferred tax assets and liabilities, shown before jurisdictional netting, are presented below:

	Year Ended December 31,	
	2015	2014
(In thousands)		
Deferred tax assets:		
Doubtful accounts	\$ 272	\$ 88
Inventory related items	11,170	8,435
Tax credits	—	579
Accrued vacation	425	374
Accrued bonus	740	335
Stock compensation	1,466	627
Net operating loss carryforwards	7,045	44,966
Intangible & fixed assets	25,354	28,609
Other	649	419
Total deferred tax assets	<u>47,121</u>	<u>84,432</u>
Less valuation allowance	(46,638)	(83,457)
Deferred tax assets after valuation allowance	<u>\$ 483</u>	<u>\$ 975</u>
Deferred tax liabilities:		
Other	—	(60)
Total deferred tax liabilities	<u>\$ —</u>	<u>\$ (60)</u>
Net deferred tax assets	<u>\$ 483</u>	<u>\$ 915</u>

At December 31, 2015 we had net operating loss carryforwards of \$13.3 million for federal and state income tax purposes. We also had foreign net operating loss carryforwards of \$8.9 million. These tax loss carryforwards expire in various periods through 2035. The tax benefit recorded for net operating losses, net of valuation allowance, is \$0.3 million which relates only to foreign net operating losses.

At December 31, 2014 we had net operating loss carryforwards of \$113.1 million for federal income tax purposes, and \$57.6 million for state income tax purposes. These losses have been recognized in the Integra tax returns and are not available to offset future taxable income.

A valuation allowance of \$46.6 million, and \$83.5 million is recorded against the Company's gross deferred tax assets of \$47.1 million, and \$84.4 million recorded at December 31, 2015 and 2014, respectively.

SEASPINE HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

The valuation allowance relates to deferred tax assets for certain items that will be deductible for income tax purposes under very limited circumstances and for which the Company believes it is not more likely than not that it will realize the associated tax benefit. However, in the event that the Company determines that it would be able to realize more or less than the recorded amount of net deferred tax assets, an adjustment to the deferred tax asset valuation allowance would be recorded in the period such a determination is made. In assessing the realizability of deferred tax assets, management considers whether it is more-likely-than-not that some portion of all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities (including the impact of available carryback and carryforward periods), projected future taxable income, and tax planning strategies in making this assessment. Based upon the levels of historical taxable income, projections of future taxable income and the reversal of deferred tax liabilities over the periods in which the deferred tax assets are deductible, management believes it is more-likely-than-not that the Company will realize the benefits of these deductible differences, net of the existing valuation allowance. The amount of deferred tax asset considered realizable, however, could change in the near term if estimates which require significant judgment of future taxable income during the carryforward period are increased or decreased.

A reconciliation of the Company's uncertain tax benefits is as follows:

	Year Ended December 31,		
	2015	2014	2013
	(In thousands)		
Balance, beginning of year	\$ 113	\$ 187	\$ 262
Gross increases:			
Prior years' tax positions	90	13	100
Additions to tax positions in prior years due to spin-off	185	—	—
Gross decreases:			
Settlements	—	—	—
Statute of limitations lapses	(90)	(87)	(175)
Balance, end of year	<u>\$ 298</u>	<u>\$ 113</u>	<u>\$ 187</u>

Approximately \$0.3 million of the balance at December 31, 2015 relates to uncertain tax positions that, if recognized, would affect the annual effective tax rate. Included in the balance of uncertain tax positions at December 31, 2015 is \$0.2 million of prior year items that were spun off from Integra, but not originally reported in their respective years. There is \$0.1 million related to tax positions for which it is reasonably possible that the total amounts could be reduced during the twelve months following December 31, 2015, as a result of expiring statutes of limitations.

The Company recognizes interest and penalties relating to uncertain tax positions in income tax expense. The amounts recorded in 2015, 2014 and 2013 were not significant.

The Company files income tax returns as prescribed by tax laws of the jurisdictions in which they operate. In the normal course of business, the Company is subject to examination by federal, state, local and foreign jurisdictions where applicable based on the statute of limitations that apply in each jurisdiction. The Company has no open tax audits with any taxing authority as of December 31, 2015.

9. COMMITMENTS AND CONTINGENCIES

In consideration for certain technology, manufacturing, distribution, and selling rights and licenses granted to the Company, the Company has agreed to pay royalties on sales of certain products sold by the Company. The royalty payments that the Company made under these agreements were included on the consolidated statements of operations as a component of cost of goods sold.

The Company is subject to various claims, lawsuits and proceedings in the ordinary course of its business with respect to its products, its current or former employees, and involving commercial disputes, some of which have been settled by the Company. In the opinion of management, such claims are either adequately covered by insurance or otherwise indemnified, or are not expected, individually or in the aggregate, to result in a material adverse effect on the Company's financial condition. However, it is possible that our results of operations, financial position and cash flows in a particular period could be materially affected by these contingencies.

SEASPINE HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

The Company accrues for loss contingencies when it is deemed probable that a loss has been incurred and that loss is estimable. The amounts accrued are based on the full amount of the estimated loss before considering insurance proceeds, and do not include an estimate for legal fees expected to be incurred in connection with the loss contingency. The Company accrues legal fees expected to be incurred in connection with loss contingencies as those fees are incurred by outside counsel as a period cost. The Company does not believe there are any pending legal proceedings that would have a material impact on the Company's financial position, liquidity or results of operations.

10. SEGMENT AND GEOGRAPHIC INFORMATION

Subsequent to the spin-off from Integra, management assessed its segment reporting based on how it internally manages and reports the results of its business to its chief operating decision maker. The Company's management reviews financial results, manages the business and allocates resources on an aggregate basis. Therefore, financial results are reported in a single operating segment: the development, manufacture and marketing of orthobiologics and spinal fusion hardware. The Company reports revenue in two product categories: orthobiologics and spinal fusion hardware. Orthobiologics products consist of a broad range of advanced and traditional bone graft substitutes that are designed to improve bone fusion rates following surgery. The spinal fusion hardware portfolio consists of an extensive line of products for minimally invasive surgery, complex spine, deformity and degenerative procedures.

Revenue, net consisted of the following:

	Year Ended December 31,		
	2015	2014	2013
	(In thousands)		
Orthobiologics	\$ 67,258	\$ 67,594	\$ 66,669
Spinal fusion hardware	65,920	71,101	79,917
Total Revenue, net	\$ 133,178	\$ 138,695	\$ 146,586

The Company attributes revenues to geographic areas based on the location of the customer. Total revenue by major geographic area consisted of the following:

	Year Ended December 31,		
	2015	2014	2013
	(In thousands)		
United States	\$ 120,259	\$ 124,365	\$ 128,653
International	12,919	14,330	17,933
Total Revenue, net	\$ 133,178	\$ 138,695	\$ 146,586

11. EMPLOYEE BENEFIT PLAN

The Company has a defined contribution savings plan under section 401(k) of the IRC. The plan covers substantially all employees. The Company matches employee contributions made to the plan according to a specified formula. The Company's matching contributions totaled approximately \$0.5 million, \$0.3 million and \$0.1 million for the years ended 2015, 2014 and 2013, respectively.

SEASPINE HOLDINGS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

12. SELECTED QUARTERLY INFORMATION - UNAUDITED

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
	(In thousands, except per share data)			
Total revenue, net:				
2015	\$ 32,314	\$ 33,461	\$ 32,679	\$ 34,724
2014	34,175	35,766	33,606	35,148
Gross profit:				
2015	\$ 19,713	\$ 18,955	\$ 15,338	\$ 18,053
2014	21,580	20,566	19,324	20,511
Net loss:				
2015	\$ (9,898)	\$ (17,685)	\$ (14,199)	\$ (13,750)
2014	(5,560)	(5,429)	(5,316)	(8,241)
Basic/diluted net loss per common share(1):				
2015	\$ (0.90)	\$ (1.60)	\$ (1.27)	\$ (1.23)
2014	(0.50)	(0.49)	(0.48)	(0.75)

(1) Per common share amounts for the quarters and full years have been calculated separately. Accordingly, quarterly amounts do not necessarily add to the annual amount because of differences in the weighted average common shares outstanding during each period principally due to the effect of the Company's issuing or retiring shares of its common stock during the year.

SCHEDULE II — VALUATION AND QUALIFYING ACCOUNTS

Description	Balance at Beginning of Period	Charged to Costs and Expenses	Charged to Other Accounts	Additions/Deductions	Balance at End of Period
	(In thousands)				
Year ended December 31, 2015:					
Allowance for doubtful accounts and sales returns and allowances	\$ 558	\$ 55	\$ —	\$ 151	\$ 764
Deferred tax asset valuation allowance	83,457	(36,819)	—	—	46,638
Year ended December 31, 2014:					
Allowance for doubtful accounts and sales returns and allowances	\$ 1,068	\$ (267)	\$ —	\$ (238)	\$ 563
Deferred tax asset valuation allowance	73,461	10,483	(487)	—	83,457
Year ended December 31, 2013:					
Allowance for doubtful accounts and sales returns and allowances	\$ 2,384	\$ (691)	\$ —	\$ (625)	\$ 1,068
Deferred tax asset valuation allowance	66,497	6,569	395	—	73,461

EXHIBIT INDEX

Exhibit No.	Description	Filed Herewith	Incorporated by Reference		
			Form	File/Film No.	Date Filed
2.1	Separation and Distribution Agreement between Integra LifeSciences Holdings Corporation and SeaSpine Holdings Corporation, dated as of June 30, 2015.		Form 8-K	001-36905-15966132	7/1/2015
3.1	Amended and Restated Certificate of Incorporation of SeaSpine Holdings Corporation.		Form 8-K	001-36905-15966132	7/1/2015
3.2	Amended and Restated Bylaws of SeaSpine Holdings Corporation.		Form 8-K	001-36905-15966132	7/1/2015
4.1	Form of Common Stock Certificate of SeaSpine Holdings Corporation.		Form 10	001-36905-15904590	6/1/2015
10.1	Transition Services Agreement between Integra LifeSciences Holdings Corporation and SeaSpine Holdings Corporation, dated as of July 1, 2015.		Form 8-K	001-36905-15966132	7/1/2015
10.2	Tax Matters Agreement between Integra LifeSciences Holdings Corporation and SeaSpine Holdings Corporation, dated as of July 1, 2015.		Form 8-K	001-36905-15966132	7/1/2015
10.3	Employee Matters Agreement between Integra LifeSciences Holdings Corporation and SeaSpine Holdings Corporation, dated as of July 1, 2015.		Form 8-K	001-36905-15966132	7/1/2015
10.4	Microfibrillar Collagen Supply Agreement between Integra LifeSciences Holdings Corporation and SeaSpine Holdings Corporation, dated as of July 1, 2015.		Form 8-K	001-36905-15966132	7/1/2015
10.5	Collagen Ceramic Supply Agreement between Integra LifeSciences Holdings Corporation and SeaSpine Holdings Corporation, dated as of July 1, 2015.		Form 8-K	001-36905-15966132	7/1/2015
10.6	Demineralized Bone Matrix and Collagen Ceramic Products Supply Agreement between Integra LifeSciences Holdings Corporation and SeaSpine Holdings Corporation, dated as of July 1, 2015.		Form 8-K	001-36905-15966132	7/1/2015
10.7	Brian Baker Letter Agreement, dated February 25, 2015.		Form 8-K	001-36905-15966132	7/1/2015

10.8	Form of Indemnification Agreement entered into between SeaSpine Holdings Corporation and each of its directors and executive officers.	Form 10	001-36905-15904590	6/1/2015
10.9	SeaSpine Holdings Corporation 2015 Incentive Award Plan.	Form S-8	333-205334-1598733	6/29/2015
10.10	Form of SeaSpine Holdings Corporation 2015 Incentive Award Plan Stock Option Agreement.	Form 10	001-36905-15904590	6/1/2015
10.11	SeaSpine Holdings Corporation 2015 Employee Stock Purchase Plan.	Form 10	001-36905-15904590	6/1/2015
10.12	Employment Agreement, by and between SeaSpine Holdings Corporation, SeaSpine Orthopedics Corporation and Keith Valentine, dated April 28, 2015.	Form 10	001-36905-15904590	6/1/2015
10.13	John Bostjancic Letter Agreement, dated March 30, 2015.	Form 10	001-36905-15904590	6/1/2015
10.14	John Winge Letter Agreement, dated January 22, 2015.	Form 10	001-36905-15904590	6/1/2015
10.15	Amended and Restated Lease between Salma Jason Monica Limited Partnership and SeaSpine, Inc., dated as of May 23, 2011 for property at 2384 La Miranda, Vista, CA.	Form 10	001-36905-15904590	6/1/2015
10.16	Amended and Restated Lease between Salma Jason Monica Limited Partnership and SeaSpine, Inc., dated as of May 23, 2011 for property at 2302 La Miranda, Vista, CA	Form 10	001-36905-15904590	6/1/2015
10.17	Amended and Restated Lease between Monarch RRC Properties, LLC (assignee of original landlord, New Goodyear LTD) and IsoTis Orthobiologics, Inc., dated as of February 23, 2006, for property at 2 Goodyear, Irvine, CA (the "Irvine Industrial Real Estate Lease").	Form 10	001-36905-15904590	6/1/2015
10.18	Amendment No. 1 to Irvine Industrial Real Estate Lease, dated as of May 26, 2011.	Form 10	001-36905-15904590	6/1/2015
10.19	Amendment No. 2 to Irvine Industrial Real Estate Lease, dated as of May 14, 2013.	Form 10	001-36905-15904590	6/1/2015
10.20	Sublease Agreement between SeaSpine Orthopedics Corporation, and SkinMedica, Inc., dated as of July 8, 2015.	Form 8-K	001-36905-151103433	9/11/2015

10.21	SeaSpine Holdings Corporation Senior Leadership Retention and Severance Plan, effective January 27, 2016.		Form 8-K	001-36905-161378936	2/2/2016
10.22	SeaSpine Holdings Corporation 2015 Incentive Award Plan Annual Incentive Program.		Form 8-K	001-36905-161472253	3/1/2016
10.23	SeaSpine Holdings Corporation Non-Employee Director Compensation Program, effective October 13, 2015.	X			
10.24	Credit Agreement between SeaSpine Holdings Corporation, and Wells Fargo Bank, National Association, dated as of December 24, 2015.	X			
21.1	List of subsidiaries of SeaSpine Holdings Corporation.	X			
23.1	Consent of Pricewaterhouse Coopers LLP, Independent Registered Public Accounting Firm.	X			
31.1	Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X			
31.2	Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X			
32.1	Certification of Principal Executive Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X			
32.2	Certification of Principal Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X			
†101.INS	XBRL Instance Document	X			
†101.SCH	XBRL Taxonomy Extension Schema Document	X			
†101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document	X			
†101.DEF	XBRL Definition Linkbase Document	X			
†101.LAB	XBRL Taxonomy Extension Labels Linkbase Document	X			

†101.PRE XBRL Taxonomy Extension Presentation Linkbase Document X

† The financial information of SeaSpine Holdings Corporation Annual Report on Form 10-K for the year ended December 31, 2015 filed on March 16, 2016 formatted in XBRL (Extensible Business Reporting Language): (i) the Consolidated Statements of Operations, (ii) the Consolidated Statements of Comprehensive Loss, (iii) the Consolidated Balance Sheets, (iv) Parenthetical Data to the Consolidated Balance Sheets, (v) the Consolidated Statements of Cash Flows, (vi) the Consolidated Statements of Equity, and (vii) Notes to Consolidated Financial Statements, is furnished electronically herewith.

SeaSpine Holdings Corporation
Non-Employee Director Compensation Program

Effective October 13, 2015

This SeaSpine Holdings Corporation (the “Company”) Non-Employee Director Compensation Program (this “Program”) for non-employee directors (the “Directors”) of the board of directors of the Company (the “Board”) shall be effective on the date set forth above (the “Effective Date”). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the SeaSpine Holdings Corporation 2015 Incentive Award Plan, as may be amended (the “Plan”). The original Program was effective upon the effectiveness of the distribution by Integra LifeSciences Holdings Corporation to its stockholders of all of the outstanding shares of the Company’s common stock (the “Original Effective Date”).

Cash Compensation

Effective upon the Original Effective Date, Directors will become entitled to receive annual retainers in the following amounts, pro-rated for any partial year of service:

Chairman Annual Retainer:	\$75,000
Non-Chairman Director Annual Retainer:	\$50,000
Chair of Audit Committee Additional Annual Retainer:	\$15,000
Chair of Compensation Committee Additional Annual Retainer:	\$15,000
Chair of Nominating and Corporate Governance Committee Additional Annual Retainer:	\$15,000
Lead Director Additional Annual Retainer:	\$25,000

All cash annual retainers will be paid in cash quarterly in arrears promptly following the end of the applicable calendar quarter, but in no event more than thirty (30) days after the end of such quarter.

Directors may be permitted to elect to receive an Option in lieu of the Director’s aggregate annual retainer (as determined in accordance with the table above). In the event a Director timely elects to receive an Option in lieu of such Director’s aggregate cash annual retainer (as described below), the Option shall be granted under the Plan or any other applicable Company equity incentive plan then-maintained by the Company on the date of the annual shareholder meeting of the Company (each, an “Annual Meeting”) that occurs in such year.

Such election must be made prior to the last day of the calendar year immediately preceding the calendar year in which the applicable Annual Meeting occurs. In no event may a Director who is initially elected or appointed to serve on the Board after the Effective Date receive an Option in lieu of such Director’s aggregate annual retainer prior to the Annual Meeting that occurs in the calendar year following the calendar year in which such Director was initially elected or appointed.

Any Option granted in lieu of a Director’s aggregate annual cash retainer will cover a number of Shares in an amount equal to the Director’s aggregate annual cash retainer with respect to the applicable year, divided by the per share grant date fair value of the Option on the applicable grant date.

For the avoidance of doubt, no Director will receive any annual retainer (or portion thereof, whether in the form of cash or as an Option) with respect to services provided to the Company or Integra prior to the Original Effective Date.

Equity Compensation

Each Director who was serving on the Board as of the Original Effective Date was hereby granted on August 1, 2015 an Option to purchase a number of Shares under the Plan in an amount equal to \$200,000 or, with respect to the Lead Independent Director and the Chairman, \$400,000 and \$500,000, respectively, divided by the per share grant date fair value of such Option on August 1, 2015.

In addition, each Director who was serving on the Board as of the Original Effective Date was hereby granted on August 1, 2015 an Option to purchase a number of Shares under the Plan in an amount equal to \$100,000 or, with respect to the Chairman, \$150,000, divided by the per share grant date fair value of such Option on August 1, 2015, subject to the Director's continued service through

Post-Distribution Stock Option Grants: such date.

Each Director who is initially elected or appointed to serve on the Board after the Original Effective Date shall be granted an Option to purchase a number of Shares under the Plan, or any other applicable Company equity incentive plan then-maintained by the Company, in an amount equal to \$100,000 or, with respect to the Chairman, \$150,000, divided by the per share grant date fair value of such Option on the later of the Director's Election Date (as defined below) and August 1, 2015 (the "Initial Option"), subject to the Director's continued service through such date (if applicable). The Initial Option may be pro-rated to reflect any partial year of service, as determined by the Board in its sole discretion.

Initial Stock Option Grant:

An Initial Option is hereby granted on the later of the date on which such Director is initially elected or appointed to serve on the Board (the "Election Date") and August 1, 2015.

Each Director serving on the Board as of the date of each Annual Meeting shall be granted an Option to purchase a number of Shares under the Plan or any other applicable Company equity incentive plan then-maintained by the Company in an amount equal to \$100,000 or, with respect to the Chairman, \$150,000, divided by the per share grant date fair value of such Option on the date of the applicable Annual Meeting (the "Annual Option").

Annual Stock Option Grant:

An Annual Option is hereby granted on the date of the applicable Annual Meeting.

Miscellaneous

Each Option granted under this Program shall be a Non-Qualified Stock Option, shall have an exercise price per Share equal to the Fair Market Value of a Share on the applicable grant date and shall have a term of ten years from the applicable grant date; provided, however, that if a Director experiences a Termination of Service for Cause, each Option granted to the Director under this Program may not be exercised after the start of business on the Director's termination date.

With respect to each Option granted under this Program, the per share grant date fair value of such Option shall be computed in accordance with FASB Accounting Standards Codification Topic 718, *Compensation -- Stock Compensation*, or any successor accounting standard.

Each Option granted under this Program shall vest with respect to 25% of the Shares subject to the Option on each quarterly anniversary of the applicable grant date, subject to continued service, and shall fully vest and become exercisable immediately prior to a Change in Control, subject to continued service until immediately prior to such Change in Control. In addition, (i) if a Director stands for reelection but is not reelected to the Board, any outstanding Option(s) then-held by such Director shall fully vest and become exercisable on the date on which such Director is not reelected and (ii) if a Director experiences a Termination of Service due to such Director's death or disability, any outstanding Option(s) granted under this Program that are then-held by such Director shall fully vest and become exercisable upon such termination.

All applicable terms of the Plan apply to this Program as if fully set forth herein, and all grants of Options are hereby subject in all respect to the terms of the Plan. The grant of any Option under this Program shall be made solely by and subject to the terms set forth in a written Award Agreement in a form approved by the Board and duly executed by an executive officer of the Company.

Effectiveness, Amendment, Modification and Termination

This Program shall become effective upon the Effective Date. This Program may be amended, modified or terminated by the Board in the future at its sole discretion. No Director shall have any rights hereunder, except with respect to any Options actually granted pursuant to the Program.

CREDIT AGREEMENT

by and among

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Administrative Agent,

WELLS FARGO BANK, NATIONAL ASSOCIATION

and

THE LENDERS THAT ARE PARTIES HERETO

as the Lenders,

SEASPINE HOLDINGS CORPORATION,

as Parent, and

SEASPINE ORTHOPEDICS CORPORATION,

ISOTIS ORTHOBIOLOGICS, INC.,

ISOTIS, INC., SEASPINE, INC.,

THEKEN SPINE, LLC,

SEASPINE SALES LLC,

as Borrowers

Dated as of December 24, 2015

TABLE OF CONTENTS

TABLE OF CONTENTS

	Page
1. DEFINITIONS AND CONSTRUCTION	1
1.1 Definitions	1
1.2 Accounting Terms	1
1.3 Code	2
1.4 Construction	2
1.5 Time References	3
1.6 Schedules and Exhibits	3
2. LOANS AND TERMS OF PAYMENT	3
2.1 Revolving Loans	3
2.2 Reserved	4
2.3 Borrowing Procedures and Settlements	4
2.4 Payments; Reductions of Commitments; Prepayments	12
2.5 Promise to Pay; Promissory Notes	16
2.6 Interest Rates and Letter of Credit Fee: Rates, Payments, and Calculations	16
2.7 Crediting Payments	18
2.8 Designated Account	18
2.9 Maintenance of Loan Account; Statements of Obligations	19
2.10 Fees	19
2.11 Letters of Credit	20
2.12 LIBOR Option	26
2.13 Capital Requirements	28
2.14 Reserved	29
2.15 Joint and Several Liability of Borrowers	30
3. CONDITIONS; TERM OF AGREEMENT	32
3.1 Conditions Precedent to the Initial Extension of Credit	32
3.2 Conditions Precedent to all Extensions of Credit	32
3.3 Maturity	33
3.4 Effect of Maturity	33
3.5 Early Termination by Borrowers	33
3.6 Conditions Subsequent	33
4. REPRESENTATIONS AND WARRANTIES	33
4.1 Due Organization and Qualification; Subsidiaries	34
4.2 Due Authorization; No Conflict	35
4.3 Governmental Consents	35
4.4 Binding Obligations; Perfected Liens	35
4.5 Title to Assets; No Encumbrances	36
4.6 Litigation	36
4.7 Compliance with Laws	36

4.8 No Material Adverse Effect	37
4.9 Solvency	37
4.10 Employee Benefits	37
4.11 Environmental Condition	37
4.12 Complete Disclosure	37
4.13 Patriot Act	38
4.14 Indebtedness	38
4.15 Payment of Taxes	38
4.16 Margin Stock	39
4.17 Governmental Regulation	39
4.18 OFAC	39
4.19 Employee and Labor Matters	39
4.20 Parent as a Holding Company	40
4.21 Leases	40
4.22 Eligible Accounts	40
4.23 Eligible Inventory	40
4.24 Location of Inventory	40
4.25 Inventory Records	40
4.26 Health Care Matters.	41
4.27 Regulatory Compliance	42
4.28 Intellectual Property	43
5. AFFIRMATIVE COVENANTS	44
5.1 Financial Statements, Reports, Certificates	44
5.2 Reporting	44
5.3 Existence	44
5.4 Maintenance of Properties	44
5.5 Taxes	44
5.6 Insurance	44
5.7 Inspection	45
5.8 Compliance with Laws	45
5.9 Environmental	46
5.10 Disclosure Updates	46
5.11 Formation of Subsidiaries	47
5.12 Further Assurances	47
5.13 Lender Meetings	48
5.14 Location of Inventory	48
5.15 Compliance with Health Care Laws.	48
5.16 Protection of Intellectual Property	49
5.17 Collateral Access Agreements	49
6. NEGATIVE COVENANTS	50
6.1 Indebtedness	50
6.2 Liens	50
6.3 Restrictions on Fundamental Changes	50

6.4 Disposal of Assets	50
6.5 Nature of Business	51
6.6 Prepayments and Amendments	51
6.7 Restricted Payments	52
6.8 Accounting Methods	52
6.9 Investments	52
6.10 Transactions with Affiliates	52
6.11 Use of Proceeds	52
6.12 Limitation on Issuance of Equity Interests	53
6.13 Inventory with Bailees	53
6.14 Parent as Holding Company	53
6.15 Modifications to Material Contracts	53
6.16 Antilayering	53
7. FINANCIAL COVENANT	53
8. EVENTS OF DEFAULT	53
8.1 Payments	54
8.2 Covenants	54
8.3 Judgments	54
8.4 Voluntary Bankruptcy, etc	54
8.5 Involuntary Bankruptcy, etc	55
8.6 Default Under Other Agreements	55
8.7 Representations, etc	55
8.8 Guaranty	55
8.9 Security Documents	55
8.10 Loan Documents	55
8.11 Change of Control	56
8.12 Lockbox Instructions	56
8.13 Health Care Laws	56
8.14 Regulatory Authority	56
8.15 Lease Agreements	57
8.16 Integra Supply Agreements	57
9. RIGHTS AND REMEDIES	57
9.1 Rights and Remedies	57
9.2 Remedies Cumulative	57
10. WAIVERS; INDEMNIFICATION	57
10.1 Demand; Protest; etc	57
10.2 The Lender Group's Liability for Collateral	57
10.3 Indemnification	57
11. NOTICES	57
12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE PROVISION	57
13. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS	57
13.1 Assignments and Participations	57

13.2	Successors	57
14.	AMENDMENTS; WAIVERS	57
14.1	Amendments and Waivers	57
14.2	Replacement of Certain Lenders	57
14.3	No Waivers; Cumulative Remedies	57
15.	AGENT; THE LENDER GROUP	57
15.1	Appointment and Authorization of Agent	57
15.2	Delegation of Duties	57
15.3	Liability of Agent	57
15.4	Reliance by Agent	57
15.5	Notice of Default or Event of Default	57
15.6	Credit Decision	57
15.7	Costs and Expenses; Indemnification	57
15.8	Agent in Individual Capacity	57
15.9	Successor Agent	57
15.10	Lender in Individual Capacity	57
15.11	Collateral Matters	57
15.12	Restrictions on Actions by Lenders; Sharing of Payments	57
15.13	Agency for Perfection	57
15.14	Payments by Agent to the Lenders	57
15.15	Concerning the Collateral and Related Loan Documents	57
15.16	Field Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information	57
15.17	Several Obligations; No Liability	57
16.	WITHHOLDING TAXES	57
16.1	Payments	57
16.2	Exemptions	57
16.3	Reductions	57
16.4	Refunds	57
17.	GENERAL PROVISIONS	57
17.1	Effectiveness	57
17.2	Section Headings	57
17.3	Interpretation	57
17.4	Severability of Provisions	57
17.5	Bank Product Providers	57
17.6	Debtor-Creditor Relationship	57
17.7	Counterparts; Electronic Execution	57
17.8	Revival and Reinstatement of Obligations; Certain Waivers	57
17.9	Confidentiality	57
17.10	Survival	57
17.11	Patriot Act	57
17.12	Integration	57
17.13	SeaSpine Orthopedics as Agent for Borrowers	57

EXHIBITS AND SCHEDULES

Exhibit A-1	—	Form of Assignment and Acceptance
Exhibit B-1	—	Form of Borrowing Base Certificate
Exhibit C-1	—	Form of Compliance Certificate
Exhibit L-1	—	Form of LIBOR Notice
Exhibit P-1	—	Form of Perfection Certificate
Schedule A-1	—	Agent’s Account
Schedule A-2	—	Authorized Persons
Schedule C-1	—	Commitments
Schedule D-1	—	Designated Account
Schedule P-1	—	Permitted Investments
Schedule P-2	—	Permitted Liens
Schedule R-1	—	Real Property Collateral
Schedule 3.1	—	Conditions Precedent
Schedule 3.6	—	Conditions Subsequent
Schedule 4.1 (b)	—	Capitalization of Borrowers
Schedule 4.1(c)	—	Capitalization of Borrowers’ Subsidiaries
Schedule 4.1(d)	—	Subscriptions, Options, Warrants, Calls
Schedule 4.6	—	Litigation
Schedule 4.11	—	Environmental Matters
Schedule 4.14	—	Permitted Indebtedness
Schedule 4.24	—	Location of Inventory
Schedule 4.28	—	Intellectual Property
Schedule 5.1	—	Financial Statements, Reports, Certificates
Schedule 5.2	—	Collateral Reporting
Schedule 6.5	—	Nature of Business

CREDIT AGREEMENT

THIS CREDIT AGREEMENT (this “Agreement”), is entered into as of December 24, 2015, by and among the lenders identified on the signature pages hereof (each of such lenders, together with its successors and permitted assigns, is referred to hereinafter as a “Lender”, as that term is hereinafter further defined), **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association (“Wells Fargo”), as administrative agent for each member of the Lender Group and the Bank Product Providers (in such capacity, together with its successors and assigns in such capacity, “Agent”), the financial institutions who are or hereafter become parties to this Agreement as lenders (together with Wells Fargo, collectively the “Lenders”, and each individually, a “Lender”), **SEASPINE HOLDINGS CORPORATION**, a Delaware corporation (“Parent”), **SEASPINE ORTHOPEDICS CORPORATION**, a Delaware corporation (“SeaSpine Orthopedics”), **SEASPINE, INC.**, a Delaware corporation (“SeaSpine Inc.”), **ISOTIS, INC.**, a Delaware corporation (“IsoTis Inc.”), **SEASPINE SALES LLC**, a Delaware limited liability company (“SeaSpine Sales”), **THEKEN SPINE, LLC**, an Ohio limited liability company (“Theken Spine”), and **ISOTIS ORTHOBIOLOGICS, INC.**, a Washington corporation (“IsoTis OrthoBiologics”; together with SeaSpine Orthopedics, SeaSpine Inc., IsoTis Inc., Theken Spine, and SeaSpine Sales are referred to hereinafter each individually as a “Borrower”, and individually and collectively, jointly and severally, as the “Borrowers”).

The parties agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 **Definitions.** Capitalized terms used in this Agreement shall have the meanings specified therefor on Schedule 1.1.

1.2 **Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, that if Borrowers notify Agent that Borrowers request an amendment to any provision hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the operation of such provision (or if Agent notifies Borrowers that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Agent and Borrowers agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lenders and Borrowers after such Accounting Change conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon and agreed to by the Required Lenders, the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred. When used herein, the term “financial statements” shall include the notes

and schedules thereto. Whenever the terms “Parent” and “Borrowers” are used in respect of a financial covenant or a related definition, it shall be understood to mean Parent and its Subsidiaries on a consolidated basis, unless the context clearly requires otherwise. Notwithstanding anything to the contrary contained herein, (a) all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under the Statement of Financial Accounting Standards No. 159 (or any similar accounting principle) permitting a Person to value its financial liabilities or Indebtedness at the fair value thereof, and (b) the term “unqualified opinion” as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is (i) unqualified, and (ii) does not include any explanation, supplemental comment, or other comment concerning the ability of the applicable Person to continue as a going concern or concerning the scope of the audit.

1.3 **Code.** Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein; provided, that to the extent that the Code is used to define any term herein and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern.

1.4 **Construction.** Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms “includes” and “including” are not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean (a) the payment or repayment in full in immediately available funds of (i) the principal amount of, and interest accrued and unpaid with respect to, all outstanding Loans, together with the payment of any premium applicable to the repayment of the Loans, (ii) all Lender Group Expenses that have accrued and are unpaid regardless of whether demand has been made therefor, (iii) all fees or charges that have accrued hereunder or under any other Loan Document (including the Letter of Credit Fee and the Unused Line Fee) and are unpaid, (b) in the case of

contingent reimbursement obligations with respect to Letters of Credit, providing Letter of Credit Collateralization, (c) in the case of obligations with respect to Bank Products (other than Hedge Obligations), providing Bank Product Collateralization, (d) the receipt by Agent of cash collateral in order to secure any other contingent Obligations for which a claim or demand for payment has been made on or prior to such time or in respect of matters or circumstances known to Agent or a Lender at such time that are reasonably expected to result in any loss, cost, damage, or expense (including attorneys' fees and legal expenses), such cash collateral to be in such amount as Agent reasonably determines is appropriate to secure such contingent Obligations, (e) the payment or repayment in full in immediately available funds of all other outstanding Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Hedge Agreements provided by Hedge Providers) other than (i) unasserted contingent indemnification Obligations, (ii) any Bank Product Obligations (other than Hedge Obligations) that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding without being required to be repaid or cash collateralized, and (iii) any Hedge Obligations that, at such time, are allowed by the applicable Hedge Provider to remain outstanding without being required to be repaid, and (f) the termination of all of the Commitments of the Lenders. Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record.

1.5 **Time References.** Unless the context of this Agreement or any other Loan Document clearly requires otherwise, all references to time of day refer to Pacific standard time or Pacific daylight saving time, as in effect in Los Angeles, California on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to and including"; provided that, with respect to a computation of fees or interest payable to Agent or any Lender, such period shall in any event consist of at least one full day.

1.6 **Schedules and Exhibits.** All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

2. **LOANS AND TERMS OF PAYMENT.**

2.1 **Revolving Loans.**

(a) Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each Revolving Lender agrees (severally, not jointly or jointly and severally) to make revolving loans ("Revolving Loans") to Borrowers in an amount at any one time outstanding not to exceed *the lesser of*:

- (i) such Lender's Revolver Commitment, or

(ii) such Lender's Pro Rata Share (subject to Section 2.3(c)) of an amount equal to *the lesser of*:

(A) the amount equal to (l) the Maximum Revolver Amount *less* (2) the sum of (y) the Letter of Credit Usage at such time, *plus* (z) the principal amount of Swing Loans outstanding at such time, and

(B) the amount equal to (1) the Borrowing Base as of such date (based upon the most recent Borrowing Base Certificate delivered by Borrowers to Agent) *less* the sum of (1) the Letter of Credit Usage at such time, *plus* (2) the principal amount of Swing Loans outstanding at such time.

(b) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement. The outstanding principal amount of the Revolving Loans, together with interest accrued and unpaid thereon, shall constitute Obligations and shall be due and payable on the Maturity Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement.

(c) Anything to the contrary in this Section 2.1 notwithstanding, Agent shall have the right (but not the obligation), in the exercise of its Permitted Discretion, to establish and increase or decrease Receivable Reserves, Inventory Reserves, Bank Product Reserves, and other Reserves against the Borrowing Base or the Maximum Revolver Amount; provided, that Agent shall endeavor to notify Borrowers at or before the time any such reserve in a material amount is to be established or increased, but a non-willful failure of Agent to so notify Borrowers shall not be a breach of this Agreement and shall not cause such establishment or increase of a reserve to be ineffective. The amount of any Receivable Reserve, Inventory Reserve, Bank Product Reserve, or other Reserve established by Agent shall have a reasonable relationship to the event, condition, other circumstance, or fact that is the basis for such reserve, shall continue only so long as such event, condition or circumstance continues, and shall not be duplicative of any other reserve established and currently maintained. Upon establishment or increase in reserves, Agent agrees to make itself available to discuss the reserve or increase, and Borrowers may take such action as may be required so that the event, condition, circumstance, or fact that is the basis for such reserve or increase no longer exists, in a manner and to the extent reasonably satisfactory to Agent in the exercise of its Permitted Discretion. In no event shall such opportunity limit the right of Agent to establish or change such Receivable Reserve, Inventory Reserve, Bank Product Reserve, or other Reserves, unless Agent shall have determined, in its Permitted Discretion, that the event, condition, other circumstance, or fact that was the basis for such Receivable Reserve, Inventory Reserve, Bank Product Reserve, or other Reserves or such change no longer exists or has otherwise been adequately addressed by Borrowers.

2.2 **Reserved.**

2.3 **Borrowing Procedures and Settlements.**

(a) **Procedure for Borrowing Revolving Loans.** Each Borrowing shall be made by a written request by an Authorized Person delivered to Agent (which may be delivered through Agent’s electronic platform or portal) and received by Agent no later than 10:00 a.m. (i) on the Business Day that is the requested Funding Date in the case of a request for a Swing Loan, (ii) on the Business Day that is one (1) Business Day prior to the requested Funding Date in the case of a request for a Base Rate Loan, and (iii) on the Business Day that is three (3) Business Days prior to the requested Funding Date in the case of all other requests, specifying (A) the amount of such Borrowing, and (B) the requested Funding Date (which shall be a Business Day); provided, that Agent may, in its sole discretion, elect to accept as timely requests that are received later than 10:00 a.m. on the applicable Business Day. All Borrowing requests which are not made on-line via Agent’s electronic platform or portal shall be subject to (and unless Agent elects otherwise in the exercise of its sole discretion, such Borrowings shall not be made until the completion of) Agent’s authentication process (with results satisfactory to Agent) prior to the funding of any such requested Revolving Loan.

(b) **Making of Swing Loans.** In the case of a request for a Revolving Loan and so long as (i) either (A) the aggregate amount of Swing Loans made since the last Settlement Date, *minus* all payments or other amounts applied to Swing Loans since the last Settlement Date, plus the amount of the requested Swing Loan does not exceed \$3,000,000, or (B) Swing Lender, in its sole discretion, agrees to make a Swing Loan notwithstanding the foregoing limitation, and (B) the requested Revolving Loan meets the requirements of Section 2.1(a), Swing Lender shall make a Revolving Loan (any such Revolving Loan made by Swing Lender pursuant to this Section 2.3(b) being referred to as a “Swing Loan” and all such Revolving Loans being referred to as “Swing Loans”) available to Borrowers on the Funding Date applicable thereto by transferring immediately available funds in the amount of such requested Borrowing to the Designated Account. Each Swing Loan shall be deemed to be a Revolving Loan hereunder and shall be subject to all the terms and conditions (including Section 3) applicable to other Revolving Loans, except that all payments (including interest) on any Swing Loan shall be payable to Swing Lender solely for its own account. Subject to the provisions of Section 2.3(d)(ii), Swing Lender shall not make and shall not be obligated to make any Swing Loan if Swing Lender has actual knowledge that (i) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing, or (ii) the requested Borrowing would exceed the Availability on such Funding Date. Swing Lender shall not otherwise be required to determine whether the applicable conditions precedent set forth in Section 3 have been satisfied on the Funding Date applicable thereto prior to making any Swing Loan. The Swing Loans shall be secured by

Agent's Liens, constitute Revolving Loans and Obligations, and bear interest at the rate then applicable from time to time to Revolving Loans.

(c) Making of Revolving Loans.

(i) In the event that Swing Lender is not obligated to make (or does not make) a Swing Loan, then after receipt of a request for a Borrowing pursuant to Section 2.3(a), Agent shall notify the Lenders by telecopy, telephone, email, or other electronic form of transmission, of the requested Borrowing; such notification to be sent on the Business Day that is (y) three (3) Business Days prior to the requested Funding Date in the case of LIBOR Rate Loans and (z) one (1) Business Day prior to the requested Funding Date for Base Rate Loans. If Agent has notified the Lenders of a requested Borrowing on the Business Day that is (y) three (3) Business Days prior to the requested Funding Date in the case of LIBOR Rate Loans and (z) one (1) Business Day prior to the requested Funding Date for Base Rate Loans, then each Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, not later than 10:00 a.m. on the Business Day that is the requested Funding Date. After Agent's receipt of the proceeds of such Revolving Loans from the Lenders, Agent shall make the proceeds thereof available to Borrowers on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Agent to the Designated Account; provided, that, subject to the provisions of Section 2.3(d)(ii), no Lender shall have an obligation to make any Revolving Loan, if (1) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing unless such condition has been waived, or (2) the requested Borrowing would exceed the Availability on such Funding Date.

(ii) Unless Agent receives notice from a Lender prior to 9:30 a.m. on the Business Day that is the requested Funding Date relative to a requested Borrowing as to which Agent has notified the Lenders of a requested Borrowing that such Lender will not make available as and when required hereunder to Agent for the account of Borrowers the amount of that Lender's Pro Rata Share of the Borrowing, Agent may assume that each Lender has made or will make such amount available to Agent in immediately available funds on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrowers a corresponding amount. If, on the requested Funding Date, any Lender shall not have remitted the full amount that it is required to make available to Agent in immediately available funds and if Agent has made available to Borrowers such amount on the requested Funding Date, then such Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, no later than 10:00 a.m. on the Business Day that is the first Business Day after the requested Funding Date (in which case, the interest accrued on such Lender's portion of such Borrowing for the Funding Date shall be for Agent's separate account). If any Lender shall not remit the full amount that it is required to make available

to Agent in immediately available funds as and when required hereby and if Agent has made available to Borrowers such amount, then that Lender shall be obligated to immediately remit such amount to Agent, together with interest at the Defaulting Lender Rate for each day until the date on which such amount is so remitted. A notice submitted by Agent to any Lender with respect to amounts owing under this Section 2.3(c)(ii) shall be conclusive, absent manifest error. If the amount that a Lender is required to remit is made available to Agent, then such payment to Agent shall constitute such Lender's Revolving Loan for all purposes of this Agreement. If such amount is not made available to Agent on the Business Day following the Funding Date, Agent will notify Borrowers of such failure to fund and, upon demand by Agent, Borrowers shall pay such amount to Agent for Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the interest rate applicable at the time to the Revolving Loans composing such Borrowing.

(d) Protective Advances and Optional Overadvances.

(i) Any contrary provision of this Agreement or any other Loan Document notwithstanding, at any time (A) after the occurrence and during the continuance of a Default or an Event of Default, or (B) that any of the other applicable conditions precedent set forth in Section 3 are not satisfied, Agent hereby is authorized by Borrowers and the Lenders, from time to time, in Agent's sole discretion, to make Revolving Loans to, or for the benefit of, Borrowers, on behalf of the Revolving Lenders, that Agent, in its Permitted Discretion, deems necessary or desirable (1) to preserve or protect the Collateral, or any portion thereof, or (2) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations) (the Revolving Loans described in this Section 2.3(d)(i) shall be referred to as "Protective Advances").

(ii) Any contrary provision of this Agreement or any other Loan Document notwithstanding, the Lenders hereby authorize Agent or Swing Lender, as applicable, and either Agent or Swing Lender, as applicable, may, but is not obligated to, knowingly and intentionally, continue to make Revolving Loans (including Swing Loans) to Borrowers notwithstanding that an Overadvance exists or would be created thereby, so long as (A) after giving effect to such Revolving Loans, the outstanding Revolver Usage does not exceed the Borrowing Base by more than \$3,000,000, and (B) after giving effect to such Revolving Loans, the outstanding Revolver Usage (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) does not exceed the Maximum Revolver Amount. In the event Agent obtains actual knowledge that the Revolver Usage exceeds the amounts permitted by the immediately foregoing provisions, regardless of the amount of, or reason for, such excess, Agent shall notify the Lenders as soon as practicable (and prior to making any (or any additional) intentional Overadvances (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) unless Agent determines that prior notice would result in imminent harm to the Collateral or its value, in which case Agent may make such Overadvances and provide

notice as promptly as practicable thereafter), and the Lenders with Revolver Commitments thereupon shall, together with Agent, jointly determine the terms of arrangements that shall be implemented with Borrowers intended to reduce, within a reasonable time, the outstanding principal amount of the Revolving Loans to Borrowers to an amount permitted by the preceding sentence. In such circumstances, if any Lender with a Revolver Commitment objects to the proposed terms of reduction or repayment of any Overadvance, the terms of reduction or repayment thereof shall be implemented according to the determination of the Required Lenders. The foregoing provisions are meant for the benefit of the Lenders and Agent and are not meant for the benefit of Borrowers (or any other Loan Party), which shall continue to be bound by the provisions of Section 2.4(e)(i). Each Lender with a Revolver Commitment shall be obligated to settle with Agent as provided in Section 2.3(e) (or Section 2.3(g), as applicable) for the amount of such Lender's Pro Rata Share of any unintentional Overadvances by Agent reported to such Lender, any intentional Overadvances made as permitted under this Section 2.3(d)(ii), and any Overadvances resulting from the charging to the Loan Account of interest, fees, or Lender Group Expenses.

(iii) Each Protective Advance and each Overadvance (each, an "Extraordinary Advance") shall be deemed to be a Revolving Loan hereunder, except that no Extraordinary Advance shall be eligible to be a LIBOR Rate Loan and, prior to Settlement therefor, all payments on the Extraordinary Advances shall be payable to Agent solely for its own account. The Extraordinary Advances shall be repayable on demand, secured by Agent's Liens, constitute Obligations hereunder, and bear interest at the rate applicable from time to time to Revolving Loans that are Base Rate Loans. The provisions of this Section 2.3(d) are for the exclusive benefit of Agent, Swing Lender, and the Lenders and are not intended to benefit Borrowers (or any other Loan Party) in any way.

(e) **Settlement.** It is agreed that each Lender's funded portion of the Revolving Loans is intended by the Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding Revolving Loans, subject to Sections 2.3(b) and 2.3(c). Such agreement notwithstanding, Agent, Swing Lender, and the other Lenders agree (which agreement shall not be for the benefit of Borrowers or any other Loan Party) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among the Lenders as to the Revolving Loans, the Swing Loans, and the Extraordinary Advances shall take place on a periodic basis in accordance with the following provisions:

(i) Agent shall request settlement ("Settlement") with the Lenders on a weekly basis, or on a more frequent basis if so determined by Agent in its sole discretion (1) on behalf of Swing Lender, with respect to the outstanding Swing Loans, (2) for itself, with respect to the outstanding Extraordinary Advances, and (3) with respect to Borrowers' or any of their Subsidiaries' payments or other amounts received, as to each by notifying the Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 2:00

p.m. on the Business Day immediately prior to the date of such requested Settlement (the date of such requested Settlement being the “Settlement Date”). Such notice of a Settlement Date shall include a summary statement of the amount of outstanding Revolving Loans, Swing Loans, and Extraordinary Advances for the period since the prior Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(g)): (y) if the amount of the Revolving Loans (including Swing Loans, and Extraordinary Advances) made by a Lender that is not a Defaulting Lender exceeds such Lender’s Pro Rata Share of the Revolving Loans (including Swing Loans, and Extraordinary Advances) as of a Settlement Date, then Agent shall, by no later than 12:00 p.m. on the Settlement Date, transfer in immediately available funds to a Deposit Account of such Lender (as such Lender may designate), an amount such that each such Lender shall, upon receipt of such amount, have as of the Settlement Date, its Pro Rata Share of the Revolving Loans (including Swing Loans, and Extraordinary Advances), and (z) if the amount of the Revolving Loans (including Swing Loans, and Extraordinary Advances) made by a Lender is less than such Lender’s Pro Rata Share of the Revolving Loans (including Swing Loans, and Extraordinary Advances) as of a Settlement Date, such Lender shall no later than 12:00 p.m. on the Settlement Date transfer in immediately available funds to Agent’s Account, an amount such that each such Lender shall, upon transfer of such amount, have as of the Settlement Date, its Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances). Such amounts made available to Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable Swing Loans or Extraordinary Advances and, together with the portion of such Swing Loans or Extraordinary Advances representing Swing Lender’s Pro Rata Share thereof, shall constitute Revolving Loans of such Lenders. If any such amount is not made available to Agent by any Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, Agent shall be entitled to recover for its account such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate.

(ii) In determining whether a Lender’s balance of the Revolving Loans, Swing Loans, and Extraordinary Advances is less than, equal to, or greater than such Lender’s Pro Rata Share of the Revolving Loans, Swing Loans, and Extraordinary Advances as of a Settlement Date, Agent shall, as part of the relevant Settlement, apply to such balance the portion of payments actually received in good funds by Agent with respect to principal, interest, fees payable by Borrowers and allocable to the Lenders hereunder, and proceeds of Collateral.

(iii) Between Settlement Dates, Agent, to the extent Extraordinary Advances or Swing Loans are outstanding, may pay over to Agent or Swing Lender, as applicable, any payments or other amounts received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Loans, for application to the Extraordinary Advances or Swing Loans. Between Settlement Dates, Agent, to the extent no Extraordinary Advances or Swing Loans are outstanding, may pay over to Swing Lender any payments or other amounts received by Agent, that in accordance with the terms of this Agreement

would be applied to the reduction of the Revolving Loans, for application to Swing Lender's Pro Rata Share of the Revolving Loans. If, as of any Settlement Date, payments or other amounts of Parent, Borrowers or their Subsidiaries received since the then immediately preceding Settlement Date have been applied to Swing Lender's Pro Rata Share of the Revolving Loans other than to Swing Loans, as provided for in the previous sentence, Swing Lender shall pay to Agent for the accounts of the Lenders, and Agent shall pay to the Lenders (other than a Defaulting Lender if Agent has implemented the provisions of Section 2.3(g)), to be applied to the outstanding Revolving Loans of such Lenders, an amount such that each such Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Revolving Loans. During the period between Settlement Dates, Swing Lender with respect to Swing Loans, Agent with respect to Extraordinary Advances, and each Lender with respect to the Revolving Loans other than Swing Loans and Extraordinary Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by Swing Lender, Agent, or the Lenders, as applicable.

(iv) Anything in this Section 2.3(e) to the contrary notwithstanding, in the event that a Lender is a Defaulting Lender, Agent shall be entitled to refrain from remitting settlement amounts to the Defaulting Lender and, instead, shall be entitled to elect to implement the provisions set forth in Section 2.3(g).

(f) **Notation.** Agent, as a non-fiduciary agent for Borrowers, shall maintain a register showing the principal amount of the Revolving Loans owing to each Lender, including the Swing Loans owing to Swing Lender, and Extraordinary Advances owing to Agent, and the interests therein of each Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate.

(g) Defaulting Lenders.

(i) Notwithstanding the provisions of Section 2.4(b)(iii), Agent shall not be obligated to transfer to a Defaulting Lender any payments made by Borrowers to Agent for the Defaulting Lender's benefit or any proceeds of Collateral that would otherwise be remitted hereunder to the Defaulting Lender, and, in the absence of such transfer to the Defaulting Lender, Agent shall transfer any such payments (A) first, to Swing Lender to the extent of any Swing Loans that were made by Swing Lender and that were required to be, but were not, paid by the Defaulting Lender, (B) second, to Issuing Bank, to the extent of the portion of a Letter of Credit Disbursement that was required to be, but was not, paid by the Defaulting Lender, (C) third, to each Non-Defaulting Lender ratably in accordance with their Commitments (but, in each case, only to the extent that such Defaulting Lender's portion of a Revolving Loan (or other funding obligation) was funded by such other Non-Defaulting Lender), (D) to a suspense account maintained by Agent, the proceeds of which shall be retained by Agent and may be made available to be re-advanced to or for the benefit

of Borrowers (upon the request of Borrowers and subject to the conditions set forth in Section 3.2) as if such Defaulting Lender had made its portion of Revolving Loans (or other funding obligations) hereunder, and (E) from and after the date on which all other Obligations have been paid in full, to such Defaulting Lender in accordance with tier (L) of Section 2.4(b)(iii). Subject to the foregoing, Agent may hold and, in its discretion, re-lend to Borrowers for the account of such Defaulting Lender the amount of all such payments received and retained by Agent for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents (including the calculation of Pro Rata Share in connection therewith) and for the purpose of calculating the fee payable under Section 2.10(b), such Defaulting Lender shall be deemed not to be a “Lender” and such Lender’s Commitment shall be deemed to be zero; provided, that the foregoing shall not apply to any of the matters governed by Section 14.1(a)(i) through (iii). The provisions of this Section 2.3(g) shall remain effective with respect to such Defaulting Lender until the earlier of (y) the date on which all of the Non-Defaulting Lenders, Agent, Issuing Bank, and Borrowers shall have waived, in writing, the application of this Section 2.3(g) to such Defaulting Lender, or (z) the date on which such Defaulting Lender makes payment of all amounts that it was obligated to fund hereunder, pays to Agent all amounts owing by Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and, if requested by Agent, provides adequate assurance of its ability to perform its future obligations hereunder (on which earlier date, so long as no Event of Default has occurred and is continuing, any remaining cash collateral held by Agent pursuant to Section 2.3(g)(ii) shall be released to Borrowers). The operation of this Section 2.3(g) shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by any Borrower of its duties and obligations hereunder to Agent, Issuing Bank, or to the Lenders other than such Defaulting Lender. Any failure by a Defaulting Lender to fund amounts that it was obligated to fund hereunder shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle Borrowers, at their option, upon written notice to Agent, to arrange for a substitute Lender to assume the Commitment of such Defaulting Lender, such substitute Lender to be reasonably acceptable to Agent. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Acceptance in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being paid its share of the outstanding Obligations (other than Bank Product Obligations, but including (1) all interest, fees, and other amounts that may be due and payable in respect thereof, and (2) an assumption of its Pro Rata Share of its participation in the Letters of Credit); provided, that any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Lender Groups’ or Borrowers’ rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund. In the event of a direct conflict between the priority provisions of this Section 2.3(g) and any other provision contained in this Agreement or any other

Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.3(g) shall control and govern.

(ii) If any Swing Loan or Letter of Credit is outstanding or is issued at the time that a Lender is or becomes a Defaulting Lender then:

(A) such Defaulting Lender's Swing Loan Exposure and Letter of Credit Exposure shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares but only to the extent (x) the sum of all Non-Defaulting Lenders' Revolving Loan Exposures plus such Defaulting Lender's Swing Loan Exposure and Letter of Credit Exposure does not exceed the total of all Non-Defaulting Lenders' Revolver Commitments and (y) the conditions set forth in Section 3.2 are satisfied at such time;

(B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, Borrowers shall within one Business Day following notice by the Agent (x) first, prepay such Defaulting Lender's Swing Loan Exposure (after giving effect to any partial reallocation pursuant to clause (A) above) and (y) second, cash collateralize such Defaulting Lender's Letter of Credit Exposure (after giving effect to any partial reallocation pursuant to clause (A) above), pursuant to a cash collateral agreement to be entered into in form and substance reasonably satisfactory to the Agent, for so long as such Letter of Credit Exposure is outstanding; provided, that Borrowers shall not be obligated to cash collateralize any Defaulting Lender's Letter of Credit Exposure if such Defaulting Lender is also the Issuing Bank;

(C) if Borrowers cash collateralize any portion of such Defaulting Lender's Letter of Credit Exposure pursuant to this Section 2.3(g)(ii), Borrowers shall not be required to pay any Letter of Credit Fees to Agent for the account of such Defaulting Lender pursuant to Section 2.6(b) with respect to such cash collateralized portion of such Defaulting Lender's Letter of Credit Exposure during the period such Letter of Credit Exposure is cash collateralized;

(D) to the extent the Letter of Credit Exposure of the Non-Defaulting Lenders is reallocated pursuant to this Section 2.3(g)(ii), then the Letter of Credit Fees payable to the Non-Defaulting Lenders pursuant to Section 2.6(b) shall be adjusted in accordance with such Non-Defaulting Lenders' Letter of Credit Exposure;

(E) to the extent any Defaulting Lender's Letter of Credit Exposure is neither cash collateralized nor reallocated pursuant to this Section 2.3(g)(ii), then, without prejudice to any rights or remedies of the Issuing Bank or any Lender hereunder, all Letter of Credit Fees that would have otherwise been payable to such Defaulting Lender under Section 2.6(b) with respect to such portion of such Letter of Credit Exposure shall instead be payable to the

Issuing Bank until such portion of such Defaulting Lender's Letter of Credit Exposure is cash collateralized or reallocated;

(F) so long as any Lender is a Defaulting Lender, the Swing Lender shall not be required to make any Swing Loan and the Issuing Bank shall not be required to issue, amend, or increase any Letter of Credit, in each case, to the extent (x) the Defaulting Lender's Pro Rata Share of such Swing Loans or Letter of Credit cannot be reallocated pursuant to this Section 2.3(g)(ii) or (y) the Swing Lender or Issuing Bank, as applicable, has not otherwise entered into arrangements reasonably satisfactory to the Swing Lender or Issuing Bank, as applicable, and Borrowers to eliminate the Swing Lender's or Issuing Bank's risk with respect to the Defaulting Lender's participation in Swing Loans or Letters of Credit; and

(G) Agent may release any cash collateral provided by Borrowers pursuant to this Section 2.3(g)(ii) to the Issuing Bank and the Issuing Bank may apply any such cash collateral to the payment of such Defaulting Lender's Pro Rata Share of any Letter of Credit Disbursement that is not reimbursed by Borrowers pursuant to Section 2.11(d).

(h) **Independent Obligations.** All Revolving Loans (other than Swing Loans and Extraordinary Advances) shall be made by the Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Revolving Loan (or other extension of credit) hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

2.4 **Payments; Reductions of Commitments; Prepayments.**

(a) **Payments by Borrowers.**

(i) Except as otherwise expressly provided herein, all payments by Borrowers shall be made to Agent's Account for the account of the Lender Group and shall be made in immediately available funds, no later than 1:30 p.m. on the date specified herein. Any payment received by Agent later than 1:30 p.m. shall be deemed to have been received (unless Agent, in its sole discretion, elects to credit it on the date received) on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(ii) Unless Agent receives notice from Borrowers prior to the date on which any payment is due to the Lenders that Borrowers will not make such payment in full as and when required, Agent may assume that Borrowers have made (or will make) such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required),

in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrowers do not make such payment in full to Agent on the date when due, each Lender severally shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the Defaulting Lender Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(b) Apportionment and Application.

(iii) So long as no Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all principal and interest payments received by Agent shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) and all payments of fees and expenses received by Agent (other than fees or expenses that are for Agent's separate account or for the separate account of Issuing Bank) shall be apportioned ratably among the Lenders having a Pro Rata Share of the type of Commitment or Obligation to which a particular fee or expense relates.

(iv) Subject to Section 2.4(b)(v) and Section 2.4(e), all payments to be made hereunder by Borrowers shall be remitted to Agent and all such payments, and all proceeds of Collateral received by Agent, shall be applied, so long as no Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, to reduce the balance of the Revolving Loans outstanding and, thereafter, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(v) At any time that an Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all payments remitted to Agent and all proceeds of Collateral received by Agent shall be applied as follows:

(A) first, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to Agent under the Loan Documents, until paid in full,

(B) second, to pay any fees or premiums then due to Agent under the Loan Documents until paid in full,

(C) third, to pay interest due in respect of all Protective Advances until paid in full,

(D) fourth, to pay the principal of all Protective Advances until paid in full,

(E) fifth, ratably, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to any of the Lenders under the Loan Documents, until paid in full,

(F) sixth, ratably, to pay any fees or premiums then due to any of the Lenders under the Loan Documents until paid in full,

(G) seventh, to pay interest accrued in respect of the Swing Loans until paid in full,

(H) eighth, to pay the principal of all Swing Loans until paid in full,

(I) ninth, to pay interest accrued in respect of the Revolving Loans (other than Protective Advances) until paid in full,

(J) tenth, ratably

i. to pay the principal of all Revolving Loans until paid in full,

ii. to Agent, to be held by Agent, for the benefit of Issuing Bank (and for the ratable benefit of each of the Lenders that have an obligation to pay to Agent, for the account of Issuing Bank, a share of each Letter of Credit Disbursement), as cash collateral in an amount up to 105% of the Letter of Credit Usage (to the extent permitted by applicable law, such cash collateral shall be applied to the reimbursement of any Letter of Credit Disbursement as and when such disbursement occurs and, if a Letter of Credit expires undrawn, the cash collateral held by Agent in respect of such Letter of Credit shall, to the extent permitted by applicable law, be reapplied pursuant to this Section 2.4(b)(iii), beginning with tier (A) hereof),

iii. ratably, (after taking into account any amounts previously paid pursuant to this clause iii. during the continuation of the applicable Application Event to (y) the Bank Product Providers based upon amounts then certified by the applicable Bank Product Provider to Agent (in form and substance satisfactory to Agent) to be due and payable to such Bank Product Providers on account of Bank Product Obligations, and (z) with any balance to be paid to Agent, to be held by Agent, for the ratable benefit of the Bank Product Providers, as cash collateral (which cash collateral may be released by Agent to the applicable Bank Product Provider and applied by such Bank Product Provider to the payment or reimbursement of any amounts due and payable with respect to Bank Product Obligations owed to the applicable Bank Product Provider as and when such amounts first become due and payable and, if and at such time as all such Bank Product Obligations are paid or otherwise satisfied in full, the cash collateral held by Agent in

respect of such Bank Product Obligations shall be reapplied pursuant to this Section 2.4(b)(iii), beginning with tier (A) hereof,

(K) eleventh, to pay any other Obligations other than Obligations owed to Defaulting Lenders;

(L) twelfth, ratably to pay any Obligations owed to Defaulting Lenders; and

(M) thirteenth, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(vi) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive, subject to a Settlement delay as provided in Section 2.3(e).

(vii) In each instance, so long as no Application Event has occurred and is continuing, Section 2.4(b)(ii) shall not apply to any payment made by Borrowers to Agent and specified by Borrowers to be for the payment of specific Obligations then due and payable (or pre-payable) under any provision of this Agreement or any other Loan Document.

(viii) For purposes of Section 2.4(b)(iii), “paid in full” of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Proceeding, default interest, interest on interest, and expense reimbursements, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(ix) In the event of a direct conflict between the priority provisions of this Section 2.4 and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, if the conflict relates to the provisions of Section 2.3(g) and this Section 2.4, then the provisions of Section 2.3(g) shall control and govern, and if otherwise, then the terms and provisions of this Section 2.4 shall control and govern.

(c) **Reserved.**

(d) **Reserved.**

(e) **Mandatory Prepayments.**

(i) **Borrowing Base.** If, at any time, (A) the Revolver Usage on such date exceeds (B) the Borrowing Base reflected in the Borrowing Base Certificate most recently delivered by Borrowers to Agent, then Borrowers shall immediately prepay the Obligations in accordance with Section 2.4(f)(i) in an aggregate amount equal to the amount of such excess.

(ii) **Dispositions.** Within 1 Business Day of the date of receipt by Parent, any Borrower or any of their Subsidiaries of the net cash proceeds of any sale or disposition by Parent, any such Borrower or any such Subsidiary of assets (excluding sales or dispositions which qualify as Permitted Dispositions under clauses (a), (b), (c), (d), (e), (j), (k), (l), (m), or (n) of the definition of Permitted Dispositions), Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(f)(ii) in an amount equal to 100% of such net cash proceeds received by such Person in connection with such sales or dispositions; provided that the Commitment shall not be reduced and, so long as (A) no Default or Event of Default shall have occurred and is continuing or would result therefrom, (B) such Borrower shall have given Agent prior written notice of such Borrower's intention to apply such monies to the costs of replacement of the properties or assets that are the subject of such sale or disposition, (C) the monies are held in a Deposit Account in which Agent has a perfected first-priority security interest, and (D) Parent, such Borrower or any such Subsidiary, as applicable, completes such replacement or purchase within 180 days after the initial receipt of such monies, then the Loan Party whose assets were the subject of such disposition shall have the option to apply such monies to the costs of replacement of the assets that are the subject of such sale or disposition unless and to the extent that such applicable period shall have expired without such replacement or purchase being made or completed, in which case, any amounts remaining in the Deposit Account referred to in clause (C) above shall be paid to Agent and applied in accordance with Section 2.4(f)(ii). Nothing contained in this Section 2.4(e)(ii) shall permit Parent, any Borrower or any of their Subsidiaries to sell or otherwise dispose of any assets other than in accordance with Section 6.4.

(f) Application of Payments.

(iii) Each prepayment pursuant to Section 2.4(e)(i) shall, (A) so long as no Application Event shall have occurred and be continuing, be applied, *first*, to the outstanding principal amount of the Revolving Loans until paid in full, and *second*, to cash collateralize the Letters of Credit in an amount equal to 105% of the then outstanding Letter of Credit Usage, and (B) if an Application Event shall have occurred and be continuing, be applied in the manner set forth in Section 2.4(b)(iii).

(iv) Each prepayment pursuant to Section 2.4(e)(ii) shall (A) so long as no Application Event shall have occurred and be continuing, be applied, *first*, to the outstanding principal amount of the Revolving Loans until paid in full, and *second*, to cash collateralize the Letters of Credit in an amount equal to 105% of the then outstanding Letter of Credit Usage and

(B) if an Application Event shall have occurred and be continuing, be applied in the manner set forth in Section 2.4(b)(iii).

2.5 Promise to Pay; Promissory Notes.

(a) Borrowers agree to pay (x) all non-out-of-pocket Lender Group Expenses on the earlier of (i) the first day of the month following the date on which the applicable Lender Group Expenses were first incurred, and (ii) the date on which demand therefor is made by Agent (provided that if demand therefor is made on a day that is not a Business Day or after 10:00 a.m. on a Business Day, such Lender Group Expenses shall be due and payable on the next Business Day) (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of Section 2.6(d) shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (ii)), and (y) all out-of-pocket Lender Group Expenses within thirty days of the date on which demand therefor is made by Agent. Borrowers promise to pay all of the Obligations (including principal, interest, premiums, if any, fees, costs, and expenses (including Lender Group Expenses)) in full on the Maturity Date or, if earlier, on the date on which the Obligations (other than the Bank Product Obligations) become due and payable pursuant to the terms of this Agreement. Borrowers agree that their obligations contained in the first sentence of this Section 2.5(a) shall survive payment or satisfaction in full of all other Obligations.

(b) Any Lender may request that any portion of its Commitments or the Loans made by it be evidenced by one or more promissory notes. In such event, Borrowers shall execute and deliver to such Lender the requested promissory notes payable to the order of such Lender in a form furnished by Agent and reasonably satisfactory to Borrowers. Thereafter, the portion of the Commitments and Loans evidenced by such promissory notes and interest thereon shall at all times be represented by one or more promissory notes in such form payable to the order of the payee named therein.

2.6 Interest Rates and Letter of Credit Fee: Rates, Payments, and Calculations.

(a) **Interest Rates.** Except as provided in Section 2.6(c), all Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest as follows:

(iv) if the relevant Obligation is a LIBOR Rate Loan, at a *per annum* rate equal to the LIBOR Rate plus the LIBOR Rate Margin, and

(v) otherwise, at a *per annum* rate equal to the Base Rate plus the Base Rate Margin.

(b) **Letter of Credit Fee.** Borrowers shall pay Agent (for the ratable benefit of the Revolving Lenders), a Letter of Credit fee (the “**Letter of Credit Fee**”) (which fee shall be in addition to the fronting fees and commissions, other fees, charges and expenses set forth in Section 2.11(k)) that shall accrue at a *per annum* rate equal to the LIBOR Rate Margin times the undrawn amount of all outstanding Letters of Credit,

(c) **Default Rate.** Upon the occurrence and during the continuation of an Event of Default and at the election of Agent or the Required Lenders,

(iii) all Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest at a *per annum* rate equal to two (2) percentage points above the per annum rate otherwise applicable thereunder, and

(iv) the Letter of Credit Fee shall be increased to two (2) percentage points above the *per annum* rate otherwise applicable hereunder.

(d) **Payment.** Except to the extent provided to the contrary in Section 2.10, Section 2.11(k) or Section 2.12(a), (i) all interest, all Letter of Credit Fees and all other fees payable hereunder or under any of the other Loan Documents shall be due and payable, in arrears, on the first day of each month, (ii) all non-out-of-pocket costs, expenses and Lender Group Expenses payable hereunder or under any of the other Loan Documents shall be due and payable on the earlier of (x) the first day of the month following the date on which the applicable costs, expenses, or Lender Group Expenses were first incurred or (y) the date on which demand therefor is made by Agent (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of the following sentence shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (y)) and (iii) all out-of-pocket audit, field exam, appraisal, UCC search, valuation and other out-of-pocket costs, expenses and Lender Group Expenses payable hereunder or under any of the other Loan Documents shall be due and payable on the 30th day after the date on which demand therefor is made by Agent. Borrowers hereby authorize Agent, from time to time without prior notice to Borrowers, to charge to the Loan Account (A) on the first day of each month, all interest accrued during the prior month on the Revolving Loans hereunder, (B) on the first day of each month, all Letter of Credit Fees accrued or chargeable hereunder during the prior month, (C) as and when incurred or accrued, all fees and costs provided for in Section 2.10(a), (D) on the first day of each month, the Unused Line Fee accrued during the prior month pursuant to Section 2.10(b), (E) as and when incurred or accrued, all non-out-of-pocket charges or fees payable hereunder pursuant to Section 2.10(c), (F) if Borrowers do not pay any such Lender Group Expenses within 30 days of the date of Borrowers’ receipt of written notice thereof, all out-of-pocket audit, field exam, appraisal, UCC search, valuation and other out-of-pocket costs payable hereunder pursuant to Section 2.10(c), (G) as and when due and payable, all other fees payable hereunder or under any of the other Loan Documents, (H) as

and when incurred or accrued, the fronting fees and all other commissions, fees, and charges provided for in Section 2.11(k), (I) if Borrowers do not pay any other Lender Group Expenses within 30 days of the date of Borrowers' receipt of written notice thereof, all other Lender Group Expenses, and (J) as and when due and payable all other payment obligations payable under any Loan Document or any Bank Product Agreement (including any amounts due and payable to the Bank Product Providers in respect of Bank Products); provided, that if such amounts are not paid and, instead, are charged to the Loan Account, they shall be charged thereto as of the day on which the item was first due and payable or incurred or accrued without regard to the applicable delay and such amounts shall accrue interest from such original date; provided further, that the applicable delays set forth in the foregoing clauses (F) and (I) and clause (iii) of the foregoing sentence shall not be applicable (and Agent shall be entitled to immediately charge to the Loan Account) at any time that an Event of Default has occurred and is continuing. All amounts (including interest, fees, costs, expenses, Lender Group Expenses, or other amounts payable hereunder or under any other Loan Document or under any Bank Product Agreement) charged to the Loan Account shall constitute Revolving Loans hereunder, shall constitute Obligations hereunder, and shall initially accrue interest at the rate then applicable to Revolving Loans that are Base Rate Loans (unless and until converted into LIBOR Rate Loans in accordance with the terms of this Agreement).

(e) **Computation.** All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360 day year, in each case, for the actual number of days elapsed in the period during which the interest or fees accrue. In the event the Base Rate is changed from time to time hereafter, the rates of interest hereunder based upon the Base Rate automatically and immediately shall be increased or decreased by an amount equal to such change in the Base Rate.

(f) **Intent to Limit Charges to Maximum Lawful Rate.** In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrowers and the Lender Group, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, that, anything contained herein to the contrary notwithstanding, if such rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, *ipso facto*, as of the date of this Agreement, Borrowers are and shall be liable only for the payment of such maximum amount as is allowed by law, and payment received from Borrowers in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

2.7 **Crediting Payments.** The receipt of any payment item by Agent shall not be required to be considered a payment on account unless such payment item is a wire transfer of immediately available federal funds made to Agent's Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment,

then Borrowers shall be deemed not to have made such payment and interest shall be calculated accordingly. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into Agent's Account on a Business Day on or before 1:30 p.m. If any payment item is received into Agent's Account on a non-Business Day or after 1:30 p.m. on a Business Day (unless Agent, in its sole discretion, elects to credit it on the date received), it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day.

2.8 **Designated Account.** Agent is authorized to make the Revolving Loans, and Issuing Bank is authorized to issue the Letters of Credit, under this Agreement based upon telephonic or other instructions received from anyone purporting to be an Authorized Person or, without instructions, if pursuant to Section 2.6(d). Borrowers agree to establish and maintain the Designated Account with the Designated Account Bank for the purpose of receiving the proceeds of the Revolving Loans requested by Borrowers and made by Agent or the Lenders hereunder. Unless otherwise agreed by Agent and Borrowers, any Revolving Loan or Swing Loan requested by Borrowers and made by Agent or the Lenders hereunder shall be made to the Designated Account.

2.9 **Maintenance of Loan Account; Statements of Obligations.** Agent shall maintain an account on its books in the name of Borrowers (the "Loan Account") on which Borrowers will be charged with all Revolving Loans (including Protective Advances, Extraordinary Advances and Swing Loans) made by Agent, Swing Lender, or the Lenders to Borrowers or for Borrowers' account, the Letters of Credit issued or arranged by Issuing Bank for Borrowers' account, and, subject to the delays set forth in clauses (F) and (I) of Section 2.6(d) (if applicable), with all other payment Obligations hereunder or under the other Loan Documents, including, accrued interest, fees and expenses, and Lender Group Expenses. In accordance with Section 2.7, the Loan Account will be credited with all payments received by Agent from Borrowers or for Borrowers' account. Agent shall make available to Borrowers monthly statements regarding the Loan Account, including the principal amount of the Revolving Loans, interest accrued hereunder, fees accrued or charged hereunder or under the other Loan Documents, and a summary itemization of all charges and expenses constituting Lender Group Expenses accrued hereunder or under the other Loan Documents, and each such statement, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrowers and the Lender Group unless, within 45 days after Agent first makes such a statement available to Borrowers, Borrowers shall deliver to Agent written objection thereto describing the error or errors contained in such statement.

2.10 **Fees.**

(a) **Agent Fees.** Borrowers shall pay to Agent, for the account of Agent, as and when due and payable under the terms of the Fee Letter, the fees set forth in the Fee Letter.

(b) **Unused Line Fee.** Borrowers shall pay to Agent, for the ratable account of the Revolving Lenders, an unused line fee (the “Unused Line Fee”) in an amount equal to 0.375% *per annum* times the result of (i) the aggregate amount of the Revolver Commitments, less (ii) the average amount of the Revolver Usage during the immediately preceding month (or portion thereof), which Unused Line Fee shall be due and payable on the first day of each month from and after the Closing Date up to the first day of the month prior to the date on which the Obligations are paid in full and on the date on which the Obligations are paid in full.

(c) **Field Examination and Other Fees.** Borrowers shall pay to Agent, field examination, appraisal, and valuation fees and charges, as and when incurred or chargeable, as follows (i) a fee of \$1,000 per day, per examiner, plus reasonable out-of-pocket expenses (including travel, meals, and lodging) for each field examination of any Borrower performed by personnel employed by Agent, and (ii) the fees or charges paid or incurred by Agent (but, in any event, no less than a charge of \$1,000 per day, per Person, plus reasonable out-of-pocket expenses (including travel, meals, and lodging)) if it elects to employ the services of one or more third Persons to perform field examinations of Parent, any Borrower or their Subsidiaries, to establish electronic collateral reporting systems, to appraise the Collateral, or any portion thereof, or to assess Parent’s, any Borrower’s or any of their Subsidiaries’ business valuation; provided, that so long as no Event of Default shall have occurred and be continuing, Borrowers shall not be obligated to reimburse Agent for (x) more than two (2) field examinations during any calendar year or (y) more than one (1) appraisal of the Collateral during any calendar year.

2.11 Letters of Credit.

(a) Subject to the terms and conditions of this Agreement, upon the request of Borrowers made in accordance herewith, and prior to the Maturity Date, Issuing Bank agrees to issue a requested Letter of Credit for the account of Borrowers. By submitting a request to Issuing Bank for the issuance of a Letter of Credit, Borrowers shall be deemed to have requested that Issuing Bank issue the requested Letter of Credit. Each request for the issuance of a Letter of Credit, or the amendment, renewal, or extension of any outstanding Letter of Credit, shall be (i) irrevocable, and made in writing by an Authorized Person, (ii) delivered to Agent and Issuing Bank via telefacsimile or other electronic method of transmission reasonably acceptable to Agent and Issuing Bank and reasonably in advance of the requested date of issuance, amendment, renewal, or extension and (iii) subject to Issuing Bank’s authentication procedures with results satisfactory to Issuing Bank. Each such request shall be in form and substance reasonably satisfactory to Agent and Issuing Bank and (i) shall specify (A) the amount of such Letter of Credit, (B) the date of issuance, amendment, renewal, or extension of such Letter of Credit, (C) the proposed expiration date of such Letter of Credit, (D) the name and address of the beneficiary of the Letter of Credit, and (E) such other information (including, the conditions to drawing, and, in the case of an amendment, renewal, or extension, identification of the Letter of Credit to be so amended, renewed, or extended) as shall

be necessary to prepare, amend, renew, or extend such Letter of Credit, and (ii) shall be accompanied by such Issuer Documents as Agent or Issuing Bank may request or require, to the extent that such requests or requirements are consistent with the Issuer Documents that Issuing Bank generally requests for Letters of Credit in similar circumstances. Issuing Bank's records of the content of any such request will be conclusive. Anything contained herein to the contrary notwithstanding, Issuing Bank may, but shall not be obligated to, issue a Letter of Credit that supports the obligations of a Loan Party or one of its Subsidiaries in respect of (x) a lease of real property, or (y) an employment contract.

(b) Issuing Bank shall have no obligation to issue a Letter of Credit if any of the following would result after giving effect to the requested issuance:

(i) the Letter of Credit Usage would exceed \$1,000,000, or

(ii) the Letter of Credit Usage would exceed the Maximum Revolver Amount *less* the outstanding amount of Revolving Loans (including Swing Loans), or

(iii) the Letter of Credit Usage would exceed the Borrowing Base at such time *less* the outstanding principal balance of the Revolving Loans (inclusive of Swing Loans) at such time.

(c) In the event there is a Defaulting Lender as of the date of any request for the issuance of a Letter of Credit, the Issuing Bank shall not be required to issue or arrange for such Letter of Credit to the extent (i) the Defaulting Lender's Letter of Credit Exposure with respect to such Letter of Credit may not be reallocated pursuant to Section 2.3(g)(ii), or (ii) the Issuing Bank has not otherwise entered into arrangements reasonably satisfactory to it and Borrowers to eliminate the Issuing Bank's risk with respect to the participation in such Letter of Credit of the Defaulting Lender, which arrangements may include Borrowers cash collateralizing such Defaulting Lender's Letter of Credit Exposure in accordance with Section 2.3(g)(ii). Additionally, Issuing Bank shall have no obligation to issue a Letter of Credit if (A) any order, judgment, or decree of any Governmental Authority or arbitrator shall, by its terms, purport to enjoin or restrain Issuing Bank from issuing such Letter of Credit, or any law applicable to Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Issuing Bank shall prohibit or request that Issuing Bank refrain from the issuance of letters of credit generally or such Letter of Credit in particular, (B) the issuance of such Letter of Credit would violate one or more policies of Issuing Bank applicable to letters of credit generally, or (C) if amounts demanded to be paid under any Letter of Credit will or may not be in United States Dollars.

(d) Any Issuing Bank (other than Wells Fargo or any of its Affiliates) shall notify Agent in writing of any issuance of a Letter of Credit no later than the Business Day immediately following the Business Day on which such Issuing Bank issued any Letter of Credit; provided that

(i) until Agent advises any such Issuing Bank that the provisions of Section 3.2 are not satisfied, or (ii) unless the aggregate amount of the Letters of Credit issued in any such week exceeds such amount as shall be agreed by Agent and such Issuing Bank, such Issuing Bank shall be required to so notify Agent in writing only once each week of the Letters of Credit issued by such Issuing Bank during the immediately preceding week as well as the daily amounts outstanding for the prior week, such notice to be furnished on such day of the week as Agent and such Issuing Bank may agree. Each Letter of Credit shall be in form and substance reasonably acceptable to Issuing Bank, including the requirement that the amounts payable thereunder must be payable in Dollars or, with the prior written consent of Agent, payable in a foreign currency. If Issuing Bank makes a payment under a Letter of Credit, Borrowers shall pay to Agent an amount equal to the applicable Letter of Credit Disbursement on the Business Day such Letter of Credit Disbursement is made and, in the absence of such payment, the amount of the Letter of Credit Disbursement immediately and automatically shall be deemed to be a Revolving Loan hereunder (notwithstanding any failure to satisfy any condition precedent set forth in Section 3) and, initially, shall bear interest at the rate then applicable to Revolving Loans that are Base Rate Loans. If a Letter of Credit Disbursement is deemed to be a Revolving Loan hereunder, Borrowers' obligation to pay the amount of such Letter of Credit Disbursement to Issuing Bank shall be automatically converted into an obligation to pay the resulting Revolving Loan. Promptly following receipt by Agent of any payment from Borrowers pursuant to this paragraph, Agent shall distribute such payment to Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to Section 2.11(e) to reimburse Issuing Bank, then to such Revolving Lenders and Issuing Bank as their interests may appear.

(e) Promptly following receipt of a notice of a Letter of Credit Disbursement pursuant to Section 2.11(d), each Revolving Lender agrees to fund its Pro Rata Share of any Revolving Loan deemed made pursuant to Section 2.11(d) on the same terms and conditions as if Borrowers had requested the amount thereof as a Revolving Loan and Agent shall promptly pay to Issuing Bank the amounts so received by it from the Revolving Lenders. By the issuance of a Letter of Credit (or an amendment, renewal, or extension of a Letter of Credit) and without any further action on the part of Issuing Bank or the Revolving Lenders, Issuing Bank shall be deemed to have granted to each Revolving Lender, and each Revolving Lender shall be deemed to have purchased, a participation in each Letter of Credit issued by Issuing Bank, in an amount equal to its Pro Rata Share of such Letter of Credit, and each such Revolving Lender agrees to pay to Agent, for the account of Issuing Bank, such Revolving Lender's Pro Rata Share of any Letter of Credit Disbursement made by Issuing Bank under the applicable Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to Agent, for the account of Issuing Bank, such Revolving Lender's Pro Rata Share of each Letter of Credit Disbursement made by Issuing Bank and not reimbursed by Borrowers on the date due as provided in Section 2.11(d), or of any reimbursement payment that is required to be refunded (or that Agent or Issuing Bank elects, based upon the advice of counsel, to refund) to Borrowers

for any reason. Each Revolving Lender acknowledges and agrees that its obligation to deliver to Agent, for the account of Issuing Bank, an amount equal to its respective Pro Rata Share of each Letter of Credit Disbursement pursuant to this Section 2.11(e) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 3. If any such Revolving Lender fails to make available to Agent the amount of such Revolving Lender's Pro Rata Share of a Letter of Credit Disbursement as provided in this Section, such Revolving Lender shall be deemed to be a Defaulting Lender and Agent (for the account of Issuing Bank) shall be entitled to recover such amount on demand from such Revolving Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(f) Each Borrower agrees to indemnify, defend and hold harmless each member of the Lender Group (including Issuing Bank and its branches, Affiliates, and correspondents) and each such Person's respective directors, officers, employees, attorneys and agents (each, including Issuing Bank, a "Letter of Credit Related Person") (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), which may be incurred by or awarded against any Letter of Credit Related Person (other than Taxes, which shall be governed by Section 16) (the "Letter of Credit Indemnified Costs"), and which arise out of or in connection with, or as a result of this Agreement, any Letter of Credit, any Issuer Document, or any Drawing Document referred to in or related to any Letter of Credit, or any action or proceeding arising out of any of the foregoing (whether administrative, judicial or in connection with arbitration); in each case, including that resulting from the Letter of Credit Related Person's own negligence; provided, however, that such indemnity shall not be available to any Letter of Credit Related Person claiming indemnification to the extent that such Letter of Credit Indemnified Costs may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of the Letter of Credit Related Person claiming indemnity. This indemnification provision shall survive termination of this Agreement and all Letters of Credit.

(g) The liability of Issuing Bank (or any other Letter of Credit Related Person) under, in connection with or arising out of any Letter of Credit (or pre-advice), regardless of the form or legal grounds of the action or proceeding, shall be limited to direct damages suffered by Borrowers that are caused directly by Issuing Bank's gross negligence or willful misconduct in (i) honoring a presentation under a Letter of Credit that on its face does not at least substantially comply with the terms and conditions of such Letter of Credit, (ii) failing to honor a presentation under a Letter of Credit that strictly complies with the terms and conditions of such Letter of Credit or (iii) retaining Drawing Documents presented under a Letter of Credit. Issuing Bank shall be

deemed to have acted with due diligence and reasonable care if Issuing Bank's conduct is in accordance with Standard Letter of Credit Practice and in accordance with this Agreement. Borrowers' aggregate remedies against Issuing Bank and any Letter of Credit Related Person for wrongfully honoring a presentation under any Letter of Credit or wrongfully retaining honored Drawing Documents shall in no event exceed the aggregate amount paid by Borrowers to Issuing Bank in respect of the honored presentation in connection with such Letter of Credit under Section 2.11(d), plus interest at the rate then applicable to Base Rate Loans hereunder. Borrowers shall take action to avoid and mitigate the amount of any damages claimed against Issuing Bank or any other Letter of Credit Related Person, including by enforcing its rights against the beneficiaries of the Letters of Credit. Any claim by Borrowers under or in connection with any Letter of Credit shall be reduced by an amount equal to the sum of (x) the amount (if any) saved by Borrowers as a result of the breach or alleged wrongful conduct complained of; and (y) the amount (if any) of the loss that would have been avoided had Borrowers taken all reasonable steps to mitigate any loss, and in case of a claim of wrongful dishonor, by specifically and timely authorizing Issuing Bank to effect a cure.

(h) Borrowers are responsible for preparing or approving the final text of the Letter of Credit as issued by Issuing Bank, irrespective of any assistance Issuing Bank may provide such as drafting or recommending text or by Issuing Bank's use or refusal to use text submitted by Borrowers. Borrowers are solely responsible for the suitability of the Letter of Credit for Borrowers' purposes. With respect to any Letter of Credit containing an "automatic amendment" to extend the expiration date of such Letter of Credit, Issuing Bank, in its sole and absolute discretion, may give notice of nonrenewal of such Letter of Credit and, if Borrowers do not at any time want such Letter of Credit to be renewed, Borrowers will so notify Agent and Issuing Bank at least 15 calendar days before Issuing Bank is required to notify the beneficiary of such Letter of Credit or any advising bank of such nonrenewal pursuant to the terms of such Letter of Credit.

(i) Borrowers' reimbursement and payment obligations under this Section 2.11 are absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, provided, however, that subject to Section 2.11(g) above, the foregoing shall not release Issuing Bank from such liability to Borrowers as may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction against Issuing Bank following reimbursement or payment of the obligations and liabilities, including reimbursement and other payment obligations, of Borrowers to Issuing Bank arising under, or in connection with, this Section 2.11 or any Letter of Credit.

(j) Without limiting any other provision of this Agreement, Issuing Bank and each other Letter of Credit Related Person (if applicable) shall not be responsible to Borrowers for, and Issuing Bank's rights and remedies against Borrowers and the obligation of Borrowers to reimburse Issuing Bank for each drawing under each Letter of Credit shall not be impaired by:

(i) honor of a presentation under any Letter of Credit that on its face substantially complies with the terms and conditions of such Letter of Credit, even if the Letter of Credit requires strict compliance by the beneficiary;

(ii) honor of a presentation of any Drawing Document that appears on its face to have been signed, presented or issued (A) by any purported successor or transferee of any beneficiary or other Person required to sign, present or issue such Drawing Document or (B) under a new name of the beneficiary;

(iii) acceptance as a draft of any written or electronic demand or request for payment under a Letter of Credit, even if nonnegotiable or not in the form of a draft or notwithstanding any requirement that such draft, demand or request bear any or adequate reference to the Letter of Credit;

(iv) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness or legal effect of any Drawing Document (other than Issuing Bank's determination that such Drawing Document appears on its face substantially to comply with the terms and conditions of the Letter of Credit);

(v) acting upon any instruction or request relative to a Letter of Credit or requested Letter of Credit that Issuing Bank in good faith believes to have been given by a Person authorized to give such instruction or request;

(vi) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation or any delay in giving or failing to give notice to Borrowers;

(vii) any acts, omissions or fraud by, or the insolvency of, any beneficiary, any nominated person or entity or any other Person or any breach of contract between any beneficiary and any Borrower or any of the parties to the underlying transaction to which the Letter of Credit relates;

(viii) assertion or waiver of any provision of the ISP or UCP that primarily benefits an issuer of a letter of credit, including any requirement that any Drawing Document be presented to it at a particular hour or place;

(ix) payment to any paying or negotiating bank (designated or permitted by the terms of the applicable Letter of Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under Standard Letter of Credit Practice applicable to it;

(x) acting or failing to act as required or permitted under Standard Letter of Credit Practice applicable to where Issuing Bank has issued, confirmed, advised or negotiated such Letter of Credit, as the case may be;

(xi) honor of a presentation after the expiration date of any Letter of Credit notwithstanding that a presentation was made prior to such expiration date and dishonored by Issuing Bank if subsequently Issuing Bank or any court or other finder of fact determines such presentation should have been honored;

(xii) dishonor of any presentation that does not strictly comply or that is fraudulent, forged or otherwise not entitled to honor; or

(xiii) honor of a presentation that is subsequently determined by Issuing Bank to have been made in violation of international, federal, state or local restrictions on the transaction of business with certain prohibited Persons.

(k) Borrowers shall pay immediately upon demand to Agent for the account of Issuing Bank as non-refundable fees, commissions, and charges (it being acknowledged and agreed that any charging of such fees, commissions, and charges to the Loan Account pursuant to the provisions of Section 2.6(d) shall be deemed to constitute a demand for payment thereof for the purposes of this Section 2.11(k)): (i) a fronting fee which shall be imposed by Issuing Bank upon the issuance of each Letter of Credit of 0.15% per annum of the face amount thereof *plus* (ii) any and all other customary commissions, fees and charges then in effect imposed by, and any and all expenses incurred by, Issuing Bank, or by any adviser, confirming institution or entity or other nominated person, relating to Letters of Credit, at the time of issuance of any Letter of Credit and upon the occurrence of any other activity with respect to any Letter of Credit (including transfers, assignments of proceeds, amendments, drawings, renewals or cancellations). Borrowers further agree that, to the extent Agent consents to any Letter of Credit being payable in a foreign currency, upon issuance of any such Letter of Credit, Agent shall establish a reserve against the Borrowing Base in an amount equal to twenty percent (20%) of the face amount of each such Letter of Credit.

(l) If by reason of (x) any Change in Law, or (y) compliance by Issuing Bank or any other member of the Lender Group with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Board of Governors as from time to time in effect (and any successor thereto):

(i) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Letter of Credit issued or caused to be issued hereunder or hereby, or

(ii) there shall be imposed on Issuing Bank or any other member of the Lender Group any other condition regarding any Letter of Credit, and the result of the foregoing is to increase, directly or indirectly, the cost to Issuing Bank or any other member of the Lender Group

of issuing, making, participating in, or maintaining any Letter of Credit or to reduce the amount receivable in respect thereof, then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Borrowers, and Borrowers shall pay within 30 days after demand therefor, such amounts as Agent may specify to be necessary to compensate Issuing Bank or any other member of the Lender Group for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder; provided, that (A) Borrowers shall not be required to provide any compensation pursuant to this Section 2.11(l) for any such amounts incurred more than 180 days prior to the date on which the demand for payment of such amounts is first made to Borrowers, and (B) if an event or circumstance giving rise to such amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. The determination by Agent of any amount due pursuant to this Section 2.11(l), as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

(m) Unless otherwise expressly agreed by Issuing Bank and Borrowers when a Letter of Credit is issued, (i) the rules of the ISP and the UCP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit.

(n) In the event of a direct conflict between the provisions of this Section 2.11 and any provision contained in any Issuer Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.11 shall control and govern.

2.12 LIBOR Option.

(a) **Interest and Interest Payment Dates.** In lieu of having interest charged at the rate based upon the Base Rate, Borrowers shall have the option, subject to Section 2.12(b) below (the “LIBOR Option”) to have interest on all or a portion of the Revolving Loans (whether at the time when made (unless otherwise provided herein), upon conversion from a Base Rate Loan to a LIBOR Rate Loan, or upon continuation of a LIBOR Rate Loan as a LIBOR Rate Loan) at a rate of interest based upon the LIBOR Rate. Interest on LIBOR Rate Loans shall be payable on the earliest of (i) the last day of the Interest Period applicable thereto; provided, that, subject to the following clauses (ii) and (iii), in the case of any Interest Period greater than 3 months in duration, interest shall be payable at 3 month intervals after the commencement of the applicable Interest Period and on the last day of such Interest Period), (ii) the date on which all or any portion of the Obligations are accelerated pursuant to the terms hereof, or (iii) the date on which this Agreement is terminated pursuant to the terms hereof. On the last day of each applicable Interest Period, unless

Borrowers have properly exercised the LIBOR Option with respect thereto, the interest rate applicable to such LIBOR Rate Loan automatically shall convert to the rate of interest then applicable to Base Rate Loans of the same type hereunder. At any time that an Event of Default has occurred and is continuing, Borrowers no longer shall have the option to request that Revolving Loans bear interest at a rate based upon the LIBOR Rate.

(b) LIBOR Election.

(i) Borrowers may, at any time and from time to time, so long as no Event of Default has occurred and is continuing, elect to exercise the LIBOR Option by notifying Agent prior to 11:00 a.m. at least 1 Business Day prior to the commencement of the proposed Interest Period (the "LIBOR Deadline"). Notice of Borrowers' election of the LIBOR Option for a permitted portion of the Revolving Loans and an Interest Period pursuant to this Section shall be made by delivery to Agent of a LIBOR Notice received by Agent before the LIBOR Deadline, or by telephonic notice received by Agent before the LIBOR Deadline (to be confirmed by delivery to Agent of a LIBOR Notice received by Agent prior to 5:00 p.m. on the same day). Promptly upon its receipt of each such LIBOR Notice, Agent shall provide a copy thereof to each of the affected Lenders.

(ii) Each LIBOR Notice shall be irrevocable and binding on Borrowers. In connection with each LIBOR Rate Loan, each Borrower shall indemnify, defend, and hold Agent and the Lenders harmless against any loss, cost, or expense actually incurred by Agent or any Lender as a result of (A) the payment of any principal of any LIBOR Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (B) the conversion of any LIBOR Rate Loan other than on the last day of the Interest Period applicable thereto, or (C) the failure to borrow, convert, continue or prepay any LIBOR Rate Loan on the date specified in any LIBOR Notice delivered pursuant hereto (such losses, costs, or expenses, "Funding Losses"). A certificate of Agent or a Lender delivered to Borrowers setting forth in reasonable detail any amount or amounts that Agent or such Lender is entitled to receive pursuant to this Section 2.12 shall be conclusive absent manifest error. Borrowers shall pay such amount to Agent or the Lender, as applicable, within 30 days of the date of its receipt of such certificate.

(iii) Unless Agent, in its sole discretion, agrees otherwise, Borrowers shall have not more than 5 LIBOR Rate Loans in effect at any given time. Borrowers may only exercise the LIBOR Option for proposed LIBOR Rate Loans of at least \$1,000,000.

(c) **Conversion.** Borrowers may convert LIBOR Rate Loans to Base Rate Loans at any time; provided, that in the event that LIBOR Rate Loans are converted or prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any prepayment through the required application by Agent of any payments or proceeds of Collateral in accordance with Section 2.4(b) or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms

hereof, each Borrower shall indemnify, defend, and hold Agent and the Lenders and their Participants harmless against any and all Funding Losses in accordance with Section 2.12(b)(ii).

(d) Special Provisions Applicable to LIBOR Rate.

(i) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, including any Changes in Law (including any changes in tax laws (except changes of general applicability in corporate income tax laws)) and changes in the reserve requirements imposed by the Board of Governors, which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at the LIBOR Rate. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (A) require such Lender to furnish to Borrowers a statement setting forth in reasonable detail the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (B) repay the LIBOR Rate Loans of such Lender with respect to which such adjustment is made (together with any amounts due under Section 2.12(b)(ii)).

(ii) In the event that any change in market conditions or any Change in Law shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain LIBOR Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender and (y) in the case of any LIBOR Rate Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such LIBOR Rate Loans, and interest upon the LIBOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans, and (z) Borrowers shall not be entitled to elect the LIBOR Option with respect to such Lender until such Lender determines that it would no longer be unlawful or impractical to do so.

(e) No Requirement of Matched Funding. Anything to the contrary contained herein notwithstanding, neither Agent, nor any Lender, nor any of their Participants, is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues at the LIBOR Rate.

2.13 Capital Requirements.

(a) If, after the date hereof, Issuing Bank or any Lender determines that (i) any Change in Law regarding capital or reserve requirements for banks or bank holding companies, or (ii) compliance by Issuing Bank or such Lender, or their respective parent bank holding companies, with any guideline, request or directive of any Governmental Authority regarding capital adequacy (whether or not having the force of law), has the effect of reducing the return on Issuing Bank's, such Lender's, or such holding companies' capital as a consequence of Issuing Bank's or such Lender's commitments hereunder to a level below that which Issuing Bank, such Lender, or such holding companies could have achieved but for such Change in Law or compliance (taking into consideration Issuing Bank's, such Lender's, or such holding companies' then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount deemed by Issuing Bank or such Lender to be material, then Issuing Bank or such Lender may notify Borrowers and Agent thereof. Following receipt of such notice, Borrowers agree to pay Issuing Bank or such Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable within 30 days after presentation by Issuing Bank or such Lender of a statement in the amount and setting forth in reasonable detail Issuing Bank's or such Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, Issuing Bank or such Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of Issuing Bank or any Lender to demand compensation pursuant to this Section shall not constitute a waiver of Issuing Bank's or such Lender's right to demand such compensation; provided that Borrowers shall not be required to compensate Issuing Bank or a Lender pursuant to this Section for any reductions in return incurred more than 180 days prior to the date that Issuing Bank or such Lender notifies Borrowers of such Change in Law giving rise to such reductions and of such Lender's intention to claim compensation therefor; provided further that if such claim arises by reason of the Change in Law that is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(b) If Issuing Bank or any Lender requests additional or increased costs referred to in Section 2.11(l) or Section 2.12(d)(i) or amounts under Section 2.13(a) or sends a notice under Section 2.12(d)(ii) relative to changed circumstances (such Issuing Bank or Lender, an "Affected Lender"), then such Affected Lender shall use reasonable efforts to promptly designate a different one of its lending offices or to assign its rights and obligations hereunder to another of its offices or branches, if (i) in the reasonable judgment of such Affected Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Section 2.11(l), Section 2.12(d)(i) or Section 2.13(a), as applicable, or would eliminate the illegality or impracticality of funding or maintaining LIBOR Rate Loans and (ii) in the reasonable judgment of such Affected Lender, such designation or assignment would not subject it to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to it. Borrowers agree to pay all reasonable

out-of-pocket costs and expenses incurred by such Affected Lender in connection with any such designation or assignment. If, after such reasonable efforts, such Affected Lender does not so designate a different one of its lending offices or assign its rights to another of its offices or branches so as to eliminate Borrowers' obligation to pay any future amounts to such Affected Lender pursuant to Section 2.11(l), Section 2.12(d)(i) or Section 2.13(a), as applicable, or to enable Borrowers to obtain LIBOR Rate Loans, then Borrowers (without prejudice to any amounts then due to such Affected Lender under Section 2.11(l), Section 2.12(d)(i) or Section 2.13(a), as applicable) may, unless prior to the effective date of any such assignment the Affected Lender withdraws its request for such additional amounts under Section 2.11(l), Section 2.12(d)(i) or Section 2.13(a), as applicable, or indicates that it is no longer unlawful or impractical to fund or maintain LIBOR Rate Loans, may designate a different Issuing Bank or substitute a Lender, in each case, reasonably acceptable to Agent to purchase the Obligations owed to such Affected Lender and such Affected Lender's commitments hereunder (a "Replacement Lender"), and if such Replacement Lender agrees to such purchase, such Affected Lender shall assign to the Replacement Lender its Obligations and commitments, and upon such purchase by the Replacement Lender, which such Replacement Lender shall be deemed to be "Issuing Bank" or a "Lender" (as the case may be) for purposes of this Agreement and such Affected Lender shall cease to be "Issuing Bank" or a "Lender" (as the case may be) for purposes of this Agreement.

(c) Notwithstanding anything herein to the contrary, the protection of Sections 2.11(l), 2.12(d), and 2.13 shall be available to Issuing Bank and each Lender (as applicable) regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, judicial ruling, judgment, guideline, treaty or other change or condition which shall have occurred or been imposed, so long as it shall be customary for issuing banks or lenders affected thereby to comply therewith. Notwithstanding any other provision herein, neither Issuing Bank nor any Lender shall demand compensation pursuant to this Section 2.13 if it shall not at the time be the general policy or practice of Issuing Bank or such Lender (as the case may be) to demand such compensation in similar circumstances under comparable provisions of other credit agreements, if any.

2.14 **Reserved.**

2.15 **Joint and Several Liability of Borrowers.**

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lender Group under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other

Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 2.15), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them.

(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Obligation until such time as all of the Obligations are paid in full.

(d) The Obligations of each Borrower under the provisions of this Section 2.15 constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of the provisions of this Agreement (other than this Section 2.15(d)) or any other circumstances whatsoever.

(e) Except as otherwise expressly provided in this Agreement, each Borrower hereby waives notice of acceptance of its joint and several liability, notice of any Revolving Loans or Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by Agent or Lenders under or in respect of any of the Obligations, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement). Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of any Agent or Lender with respect to the failure by any Borrower to comply with any of its respective Obligations, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.15 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.15, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Borrower under this Section 2.15 shall not be discharged except

by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.15 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any other Borrower or any Agent or Lender.

(f) Each Borrower represents and warrants to Agent and Lenders that such Borrower is currently informed of the financial condition of Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of Borrowers' financial condition and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) The provisions of this Section 2.15 are made for the benefit of Agent, each member of the Lender Group, each Bank Product Provider, and their respective successors and assigns, and may be enforced by it or them from time to time against any or all Borrowers as often as occasion therefor may arise and without requirement on the part of Agent, any member of the Lender Group, any Bank Product Provider, or any of their successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.15 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.15 will forthwith be reinstated in effect, as though such payment had not been made.

(h) Each Borrower hereby agrees that it will not enforce any of its rights of contribution or subrogation against any other Borrower with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to Agent or Lenders with respect to any of the Obligations or any collateral security therefor until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to any Agent or any member of the Lender Group hereunder or under any of the Bank Product Agreements are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution

of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor.

(i) Each Borrower hereby agrees that after the occurrence and during the continuance of any Default or Event of Default, such Borrower will not demand, sue for or otherwise attempt to collect any indebtedness of any other Borrower owing to such Borrower until the Obligations shall have been paid in full in cash. If, notwithstanding the foregoing sentence, such Borrower shall collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Borrower as trustee for Agent, and such Borrower shall deliver any such amounts to Agent for application to the Obligations in accordance with Section 2.4(b). During any period in which an Event of Default is not continuing, the foregoing reference to collection of indebtedness is not meant to restrict the cash management process of Borrowers which is administered by SeaSpine Orthopedics to the extent such cash management process is in the ordinary course of Borrowers' business and consistent with past practices.

3. CONDITIONS; TERM OF AGREEMENT.

3.1 **Conditions Precedent to the Initial Extension of Credit.** The obligation of each Lender to make the initial extensions of credit provided for hereunder is subject to the fulfillment, to the satisfaction of Agent and each Lender, of each of the conditions precedent set forth on Schedule 3.1 (the making of such initial extensions of credit by a Lender being conclusively deemed to be its satisfaction or waiver of the conditions precedent).

3.2 **Conditions Precedent to all Extensions of Credit.** The obligation of the Lender Group (or any member thereof) to make any Revolving Loans hereunder (or to extend any other credit hereunder) at any time shall be subject to the following conditions precedent (except solely with respect to subsection (d) hereof, after the initial Revolving Loans on the Closing Date in an amount sufficient to pay fees, costs and expenses in an amount equal to the amount set forth on the Flow of Funds Agreement):

(i) Agent shall have received from Borrowers a Borrowing Base Certificate regarding the Borrowing Base then in effect;

(j) the representations and warranties of Parent, each Borrower and their Subsidiaries contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects

(except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date);

(k) no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof; and

(l) Agent shall have received legal opinions with respect to Theken Spine and IsoTis Orthobiologics in form and substance reasonably acceptable to Agent.

3.3 **Maturity.** This Agreement shall continue in full force and effect for a term ending on the Maturity Date.

3.4 **Effect of Maturity.** On the Maturity Date, all commitments of the Lender Group to provide additional credit hereunder shall automatically be terminated and all of the Obligations immediately shall become due and payable without notice or demand and Borrowers shall be required to repay all of the Obligations in full. No termination of the obligations of the Lender Group (other than payment in full of the Obligations and termination of the Commitments) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Agent's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full and the Commitments have been terminated. When all of the Obligations have been paid in full and the Lender Group's obligations to provide additional credit under the Loan Documents have been terminated irrevocably, Agent will, at Borrowers' sole expense, execute and deliver any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, Agent's Liens and all notices of security interests and liens previously filed by Agent and will redeliver to Borrowers or their representatives any possessory Collateral in Agent's possession.

3.5 **Early Termination by Borrowers.** Borrowers have the option, at any time upon 10 Business Days prior written notice to Agent, to terminate this Agreement and terminate the Commitments hereunder by repaying to Agent all of the Obligations in full. The foregoing notwithstanding, (a) Borrowers may rescind termination notices relative to proposed payments in full of the Obligations with the proceeds of third party Indebtedness if the closing for such issuance or incurrence does not happen on or before the date of the proposed termination (in which case, a new notice shall be required to be sent in connection with any subsequent termination), and (b) Borrowers may extend the date of termination at any time with the consent of Agent (which consent shall not be unreasonably withheld or delayed).

3.6 **Conditions Subsequent.** The obligation of the Lender Group (or any member thereof) to continue to make Revolving Loans (or otherwise extend credit hereunder) is subject to the fulfillment, on or before the date applicable thereto, of the conditions subsequent set forth on

Schedule 3.6 (the failure by Borrowers to so perform or cause to be performed such conditions subsequent as and when required by the terms thereof (unless such date is extended, in writing, by Agent, which Agent may do without obtaining the consent of the other members of the Lender Group), shall constitute an Event of Default).

4. REPRESENTATIONS AND WARRANTIES.

In order to induce the Lender Group to enter into this Agreement, each of Parent and each Borrower makes the following representations and warranties to the Lender Group which shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the Closing Date, and shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the date of the making of each Revolving Loan (or other extension of credit) made thereafter, as though made on and as of the date of such Revolving Loan (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement:

4.1 Due Organization and Qualification; Subsidiaries.

(m) Each Loan Party (i) is duly organized and existing and in good standing under the laws of the jurisdiction of its organization, (ii) is qualified to do business in any state where the failure to be so qualified could reasonably be expected to result in a Material Adverse Effect, and (iii) has all requisite power and authority to own or lease and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

(n) Set forth on Schedule 4.1(b) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement) is a complete and accurate description of the authorized Equity Interests of each Borrower, by class, and, as of the Closing Date, a description of the number of shares of each such class that are issued and outstanding, except that such Schedule does not reflect and Borrowers shall have no obligation to update such Schedule to reflect any securities issues pursuant to the employee stock option plan or employee stock purchase plan, each as disclosed to Agent in the Perfection Certificate. No Borrower is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire

any shares of its Equity Interests or any security convertible into or exchangeable for any of its Equity Interests.

(o) Set forth on Schedule 4.1(c) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement) is a complete and accurate list of the Parent's direct and indirect Subsidiaries, showing: (i) the number of shares of each class of common and preferred Equity Interests authorized for each of such Subsidiaries, and (ii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by Parent. All of the outstanding Equity Interests of each such Subsidiary has been validly issued and is fully paid and non-assessable.

(p) Except as set forth on Schedule 4.1(d), there are no subscriptions, options, warrants, or calls relating to any shares of any of Parent's direct or indirect Subsidiaries' Equity Interests, including any right of conversion or exchange under any outstanding security or other instrument.

4.2 Due Authorization; No Conflict.

(g) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of such Loan Party.

(h) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party do not and will not (i) violate any material provision of federal, state, or local law or regulation applicable to any Loan Party or its Subsidiaries, the Governing Documents of any Loan Party or its Subsidiaries, or any order, judgment, or decree of any court or other Governmental Authority binding on any Loan Party or its Subsidiaries, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under (A) any Patent License applicable to any Eligible Inventory or (B) any other Material Contract, except to the extent for purposes of this clause (B), any such conflict, breach or default (1) could not individually or in the aggregate reasonably be expected to have a Material Adverse Effect and (2) does not prohibit or give rise to an event of default if such Material Contract or the rights therein are pledged, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of any Loan Party, other than Permitted Liens, or (iv) require any approval of any holder of Equity Interests of a Loan Party or any approval or consent of any Person under any material agreement of any Loan Party, other than consents or approvals that have been obtained and that are still in force and effect and except for consents or approvals, the failure to obtain could not individually or in the aggregate reasonably be expected to cause a Material Adverse Effect.

4.3 **Governmental Consents.** The execution, delivery, and performance by each Loan Party of the Loan Documents to which such Loan Party is a party and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any Governmental Authority, other than registrations, consents, approvals, notices, or other actions that have been obtained and that are still in force and effect and except for filings and recordings with the United States Securities and Exchange Commission, which will be made timely, and with respect to the Collateral to be made, or otherwise delivered to Agent for filing or recordation, as of the Closing Date.

4.4 **Binding Obligations; Perfected Liens.**

(g) Each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

(h) Agent's Liens are validly created, perfected (other than (i) in respect of motor vehicles that are subject to a certificate of title, (ii) money, (iii) letter-of-credit rights (other than supporting obligations), (iv) commercial tort claims (other than those that, by the terms of the Guaranty and Security Agreement, are required to be perfected), and (v) any Deposit Accounts and Securities Accounts not subject to a Control Agreement as permitted by Section 7(k)(iv) of the Guaranty and Security Agreement, and subject only to the filing of financing statements, the recordation of the Intellectual Property Security Agreements, in each case, in the appropriate filing offices as required under the Code and the United States Patent and Trademark Office and any other applicable offices), and first priority Liens, subject only to Permitted Liens which are non-consensual Permitted Liens, permitted purchase money Liens, the interests of lessors under Capital Leases or Liens described in clause (k) of the definition of Permitted Liens.

4.5 **Title to Assets; No Encumbrances.** Each of the Loan Parties and its Subsidiaries has (a) good, sufficient and legal title to (in the case of fee interests in Real Property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of their respective material assets reflected in their most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements to the extent permitted hereby. All of such assets are free and clear of Liens except for Permitted Liens.

4.6 **Litigation.**

(a) There are no actions, suits, or proceedings pending or, to the knowledge of any Borrower, after due inquiry, threatened in writing against a Loan Party or any of its Subsidiaries

that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Effect.

(b) Schedule 4.6(b) sets forth a complete and accurate description, with respect to each of the actions, suits, or proceedings with asserted liabilities in excess of, or that could reasonably be expected to result in liabilities in excess of, \$100,000 that, as of the Closing Date, is pending or, to the knowledge of any Borrower, after due inquiry, threatened against a Loan Party or any of its Subsidiaries, of (i) the parties to such actions, suits, or proceedings, (ii) the nature of the dispute that is the subject of such actions, suits, or proceedings, (iii) the procedural status, as of the Closing Date, with respect to such actions, suits, or proceedings, and (iv) whether any liability of the Loan Parties' and their Subsidiaries in connection with such actions, suits, or proceedings is covered by insurance.

(c) Proceedings. There is no pending (or, to the knowledge of any Loan Party, threatened) Health Care Proceeding commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator against or affecting Parent, any Borrower or any of their Subsidiaries which could reasonably be expected to result in a Material Adverse Effect. There are no facts, circumstances or conditions that would reasonably be expected to form the basis for any such Health Care Proceeding against or affecting Parent, any Borrower or any of their Subsidiaries which could reasonably be expected to result in a Material Adverse Effect.

4.7 Compliance with Laws. Neither Parent, any Borrower nor any of their respective Subsidiaries (a) is in violation of any Requirement of Law (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.8 No Material Adverse Effect. Except as noted therein, all historical financial statements relating to Parent and its Subsidiaries that have been delivered to Agent have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes, appropriate format, and being subject to year-end audit adjustments) and present fairly in all material respects, Parent's and its Subsidiaries' combined and/or consolidated financial condition as of the date thereof and results of operations for the period then ended, in conformity with GAAP. Since July 1, 2015, no event, circumstance, or change has occurred that has or could reasonably be expected to result in a Material Adverse Effect with respect to the Loan Parties and their Subsidiaries.

4.9 Solvency.

(o) Each Loan Party is Solvent.

(p) No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

4.10 **Employee Benefits.** No Loan Party, none of their Subsidiaries, nor any of their ERISA Affiliates maintains or contributes to any Benefit Plan.

4.11 **Environmental Condition.** Except as set forth on Schedule 4.11, (a) to Parent's and each Borrower's knowledge, none of Parent's, nor any Borrower's, nor any of their respective Subsidiaries' properties or assets has ever been used by a Loan Party, any of its Subsidiaries, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, (b) to Parent's and each Borrower's knowledge, none of Parent's, nor any Borrower's, nor any of their Subsidiaries' properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, (c) none of Parent, nor any Borrower, nor any of their respective Subsidiaries has received notice that a Lien arising under any Environmental Law has attached to any revenues or to any Real Property owned or operated by a Loan Party or any of its Subsidiaries, and (d) none of Parent, nor any Borrower, nor any of their respective Subsidiaries, nor any of their respective Health Care Facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.12 **Complete Disclosure.** All factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about Borrowers' industry) furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents, and all other such factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about Borrowers' industry) hereafter furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender will be, true and accurate, in all material respects, on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided. The Projections previously delivered to Agent on August 15, 2015 represent, and except as noted therein

as of the date on which any other Projections are delivered to Agent, such additional Projections represent, Parent's and Borrowers' good faith estimate, on the date such Projections are delivered, of the Loan Parties' and their Subsidiaries' future performance for the periods covered thereby based upon assumptions believed by Parent and Borrowers to be reasonable at the time of the delivery thereof to Agent (it being understood that such Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties and their Subsidiaries, and no assurances can be given that such Projections will be realized, and although reflecting Parent's and Borrowers' good faith estimate, projections or forecasts based on methods and assumptions which Borrowers believed to be reasonable at the time such Projections were prepared, are not to be viewed as facts, and that actual results during the period or periods covered by the Projections may differ materially from projected or estimated results).

4.13 **Patriot Act.** To the extent applicable, each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "**Patriot Act**"). No part of the proceeds of the loans made hereunder will be used by any Loan Party or any of their Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

4.14 **Indebtedness.** Set forth on Schedule 4.14 is a true and complete list of all Indebtedness of Parent and each of its Subsidiaries outstanding immediately prior to the Closing Date that is to remain outstanding immediately after giving effect to the closing hereunder on the Closing Date and such Schedule accurately sets forth the aggregate principal amount of such Indebtedness as of the Closing Date.

4.15 **Payment of Taxes.** Except as otherwise permitted under Section 5.5, all tax returns and reports of Parent and each of its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon Parent and each of its Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable or commenced a Permitted Protest. Parent and each of its Subsidiaries have made adequate provision in accordance with GAAP for all taxes not yet due and payable. Neither Parent nor any Borrower knows of any proposed tax assessment against a Loan Party or any of its Subsidiaries that is not being appropriately contested by such Loan Party or such Subsidiary diligently, in good

faith, and by appropriate proceedings; provided such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.16 **Margin Stock.** Neither Parent nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Loans will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors.

4.17 **Governmental Regulation.** Neither Parent nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. Neither Parent nor any of its Subsidiaries is a “registered investment company” or a company “controlled” by a “registered investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the Investment Company Act of 1940.

4.18 **OFAC.** Neither Parent nor any of its Subsidiaries is in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC. Neither Parent nor any of its Subsidiaries (a) is a Sanctioned Person or a Sanctioned Entity, (b) has its assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. No proceeds of the Loans or any other loan made hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity.

4.19 **Employee and Labor Matters.** There is (i) no unfair labor practice complaint pending or, to the knowledge of Parent or any Borrower, threatened against Parent or any of its Subsidiaries before any Governmental Authority, and no grievance or arbitration proceeding pending or threatened against Parent or any of its Subsidiaries which arises out of or under any collective bargaining agreement and that could reasonably be expected to result in a material liability or (ii) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or threatened in writing against Parent or any of its Subsidiaries that could reasonably be expected to result in a material liability or (iii) as of the Closing Date, to the knowledge of Parent or any Borrower, after due inquiry, no union representation question existing with respect to the employees of Parent or any of its Subsidiaries and no union organizing activity taking place with respect to any of the employees of Parent or any of its Subsidiaries. Neither Parent nor any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of Parent and each of its Subsidiaries have not been in violation of the Fair Labor Standards Act or

any other applicable legal requirements, except to the extent such violations could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All material payments due from Parent or any of its Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of Parent and such Subsidiary, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

4.20 **Parent as a Holding Company.** Parent is a holding company and does not have any material liabilities (other than liabilities arising under the Loan Documents and liabilities disclosed in writing to the Agent), own any material assets (other than the Equity Interests of Borrowers) or engage in any operations or business (other than the ownership of Borrowers and their Subsidiaries and incidental activities related thereto).

4.21 **Leases.** Parent and each of its Subsidiaries enjoy peaceful and undisturbed possession under all leases material to their business and to which they are parties or under which they are operating, and, subject to Permitted Protests, all of such material leases are valid and subsisting and no material default by Parent or such Subsidiary exists under any of them.

4.22 **Eligible Accounts.** As to each Account that is identified by Borrowers as an Eligible Account in a Borrowing Base Certificate submitted to Agent, such Account is (a) a bona fide existing payment obligation of the applicable Account Debtor created by the sale and delivery of Inventory or the rendition of services to such Account Debtor in the ordinary course of the Borrowers' business, (b) owed to a Borrower without any known defenses, disputes, offsets, counterclaims, or rights of return or cancellation, and (c) not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Agent-discretionary criteria) set forth in the definition of Eligible Accounts. Each Account that is identified by Borrowers as an Eligible Account reimbursed pursuant to a Third Party Payor Arrangement (a) has been originated in compliance with the reimbursement policies of the applicable Third Party Payor Arrangement and (b) does not exceed the amount a Borrower is entitled to receive under any applicable capitation arrangement, fee schedule, discount formula, cost-based reimbursement or other adjustment or limitation to a Borrower's usual charges.

4.23 **Eligible Inventory.** As to each item of Inventory that is identified by Borrowers as Eligible Finished Goods Inventory, Eligible Raw Materials Inventory or Eligible Work-in-Process Inventory in a Borrowing Base Certificate submitted to Agent, such item of Inventory is (a) of good and merchantable quality, free from known defects, and (b) not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Agent-discretionary criteria) set forth in the definition of Eligible Inventory.

4.24 **Location of Inventory.** The Inventory (other than Inventory on consignment) of Borrowers and their Subsidiaries is not stored with a bailee, warehouseman, or similar party and is

located only at, or in-transit between, the locations identified on Schedule 4.24 (as such Schedule may be updated pursuant to Section 5.14).

4.25 **Inventory Records.** Each Loan Party keeps correct and accurate records itemizing and describing the type, quality, and quantity of its and its Subsidiaries' Inventory and the book value thereof.

4.26 **Health Care Matters.**

(a) **Compliance with Health Care Laws; Health Care Permits; Third Party Payors.** Each Borrower and each of its Subsidiaries is in compliance in all material respects with all Health Care Laws and requirements of Third Party Payor Arrangements applicable to it and its assets, business or operations. Each Borrower and each of its Subsidiaries (i) holds in full force and effect (without default, violation or noncompliance) all Health Care Permits necessary for it to own, lease, sublease or operate its assets and to conduct its business and operations as presently conducted (including to obtain reimbursement under all Third Party Payor Arrangements in which it participates) and (ii) to the extent required under applicable laws, has obtained and maintains accreditation from all applicable recognized accreditation agencies. No circumstance exists or event has occurred which could reasonably be expected to result in the suspension, revocation, termination, restriction, limitation, modification or non-renewal of any material Health Care Permit.

(b) **Material Statements.** No Borrower, nor any officer, managing employee or director of any Borrower has made an untrue statement of a material fact or fraudulent statement to any Governmental Authority, failed to disclose a material fact that must be disclosed to any Governmental Authority, or committed an act, made a statement or failed to make a statement that, at the time such statement, disclosure or failure to disclose occurred, would constitute a violation of any Health Care Law.

(c) **Exclusion.** No Borrower, nor any officer, managing employee or director of any Borrower, or Person with a "direct or indirect ownership interest" (as that phrase is defined in 42 C.F.R. § 420.201) in any Borrower, has (i) been excluded from or debarred from participating in any Third Party Payor Arrangement or had a civil monetary penalty assessed pursuant to 42 U.S.C. § 1320a-7; (ii) been convicted (as that term is defined in 42 C.F.R. § 1001.2) of any of those offenses described in 42 U.S.C. § 1320a-7b or 18 U.S.C. § § 669, 1035, 1347 or 1518, including any of the following categories of offenses: (A) criminal offenses relating to the delivery of an item or service under any federal health care program (as that term is defined in 42 U.S.C. § 1320a-7b) or healthcare benefit program (as that term is defined in 18 U.S.C. § 24b), (B) criminal offenses under federal or state law relating to patient neglect or abuse in connection with the delivery of a healthcare item or service, (C) criminal offenses under laws relating to fraud and abuse, theft, embezzlement, false statements to third parties, money laundering, kickbacks, breach of fiduciary

responsibility or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in a program operated by or financed in whole or in part by any federal, state or local governmental agency, (D) laws relating to the interference with or obstruction of any investigations into any criminal offenses described in clause (c), or (E) criminal offenses under laws relating to the unlawful manufacturing, distribution, prescription or dispensing of a controlled substance; or (iii) been involved or named as a defendant in a U.S. Attorney complaint made or any other action taken pursuant to the False Claims Act under 31 U.S.C. § 3729-3731 or qui tam action brought pursuant to 31 U.S.C. § 3729 et seq.

(d) **Corporate Integrity Agreement.** No Borrower, nor any officer, managing employee or director of any Borrower is a party to or bound by any individual integrity agreement, corporate integrity agreement, corporate compliance agreement, deferred prosecution agreement, or other similar written agreement with any Governmental Authority concerning compliance with Health Care Laws, any Government Reimbursement Programs or the requirements of any Health Care Permit.

(e) **Third Party Payor Audits and Investigations.** No Borrower, nor any officer, managing employee or director of any Borrower is subject to any Third Party Payor special investigations unit or other fraud or compliance-related audit or investigation, except solely with respect to compliance-related audits in the normal course of such Borrower's business.

4.27 **Regulatory Compliance.**

(a) Each Loan Party is in compliance in all material respects with all applicable statutes, rules, regulations, directives, standards, guidances, policies or orders issued by relevant Regulatory Authorities. Each Loan Party has, and it and its products are in conformance in all material respects with, all Registrations that are required to conduct its business as currently conducted, or as proposed to be conducted. To the knowledge of each Loan Party, no Regulatory Authority is considering limiting, suspending, or revoking such Registrations or requiring changes to the marketing classification or labeling or other significant parameter adversely affecting any product of any Loan Party, in each case, the effect of which would not reasonably be likely to result in any material liability to such Loan Party. To best knowledge of each Loan Party, any third party that is a manufacturer, supplier, distributor or contractor for any Loan Party is in compliance in all material respects, and has been (to the extent applicable) in compliance in all material respects for the previous six years, with all Registrations required by relevant Regulatory Authorities and all Public Health Laws that reasonably pertain to product components of, accessories to, or products regulated as drugs or medical devices and marketed or distributed by such Loan Party, in any case, the effect of which would not reasonably be likely to result in any material liability to such Loan Party. To the knowledge of each Loan Party, there are no facts that furnish any reasonable basis for any Regulatory Action by that Regulatory Authority.

(b) All products designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, promoted, sold or marketed by or on behalf of any Loan Party that are subject to the jurisdiction of any Regulatory Authority have been and are being, to the best knowledge of each Loan Party, designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, promoted, sold and marketed in compliance in all material respects with the Public Health Laws and, to the best knowledge of each Loan Party, have been (to the extent applicable) for the previous six years. All activities conducted by the Loan Parties are conducted in compliance in all material respects with the Public Health Laws.

(c) No Loan Party is subject to any material obligation arising under a Regulatory Action, and no such obligation has been threatened. There is no material Regulatory Action or other civil, criminal or administrative action, suit, demand, claim, complaint, hearing, investigation, demand letter, proceeding or request for information pending against any Loan Party or an officer, director, or employee of any Loan Party, and no Loan Party has any material liability (whether actual or contingent) for failure to comply with any Public Health Laws.

(d) As of the Closing Date, no Loan Party is undergoing any inspection by any Regulatory Authority related to any activities or products of any Loan Party that are subject to Public Health Laws.

(e) No Loan Party has received any notice or communication from any Regulatory Authority alleging material noncompliance with any Public Health Law. No product has been seized, withdrawn, recalled, detained, or subject to a suspension of research, manufacturing, distribution or commercialization activity as a result of non-compliance with any Public Health Law. No proceedings seeking the withdrawal, recall, revocation, suspension, import detention, or seizure of any product are pending or threatened against any Loan Party.

4.28 **Intellectual Property.** A list of all of each Loan Party's Intellectual Property (limited to clause (a) of the definition thereof but excluding the right to use any other Person's Intellectual Property) and all inbound exclusive license agreements as of the Closing Date is set forth on Schedule 4.28 hereto, which indicates, for each such item of Property: (a) the name of the Loan Party owning such Intellectual Property or licensing such Intellectual Property, (b) the Loan Party's identifier for such property (e.g., name of patent, application serial number, patent number, license, etc.), (c) whether such Property is Intellectual Property (or application therefor) that is owned by such Loan Party or is licensed by such Loan Party, (d) the expiration date of such Intellectual Property or license agreement, and (e) whether such Intellectual Property is material to the condition (financial or otherwise), business or operations of any Loan Party. In the case of any Intellectual Property described in the foregoing clause (e) that is an in-bound license agreement, Schedule 4.28 further indicates, for each: (i) the name and address of the licensor, (ii) the name and date of the

agreement pursuant to which such item of Intellectual Property is licensed, (iii) whether or not such license agreement grants an exclusive license to a Loan Party, (iv) whether there are any purported restrictions in such license agreement as to the ability of a Loan Party to grant a security interest in, or to Transfer any of its rights as a licensee under, such license agreement, and (v) whether a default under or termination of such license agreement could interfere with Agent's right to sell or assign such license or any other Collateral. Each Loan Party's Intellectual Property is valid and enforceable, and each Loan Party owns or has rights to use all Intellectual Property material to the conduct of its business as now conducted by it or proposed to be conducted by it, without any actual (or, to its best knowledge, claimed) infringement, upon the rights of third parties. Except as specified on Schedule 4.28, as of the Closing Date, each Loan Party is the sole owner of its Intellectual Property, and such Intellectual Property is free and clear of all Liens, except for non-exclusive licenses of Intellectual Property granted by a Loan Party to third parties in the ordinary course of its business. No Loan Party has entered into any agreement or financing arrangement (other than any Loan Document) prohibiting or otherwise restricting the existence of any Lien upon any of its Intellectual Property. Upon filing of the Intellectual Property Security Agreements with the United States Patent and Trademark Office and the United States Copyright Office, as applicable, and the filing of appropriate financing statements, all action necessary or desirable to protect and perfect Agent's Lien on each Loan Party's Intellectual Property shall have been duly taken.

5. AFFIRMATIVE COVENANTS.

Each of Parent and each Borrower (jointly and severally) covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations (other than contingent Obligations as to which any claim has been asserted):

5.1 **Financial Statements, Reports, Certificates.** Borrowers (a) will deliver to Agent, with copies to each Lender, each of the financial statements, reports, and other items set forth on Schedule 5.1 no later than the times specified therein, (b) agree that no Borrower nor any of its Subsidiaries will have a fiscal year different from that of Parent, (c) agree to maintain a system of accounting that enables Parent and Borrowers to produce financial statements in accordance with GAAP, and (d) agree that they will, and will cause each other Loan Party to, (i) keep a reporting system that shows all additions, sales, claims, returns, and allowances with respect to their and their Subsidiaries' sales, and (ii) maintain their billing systems and practices substantially as in effect as of the Closing Date and shall only make material modifications thereto with notice to Agent.

5.2 **Reporting.** Borrowers (a) will deliver to Agent (and if so requested by Agent, with copies for each Lender) each of the reports set forth on Schedule 5.2 at the times specified therein, and (b) agree to use commercially reasonable efforts in cooperation with Agent to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth on such Schedule.

5.3 **Existence.** Except as otherwise permitted under Section 6.3 or Section 6.4, Parent and each Borrower will, and will cause each of their Subsidiaries to, at all times preserve and keep in full force and effect such Person's valid existence and good standing in its jurisdiction of organization and, except as could not reasonably be expected to result in a Material Adverse Effect, good standing with respect to all other jurisdictions in which it is qualified to do business and any rights, franchises, permits, licenses, accreditations, authorizations, or other approvals material to their businesses.

5.4 **Maintenance of Properties.** Parent and each Borrower will, and will cause each of their Subsidiaries to, maintain and preserve all of its assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear, casualty, and condemnation and Permitted Dispositions excepted.

5.5 **Taxes.** Parent and each Borrower will, and will cause each of their Subsidiaries to, pay in full before delinquency or before the expiration of any extension period all material governmental assessments and taxes imposed, levied, or assessed against it, or any of its assets or in respect of any of its income, businesses, or franchises, except to the extent that the validity of such governmental assessment or tax is the subject of a Permitted Protest.

5.6 **Insurance.** Parent and each Borrower will, and will cause each of their Subsidiaries to, at Borrowers' expense, maintain insurance respecting each of Parent's and its Subsidiaries' assets wherever located, covering liabilities, losses or damages as are customarily are insured against by other Persons engaged in same or similar businesses and similarly situated and located. All such policies of insurance shall be with financially sound and reputable insurance companies and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and, in any event, in amount, adequacy, and scope reasonably satisfactory to Agent (it being agreed that the amount, adequacy, and scope of the policies of insurance of Parent and Borrowers in effect as of the Closing Date are acceptable to Agent). All property insurance policies covering the Collateral are to be made payable to Agent for the benefit of Agent and the Lenders, as their interests may appear, in case of loss, pursuant to a standard loss payable endorsement with a standard non-contributory "lender" or "secured party" clause and are to contain such other provisions as Agent may reasonably require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. All certificates of property and general liability insurance are to be delivered to Agent, with the loss payable (but only in respect of Collateral) and additional insured endorsements in favor of Agent and shall provide for not less than 30 days (10 days in the case of non-payment) prior written notice to Agent of the exercise of any right of cancellation. If Parent, any Borrower or any of their Subsidiaries fails to maintain such insurance, Agent may arrange for such insurance, but at Borrowers' expense and without any responsibility on Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Borrowers shall give Agent

prompt notice of any loss exceeding \$150,000 covered by Parent's or any Subsidiary's casualty or business interruption insurance. Upon the occurrence and during the continuance of an Event of Default, Agent shall have the sole right to file claims under any property and general liability insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

5.7 **Inspection.**

(d) Parent and each Borrower will, and will cause each of their Subsidiaries to, permit Agent, any Lender, and each of their respective duly authorized representatives or agents to visit any of its properties and inspect any of its assets or books and records, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees (provided an authorized representative of a Borrower shall be allowed to be present) at such reasonable times and intervals as Agent or any Lender, as applicable, may designate and, so long as no Default or Event of Default has occurred and is continuing, with reasonable prior notice to Borrowers and during regular business hours.

(e) Parent and each Borrower will, and will cause each of their Subsidiaries to, permit Agent and each of its duly authorized representatives or agents to conduct appraisals and valuations at such reasonable times and intervals as Agent may designate.

5.8 **Compliance with Laws.** Each of Parent and each Borrower will, and will cause each of their Subsidiaries to, comply with all applicable Requirement of Law except where the failure to comply could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect or except where being contested in connection with a Permitted Protest and solely to the extent permitted by the terms and provisions of this Agreement. Without limiting the generality of the foregoing, each Parent and each Borrower will, and will cause each of their Subsidiaries to, comply in all material respects with all Public Health Laws and their implementation by any applicable Governmental Authority and all lawful requests of any Governmental Authority applicable to its products. Each of Parent and each Borrower will, and will cause each of their Subsidiaries to, continue to operate all facilities, locations, and processes in compliance in all material respects with all Registrations and Public Health Laws. All products designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, promoted, sold or marketed by or on behalf of Parent, any Borrower or any of their direct or indirect Subsidiaries that are subject to the jurisdiction of any Regulatory Authority shall be designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, promoted, sold and marketed in compliance in all material respects with the Public Health Laws.

5.9 **Environmental.** Each of Parent and each Borrower will, and will cause each of their Subsidiaries to,

(f) Keep any property either owned or operated by Parent and any Borrower or any of their Subsidiaries free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens,

(g) Comply, in all material respects, with Environmental Laws and provide to Agent documentation of such compliance which Agent reasonably requests,

(h) Promptly notify Agent of any release of which any Borrower has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by Parent or any Borrower or any of their Subsidiaries and take any Remedial Actions required to abate said release or otherwise to come into compliance, in all material respects, with applicable Environmental Law, and

(i) Promptly, but in any event within 5 Business Days of its receipt thereof, provide Agent with written notice of any of the following: (i) notice that an Environmental Lien has been filed against any Property of Parent, any Borrower or any of their Subsidiaries, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against Parent, any Borrower or any of their Subsidiaries, and (iii) written notice of a violation, citation, or other administrative order from a Governmental Authority.

5.10 **Disclosure Updates.** Each of Parent and each Borrower will, promptly and in no event later than 5 Business Days after obtaining knowledge thereof, notify Agent if any written information, exhibit, or report furnished to Agent or the Lenders contained, at the time it was furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances in which made. The foregoing to the contrary notwithstanding, any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto.

5.11 **Formation of Subsidiaries.** Each of Parent and each Borrower will, and will cause each of their Subsidiaries to, at the time that any Loan Party forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Closing Date, within 15 days of such formation or acquisition (or such later date as permitted by Agent in its sole discretion) (a) cause such new Subsidiary to provide to Agent a joinder to the Guaranty and Security Agreement, together with such other security agreements (including Intellectual Property Security Agreements and mortgages with respect to any Real Property owned in fee of such new Subsidiary), as well as appropriate financing statements (and with respect to all property subject to a mortgage, fixture filings), all in

form and substance reasonably satisfactory to Agent (including being sufficient to grant Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary); provided, that the joinder to the Guaranty and Security Agreement and such other security agreements shall not be required to be provided to Agent with respect to any CFC or any foreign Subsidiary of any CFC, (b) provide, or cause the applicable Loan Party to provide, to Agent a pledge agreement (or an addendum to the Guaranty and Security Agreement) and appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary in form and substance reasonably satisfactory to Agent; provided, that the Equity Interests of any CFC or any foreign Subsidiary of such CFC shall not be required to be pledged, and (c) provide to Agent all other documentation, including one or more opinions of counsel reasonably satisfactory to Agent, which, in its reasonable opinion, is appropriate with respect to the execution and delivery of the applicable documentation referred to above (including policies of title insurance or other documentation with respect to all Real Property owned in fee and subject to a mortgage). Any document, agreement, or instrument executed or issued pursuant to this Section 5.11 shall constitute a Loan Document.

5.12 **Further Assurances.** Each of Parent and each Borrower will, and will cause each of their Subsidiaries to, at any time upon the reasonable request of Agent, execute or deliver to Agent any and all financing statements, fixture filings, security agreements (including Intellectual Property Security Agreement), pledges, assignments, mortgages, deeds of trust, opinions of counsel, and all other documents (the "Additional Documents") that Agent may reasonably request in form and substance reasonably satisfactory to Agent, to create, perfect, and continue perfected or to better perfect Agent's Liens in all of the assets of Parent, each Borrower and their Subsidiaries (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal), to create and perfect Liens in favor of Agent in any Real Property acquired after the Closing Date by Parent or any Subsidiary, and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents; provided that the foregoing shall not apply to any CFC, any foreign Subsidiary of any CFC, and any Subsidiary which would be excluded from the requirements of Section 5.11. To the maximum extent permitted by applicable law, if Parent or any Borrower or any other Loan Party refuses or fails to execute or deliver any reasonably requested Additional Documents within a reasonable period of time following the request to do so, Parent, each Borrower and each other Loan Party hereby authorizes Agent to execute any such Additional Documents in the applicable Loan Party's name and authorizes Agent to file such executed Additional Documents in any appropriate filing office. In furtherance of, and not in limitation of, the foregoing, each Loan Party shall take such actions as Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of Parent and its Subsidiaries, including all of the outstanding capital Equity Interests of Borrowers and their Subsidiaries (subject to exceptions and limitations contained in the Loan Documents with respect to CFCs).

5.13 **Lender Meetings.** Parent and Borrowers will, within 90 days after the close of each fiscal year of Parent, at the request of Agent or of the Required Lenders and upon reasonable prior notice, hold a meeting (at a mutually agreeable location and time or, at the option of Agent, by conference call) with all Lenders who choose to attend such meeting at which meeting shall be reviewed the financial results of the previous fiscal year and the financial condition of Parent and its Subsidiaries and the projections presented for the current fiscal year of Parent.

5.14 **Location of Inventory.** Each Borrower will, and will cause each of its Subsidiaries to, keep its Inventory (other than Inventory on consignment or in transit and Inventory held outside of the United States) only at the locations identified on Schedule 4.24 and their principal executive offices only at the locations identified on Item C.18 of Exhibit P-1; provided, that Borrowers may amend Schedule 4.24 or Item C.18 so long as such amendment occurs by written notice to Agent not less than 10 days prior to the date on which such Inventory is moved to such new location or such principal executive office is relocated and so long as such new location is within the continental United States.

5.15 **Compliance with Health Care Laws.**

(a) In addition to complying with Section 5.8, each Borrower and each of its Subsidiaries will comply in all material respects with all applicable Health Care Laws.

(b) Each Borrower and each of its Subsidiaries shall (i) obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all material Health Care Permits (including, as applicable, Health Care Permits necessary for it to be eligible to receive payment and compensation from and to participate in any Third Party Payor Arrangements) which are necessary or useful in the proper conduct of its business; (ii) be and remain in material compliance with all requirements for participation in, and for licensure required to provide the goods or services that are reimbursable under, all Third Party Payor Arrangements; and (iii) keep and maintain all records required to be maintained by any Governmental Authority or otherwise under any Health Care Law.

(c) By a date not later than March 31, 2016, Parent and SeaSpine Orthopedics shall adopt and cause their respective Subsidiaries to maintain a corporate and health care regulatory compliance program (“RCP”) which addresses the requirements of Health Care Laws, including without limitation HIPAA, and includes at least the following components: (i) standards of conduct and procedures that describe compliance policies regarding laws with an emphasis on prevention of fraud and abuse; (ii) a specific officer within high-level personnel identified as having overall responsibility for compliance with such standards and procedures; (iii) training and education programs which effectively communicate the compliance standards and procedures to employees and agents, including fraud and abuse laws and illegal billing practices; (iv) auditing and monitoring systems and reasonable steps for achieving compliance with such standards and procedures

including publicizing a reporting system to allow employees and other agents to anonymously report criminal or suspect conduct and potential compliance problems; (v) disciplinary guidelines and consistent enforcement of compliance policies including discipline of individuals responsible for the failure to detect violations of the RCP; and (vi) mechanisms to immediately respond to detected violations of the RCP. Each Borrower and each of its Subsidiaries shall modify such RCPs from time to time, as may be necessary to ensure continuing compliance with all applicable Health Care Laws. Upon request, the Agent (and/or its consultants) shall be permitted to review such RCPs.

(d) Borrower shall provide to Agent upon request, an accurate, complete and current list of all Third Party Payor Arrangements with respect to the business of the Borrowers and their Subsidiaries.

5.16 **Protection of Intellectual Property.** Each Loan Party shall (a) protect, defend and maintain the validity and enforceability of any Intellectual Property material to the business of the Loan Parties and (b) not allow any Intellectual Property material to the Loan Parties' business to be abandoned, forfeited or dedicated to the public without Agent's prior written consent. Each Loan Party shall at all times use commercially reasonable efforts to conduct its business without, in any material respect, infringing, misappropriating, diluting, violating, or otherwise impairing the Intellectual Property of any other Person. Each Loan Party shall remain liable under each of its Intellectual Property licenses pursuant to which it is a licensee that are material to such Loan Party's business, and shall observe and perform, in all material respects, all of the conditions and obligations to be observed and performed by it thereunder. None of Agent or any Lender shall have any obligation or liability under any such license by reason of or arising out of any Loan Document, the granting of a Lien, if any, in such license or the receipt by Agent (on behalf of itself and Lenders) of any payment relating to any such license. If after the Closing Date any Loan Party (i) obtains any patent, registered trademark or servicemark, registered copyright, registered mask work, or any pending application for any of the foregoing, whether as owner, licensee or otherwise, or (ii) applies for any patent or the registration of any trademark, servicemark, copyright or mask work, in each case that is material to any such Loan Party, then such Loan Party shall concurrently with the delivery of the next Compliance Certificate in accordance with this Agreement provide written notice thereof to Agent and shall promptly execute an Intellectual Property Security Agreement (or updates to the Exhibits to the Intellectual Property Security Agreement previously delivered if not filed at such time by Agent) and other documents and take such other actions as Agent shall request to protect or perfect and maintain a first priority perfected security interest (which will be effective as provided herein) in favor of Agent, for the benefit of Lenders, in such Property. If requested by Agent, each Loan Party shall promptly provide to Agent copies of all applications that it files for patents or for the registration of trademarks, servicemarks, copyrights or mask works.

5.17 **Collateral Access Agreements.** Unless otherwise agreed to by Agent in writing, each Loan Party shall obtain and maintain a Collateral Access Agreement with respect to any real

property (other than real property owned by such Loan Party) (a) that is such Loan Party's principal place of business, (b) where such Loan Party's books or records are maintained and (c) where any Collateral (other than Inventory on consignment) is stored or maintained.

6. NEGATIVE COVENANTS.

Each of Parent and each Borrower (jointly and severally) covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations (other than contingent Obligations as to which any claim has been asserted):

6.1 **Indebtedness.** Neither Parent nor any Borrower shall permit any of its Subsidiaries to create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness.

6.2 **Liens.** Neither Parent nor any Borrower shall, nor shall they permit their respective Subsidiaries to, create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens.

6.3 **Restrictions on Fundamental Changes.** Neither Parent, any Borrower nor any of their respective Subsidiaries will,

(a) Other than in order to consummate a Permitted Acquisition or an IsoTis Acquisition, enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its Equity Interests, except for any (i) merger or such other transaction between Borrowers, provided, that no merger may occur between Parent and any Borrower and (ii) merger or such other transaction between a Borrower and a Subsidiary of such Borrower that is not a Loan Party so long as such Borrower is the surviving entity of any such merger and (iii) merger or such other transaction between Subsidiaries which are not Borrowers or Guarantors,

(b) liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution), except for (i) the liquidation or dissolution of non-operating Subsidiaries with nominal assets and nominal liabilities, (ii) the liquidation or dissolution of a Loan Party (other than Parent or any Borrower) or any of its wholly-owned Subsidiaries so long as all of the assets (including any interest in any Equity Interests) of such liquidating or dissolving Loan Party or Subsidiary are transferred to a Loan Party that is not liquidating or dissolving, or (iii) the liquidation or dissolution of a Subsidiary that is not a Loan Party so long as all of the assets of such liquidating or dissolving Subsidiary are transferred to a Subsidiary that is not liquidating or dissolving or to a Subsidiary which would not be required to be a Loan Party pursuant to Section 5.11, or

(c) suspend or cease operating a substantial portion of its or their business, except as permitted pursuant to clauses (a) or (b) above or in connection with a transaction permitted under Section 6.4.

6.4 **Disposal of Assets.** Other than Permitted Dispositions or transactions expressly permitted by Sections 6.3 or 6.9, neither Parent nor any Borrower shall, nor shall they permit their respective Subsidiaries to Transfer or otherwise dispose of (or enter into an agreement to Transfer or otherwise dispose of) any of its or their assets.

6.5 **Nature of Business.** Neither Parent nor any Borrower shall, nor shall they permit their respective Subsidiaries to, make any change in the nature of its or their business as described in Schedule 6.5 or acquire any properties or assets that are not reasonably related to the conduct of such business activities; provided, that the foregoing shall not prevent Parent, any Borrower or any of their respective Subsidiaries from engaging in any business that is reasonably related or ancillary to its or their business.

6.6 **Prepayments and Amendments.** Neither Parent nor any Borrower shall, nor shall they permit their respective Subsidiaries to,

(f) Except in connection with Refinancing Indebtedness permitted by Section 6.1,

(iii) optionally prepay, redeem, defease, purchase, or otherwise acquire any Indebtedness of Parent, any Borrower or any of their Subsidiaries, other than (A) the Obligations in accordance with this Agreement, and (B) Permitted Intercompany Advances, or

(iv) make any payment on account of Indebtedness that has been contractually subordinated in right of payment to the Obligations if such payment is not permitted at such time under the subordination terms and conditions, or

(g) Directly or indirectly, amend, modify, or change any of the terms or provisions of

(i) any agreement, instrument, document, indenture, or other writing evidencing or concerning Permitted Indebtedness other than (A) the Obligations in accordance with this Agreement, (B) Permitted Intercompany Advances, (C) Indebtedness permitted under clauses (c), (h), (j) and (k) of the definition of Permitted Indebtedness and (D) any other amendments, modifications or changes so long as after giving effect thereto the applicable agreement, instrument, document, indenture or other writing constitutes Permitted Indebtedness,

(ii) the Governing Documents of any Loan Party or any of its Subsidiaries if the effect thereof, either individually or in the aggregate, could reasonably be expected to be materially adverse to the interests of the Lenders,

(iii) the Patent Licenses with respect to any Eligible Inventory, except to the extent that such amendment, modification, or change could not, individually or in the aggregate, reasonably be expected to be materially adverse to the interests of Agent or any Lender (it being understood that any amendment or modification that restricts the ability of the Parent or any of its Subsidiaries to sublicense or assign any Intellectual Property in respect of any such Patent License to Agent shall be deemed to be materially adverse to the interests of Agent and the Lenders), or

(iv) any other Material Contract, except to the extent that such amendment, modification, or change could not, individually or in the aggregate, reasonably be expected to be materially adverse to the interests of Agent or any Lender.

6.7 **Restricted Payments**. Neither Parent nor any Borrower shall, nor shall they permit their respective Subsidiaries to, make any Restricted Payment, except as permitted under Section 2.15(i).

6.8 **Accounting Methods**. Neither Parent nor any Borrower shall, nor shall they permit their respective Subsidiaries to, modify or change its fiscal year or its method of accounting (other than as may be required to conform to or is permitted by GAAP).

6.9 **Investments**. Neither Parent nor any Borrower shall, nor shall they permit their respective Subsidiaries to, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment except for Permitted Investments.

6.10 **Transactions with Affiliates**. Neither Parent nor any Borrower shall, nor shall they permit their respective Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction with any Affiliate of any Loan Party except for:

(a) transactions (other than the payment of management, consulting, monitoring, or advisory fees) between Parent or any Borrower or any of their Subsidiaries, on the one hand, and any Affiliate of Parent or any Borrower or any of their Subsidiaries, on the other hand, so long as such transactions (i) are fully disclosed to Agent prior to the consummation thereof, if they involve one or more payments by Parent, such Borrower or such Subsidiary in excess of \$100,000 for any single transaction or series of related transactions and (ii) are no less favorable, taken as a whole, to Parent, such Borrower or such Subsidiary, as applicable, than would be obtained in an arm's length transaction with a non-Affiliate,

(b) so long as it has been approved by Parent's, such Borrower's or such Subsidiary's board of directors (or comparable governing body) if required by applicable law, any indemnity provided for the benefit of directors or officers (or comparable managers) of Parent, such Borrower or such Subsidiary,

(c) so long as it has been approved by Parent's, such Borrower's or such Subsidiary's board of directors (or comparable governing body) if required by applicable law, the payment of reasonable compensation (including equity awards and related documentation), severance, or employee benefit arrangements to employees, officers, and outside directors of Parent, such Borrower and such Subsidiaries in the ordinary course of business and consistent with industry practice, and

(d) transactions permitted by Section 6.3 or Section 6.7, or any Permitted Intercompany Advance.

6.11 **Use of Proceeds.** Neither Parent nor any Borrower shall, nor shall they permit their respective Subsidiaries to, use the proceeds of the Loans for any purpose other than (a) on the Closing Date, to pay the fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, and the transactions contemplated hereby and thereby, in each case, as set forth in the Funds Flow Agreement, and (b) thereafter, consistent with the terms and conditions hereof, for their lawful and permitted purposes (including that no part of the proceeds of the Loans made to Borrowers will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors).

6.12 **Limitation on Issuance of Equity Interests.** Other than in connection with a Permitted Disposition or a Permitted Acquisition, neither Parent nor any Borrower shall, nor shall they permit their respective Subsidiaries to, issue or sell or enter into any agreement or arrangement for the issuance or sale of any of its Equity Interests.

6.13 **Inventory with Bailees.** Neither Parent nor any Borrower shall, nor shall they permit their respective Subsidiaries to, other than as set forth on Schedule 4.24, other than as permitted under Section 5.14 and other than consigned Inventory, store Inventory at any time with a bailee, warehouseman, or similar party, or Transfer any Collateral to any such location without Agent's prior written consent.

6.14 **Parent as Holding Company.** Parent shall not incur any liabilities (other than liabilities arising under the Loan Documents), own or acquire any assets (other than the Equity Interests of Borrowers and its other Subsidiaries) or engage itself in any operations or business, except in connection with its ownership of Borrowers and Parent's other Subsidiaries and Parent's rights and obligations under the Loan Documents.

6.15 **Modifications to Material Contracts.** Neither Parent nor any Borrower shall, nor shall they permit their respective Subsidiaries to, amend, modify or waive any provision of (a) any Material Contract, unless the net effect of such amendment, modification or waiver is not adverse to any Loan Party, Agent or Lenders, or (b) any document relating to any Subordinated Indebtedness.

6.16 **Antilayering.** Borrowers shall not incur or suffer to exist Indebtedness that is senior in right of payment to the Loans or any of the other Obligations under the Loan Documents, as the case may be, and expressly subordinate in right of payment to any other Indebtedness of such Person.

7. FINANCIAL COVENANT.

Each of Parent and each Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations (other than contingent Obligations as to which any claim has been asserted), during any Covenant Testing Period, Borrowers will maintain a Fixed Charge Coverage Ratio of at least 1.10 to 1.00 measured as of the last day of the prior fiscal month for the applicable Measurement Period. At all times when no Covenant Testing Period exists, Parent and Borrowers shall have no obligations under this Section 7.

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an event of default (each, an “Event of Default”) under this Agreement:

8.1 **Payments.** If any Loan Party fail to pay when due and payable, or when declared due and payable, (a) all or any portion of the Obligations consisting of interest, fees, or charges due the Lender Group, reimbursement of Lender Group Expenses, or other amounts (other than any portion thereof constituting principal) constituting Obligations (including any portion thereof that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), and such failure continues for a period of 5 Business Days, (b) all or any portion of the principal of the Loans, or (c) any amount payable to Issuing Bank in reimbursement of any drawing under a Letter of Credit;

8.2 **Covenants.** If any Loan Party or any of its Subsidiaries:

(d) fails to perform or observe any covenant or other agreement contained in any of (i) Sections 3.6, 5.1, 5.2, 5.3 (solely if any Borrower is not in good standing in its jurisdiction of organization), 5.6, 5.7 (solely if any Borrower refuses to allow Agent or its representatives or agents to visit any Borrower’s properties, inspect its assets or books or records, examine and make copies of its books and records, or discuss Borrowers’ affairs, finances, and accounts with officers and employees of any Borrower), 5.10, 5.11, 5.13, or 5.14, 5.15, 5.16 or 5.17 of this Agreement,

(ii) Section 6 of this Agreement, (iii) Section 7 of this Agreement, or (iv) Section 7 of the Guaranty and Security Agreement;

(e) fails to perform or observe any covenant or other agreement contained in any of Sections 5.3 (other than if any Borrower is not in good standing in its jurisdiction of organization), 5.4, 5.5, 5.8, 5.9 and 5.12 of this Agreement and such failure continues for a period of 10 days after the earlier of (i) the date on which such failure shall first become known to any officer of any Borrower or (ii) the date on which written notice thereof is given to Borrowers by Agent; or

(f) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of 30 days after the earlier of (i) the date on which such failure shall first become known to any officer of any Borrower or (ii) the date on which written notice thereof is given to Borrowers by Agent;

8.3 **Judgments.** If one or more judgments, orders, or awards for the payment of cash involving an aggregate amount of \$250,000, or more (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) is entered or filed against a Loan Party or any of its Subsidiaries, or with respect to any of their respective assets, and either (a) there is a period of 45 consecutive days at any time after the entry of any such judgment, order, or award during which (1) the same is not discharged, satisfied, vacated, or bonded pending appeal, or (2) a stay of enforcement thereof is not in effect, or (b) enforcement proceedings are commenced upon such judgment, order, or award;

8.4 **Voluntary Bankruptcy, etc.** If an Insolvency Proceeding is commenced by a Loan Party or any of its Subsidiaries;

8.5 **Involuntary Bankruptcy, etc.** If an Insolvency Proceeding is commenced against a Loan Party or any of its Subsidiaries and any of the following events occur: (a) such Loan Party or such Subsidiary consents to the institution of such Insolvency Proceeding against it, (b) the petition commencing the Insolvency Proceeding is not timely controverted, (c) the petition commencing the Insolvency Proceeding is not dismissed within 60 calendar days of the date of the filing thereof, (d) an interim trustee is appointed to take possession of all or any substantial portion of the properties or assets of, or to operate all or any substantial portion of the business of, such Loan Party or its Subsidiary, or (e) an order for relief shall have been issued or entered therein;

8.6 **Default Under Other Agreements.** If there is (a) a default in one or more agreements to which a Loan Party or any of its Subsidiaries is a party with one or more third Persons relative to a Loan Party's or any of its Subsidiaries' Indebtedness involving an aggregate amount of \$250,000 or more, and such default (i) occurs at the final maturity of the obligations thereunder,

or (ii) results in a right by such third Person, irrespective of whether exercised, to accelerate the maturity of such Loan Party's or its Subsidiary's obligations thereunder, or (b) a default in or an involuntary early termination of one or more Hedge Agreements to which a Loan Party or any of its Subsidiaries is a party with a value in excess of \$250,000, or (c) the occurrence of any event that terminates, or permits any counterparty to terminate, any Patent License or any consent to a sublicense of such Patent License to Agent, in each case applicable to any Eligible Inventory with a value in excess of \$100,000;

8.7 **Representations, etc.** If any warranty, representation, certificate, statement, or Record made herein or in any other Loan Document or delivered in writing to Agent or any Lender in connection with this Agreement or any other Loan Document proves to be untrue in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof;

8.8 **Guaranty.** If the obligation of any Guarantor under the guaranty contained in the Guaranty and Security Agreement is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement);

8.9 **Security Documents.** If the Guaranty and Security Agreement, any Intellectual Property Security Agreement or any other Loan Document that purports to create a Lien, shall, for any reason, fail or cease to create a valid and perfected and, except to the extent of Permitted Liens which are non-consensual Permitted Liens, permitted purchase money Liens or the interests of lessors under Capital Leases, first priority Lien on the Collateral covered thereby, except (a) as a result of a disposition of the applicable Collateral in a transaction permitted under this Agreement, or (b) as the result of an action or failure to act on the part of Agent;

8.10 **Loan Documents.** The validity or enforceability of any Loan Document shall at any time for any reason (other than solely as the result of an action or failure to act on the part of Agent) be declared to be null and void, or a proceeding shall be commenced by a Loan Party or its Subsidiaries, or by any Governmental Authority having jurisdiction over a Loan Party or its Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or a Loan Party or its Subsidiaries shall deny that such Loan Party or its Subsidiaries has any liability or obligation purported to be created under any Loan Document;

8.11 **Change of Control.** A Change of Control shall occur, whether directly or indirectly.

8.12 **Lockbox Instructions.** If (a) any instruction or agreement regarding any Non-Government Receivables Lockbox Account is amended or terminated without the written consent of Agent, (b) any Borrower fails to forward any Collections on Accounts to the applicable Non-Government Receivables Lockbox Account as required pursuant to Section 7(k) of the Guaranty

and Security Agreement or (c) any Loan Party directs any Account Debtor to make a payment in respect of any Account to any place, lockbox or Deposit Account other than a Non-Government Receivables Lockbox Account.

8.13 **Health Care Laws.** If any of the following shall occur:

(a) any Health Care Permit of a Borrower shall be revoked, fail to be renewed, suspended or otherwise terminated, if the result thereof is reasonably expected to have a Material Adverse Effect,

(b) any Borrower shall lose eligibility for any reason to participate in any Government Reimbursement Program or to accept assignments or rights to reimbursement thereunder, if the result thereof is reasonably expected to have a Material Adverse Effect,

(c) any Account Debtor shall terminate, revoke or fail to renew any Borrower's right to participate in any Third Party Payor Arrangement, if the result thereof is reasonably expected to have a Material Adverse Effect,

(d) any Borrower shall fail to pay when due any amounts owing by such Borrower under any extended repayment agreement, or such Borrower shall fail to perform in a timely manner any of its other obligations under such extended repayment agreement, or any event shall occur that shall permit CMS to accelerate the aggregate amounts payable under such extended repayment agreement, if the result thereof is reasonably expected to have a Material Adverse Effect, or

(e) any Borrower, officer, managing employee or director of any Borrower (i) shall have been found guilty of an act of fraud or been convicted of a felony crime that relates to any Third Party Payor Arrangement or (ii) shall have been specifically identified as the target of a criminal investigation or indicted for a felony crime relating to any Third Party Payor Arrangement.

8.14 **Regulatory Authority.** (i) a Regulatory Authority initiates a Regulatory Action or any other enforcement action against any Loan Party or any supplier of a Loan Party that causes any Loan Party to recall, withdraw, remove or discontinue marketing or conducting clinical research on any of its products which could reasonably be expected to have a Material Adverse Effect; (ii) a Regulatory Authority issues or undertakes a Regulatory Action with respect to any Loan Party or any of its activities or products which could reasonably be expected to have a Material Adverse Effect; (iii) any Loan Party conducts a mandatory or voluntary recall which could reasonably be expected to result in liability and expense to the Loan Parties of \$500,000 or more; (iv) any Loan Party enters into a settlement agreement with CMS or any Regulatory Authority that results in aggregate liability as to any single or related series of transactions, incidents or conditions of \$500,000 or more or that could reasonably be expected to have a Material Adverse Effect; or (v) a Regulatory Authority revokes any authorization or permission granted under any Registration, or

any Loan Party withdraws any Registration, that could reasonably be expected to have a Material Adverse Effect.

8.15 **Lease Agreements.** The occurrence of an event of default (after giving effect to any cure periods) under any lease agreement covering the leased premises at (i) 5770 Armada Drive, Carlsbad, California or (ii) 2 Goodyear, Irvine, California, and as a result thereof, the landlord thereunder terminates such lease agreement or sends a written notice of default or intent to terminate such lease agreement.

8.16 **Integra Supply Agreements.** The occurrence of a default by a Borrower under any of the Integra Supply Agreements which continues uncured beyond any applicable notice and grace period provided thereunder and the effect of which could reasonably be expected to result in a Material Adverse Effect.

9. RIGHTS AND REMEDIES.

9.1 **Rights and Remedies.** Upon the occurrence and during the continuation of an Event of Default, Agent may, and, at the instruction of the Required Lenders, shall (in each case under clauses (a) or (b) by written notice to Borrowers), in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by applicable law, do any one or more of the following:

(g) (i) declare the principal of, and any and all accrued and unpaid interest and fees in respect of, the Loans and all other Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents to be immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrowers shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by each Borrower, and (ii) direct Borrowers to provide (and Borrowers agree that upon receipt of such notice Borrowers will provide) Letter of Credit Collateralization to Agent to be held as security for Borrowers' reimbursement obligations for drawings that may subsequently occur under issued and outstanding Letters of Credit;

(h) declare the Commitments terminated, whereupon the Commitments shall immediately be terminated together with (i) any obligation of any Revolving Lender to make Revolving Loans, (ii) the obligation of the Swing Lender to make Swing Loans, and (iii) the obligation of Issuing Bank to issue Letters of Credit; and

(i) exercise all other rights and remedies available to Agent or the Lenders under the Loan Documents, under applicable law, or in equity.

The foregoing to the contrary notwithstanding, upon the occurrence of any Event of Default described in Section 8.4 or Section 8.5, in addition to the remedies set forth above, without any notice to Borrowers or any other Person or any act by the Lender Group, the Commitments shall automatically terminate and the Obligations (other than the Bank Product Obligations), inclusive of the principal of, and any and all accrued and unpaid interest and fees in respect of, the Loans and all other Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents, shall automatically become and be immediately due and payable and Borrowers shall automatically be obligated to repay all of such Obligations in full (including Borrowers being obligated to provide (and Borrowers agree that they will provide) (1) Letter of Credit Collateralization to Agent to be held as security for Borrowers' reimbursement obligations in respect of drawings that may subsequently occur under issued and outstanding Letters of Credit and (2) Bank Product Collateralization to be held as security for Borrowers' or their Subsidiaries' obligations in respect of outstanding Bank Products), without presentment, demand, protest, or notice or other requirements of any kind, all of which are expressly waived by Parent, Borrowers and their Subsidiaries.

9.2 **Remedies Cumulative.** The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

10. WAIVERS; INDEMNIFICATION.

10.1 **Demand; Protest; etc.** Each of Parent and each Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which Parent or any Borrower may in any way be liable.

10.2 **The Lender Group's Liability for Collateral.** Each of Parent and each Borrower hereby agrees that: (a) so long as Agent complies with its obligations, if any, under the Code, the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by Parent and Borrowers.

10.3 **Indemnification.** Parent and each Borrower shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons, and each Participant (each, an “Indemnified Person”) harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery, enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby or Agent’s monitoring of Parent’s, Borrowers’ and their Subsidiaries’ compliance with the terms of the Loan Documents (provided that neither Parent nor any Borrower shall be liable for costs and expenses (including attorneys fees) of any Lender (other than Wells Fargo) incurred in advising, structuring, drafting, reviewing, administering or syndicating the Loan Documents)) (provided, that the indemnification in this clause (a) shall not extend to (i) disputes solely between or among the Lenders that do not involve any acts or omissions of any Loan Party, or (ii) disputes solely between or among the Lenders and their respective Affiliates that do not involve any acts or omissions of any Loan Party; it being understood and agreed that the indemnification in this clause (a) shall extend to Agent (but not the Lenders) relative to disputes between or among Agent on the one hand, and one or more Lenders, or one or more of their Affiliates, on the other hand, or (iii) any Taxes or any costs attributable to Taxes, which shall be governed by Section 16), (b) with respect to any actual or prospective investigation, litigation, or proceeding related to this Agreement, any other Loan Document, the making of any Loans or issuance of any Letters of Credit hereunder, or the use of the proceeds of the Loans or the Letters of Credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by any Borrower or any of its Subsidiaries or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of any Borrower or any of its Subsidiaries (each and all of the foregoing, the “Indemnified Liabilities”). The foregoing to the contrary notwithstanding, neither Parent nor any Borrower shall have any obligation to any Indemnified Person under this Section 10.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, attorneys, or agents. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Parent or Borrowers were required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed

by Parent and Borrowers with respect thereto. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.**

11. **NOTICES.**

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to Parent, any Borrower or Agent, as the case may be, they shall be sent to the respective address set forth below:

If to Parent or any Borrower:	c/o SeaSpine Orthopedics Corporation 5770 Amada Drive Carlsbad, CA 92008 Attn: John Bostjancic Fax No. (760) 683-6634
with copies to:	Goodsmith, Gregg & Unruh LLP 150 S. Wacker Dr., Suite 3150 Chicago, IL 60606 Attn: David Gregg, Esq. Fax No. (312) 322-0056
If to Agent:	Wells Fargo Bank, National Association 2450 Colorado Avenue Suite 3000 West Santa Monica, California 90404 Attn: Specialty Finance Manager Fax No. (310) 453-7442
with copies to:	Duane Morris LLP 190 South LaSalle Street, Suite 3700 Chicago, Illinois 60603 Attn: N. Paul Coyle, Esq. Fax No. (312) 277-7590

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in

accordance with this Section 11, shall be deemed received on the earlier of the date of actual receipt or 3 Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment).

12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE PROVISION.

(q) THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

(r) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA; PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH OF PARENT AND EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 12(b).

(s) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF PARENT AND EACH BORROWER AND EACH MEMBER OF THE

LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). EACH OF PARENT AND EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(t) EACH OF PARENT AND EACH BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF LOS ANGELES AND THE STATE OF CALIFORNIA, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(u) NO CLAIM MAY BE MADE BY ANY LOAN PARTY AGAINST THE AGENT, THE SWING LENDER, ANY OTHER LENDER, ISSUING BANK, OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH LOAN PARTY HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

(v) IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CLAIM AND THE WAIVER SET FORTH IN CLAUSE (C) ABOVE IS NOT ENFORCEABLE IN SUCH PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBCLAUSE (ii) BELOW, ANY CLAIM SHALL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE. VENUE FOR THE REFERENCE PROCEEDING SHALL BE IN THE COUNTY OF LOS ANGELES, CALIFORNIA.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SETOFF OR RECOUPMENT), (C) APPOINTMENT OF A RECEIVER, AND (D) TEMPORARY, PROVISIONAL, OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS, OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO PARTICIPATE IN A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT WITH RESPECT TO ANY OTHER MATTER.

(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN 10 DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY SHALL HAVE THE RIGHT TO REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). THE REFEREE SHALL BE APPOINTED TO SIT WITH ALL OF THE POWERS PROVIDED BY LAW. PENDING APPOINTMENT OF THE REFEREE, THE COURT SHALL HAVE THE POWER TO ISSUE TEMPORARY OR PROVISIONAL REMEDIES.

(iv) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REFEREE SHALL DETERMINE THE MANNER IN WHICH THE REFERENCE PROCEEDING IS CONDUCTED INCLUDING THE TIME AND PLACE OF HEARINGS, THE ORDER OF PRESENTATION OF EVIDENCE, AND ALL OTHER

QUESTIONS THAT ARISE WITH RESPECT TO THE COURSE OF THE REFERENCE PROCEEDING. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS A COURT REPORTER AND A TRANSCRIPT IS ORDERED, A COURT REPORTER SHALL BE USED AND THE REFEREE SHALL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY THE COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND SHALL ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA.

(vi) THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH CALIFORNIA SUBSTANTIVE AND PROCEDURAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE REFEREE SHALL ISSUE A DECISION AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 644, THE REFEREE'S DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE FINAL JUDGMENT OR ORDER FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE SHALL BE FULLY APPEALABLE AS IF IT HAS BEEN ENTERED BY THE COURT.

(vii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE, EACH PARTY HERETO KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS

REFERENCE PROVISION SHALL APPLY TO ANY DISPUTE BETWEEN THEM THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

13. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.

13.1 Assignments and Participations.

(j) (i) Subject to the conditions set forth in clause (a)(ii) below, any Lender may assign and delegate all or any portion of its rights and duties under the Loan Documents (including the Obligations owed to it and its Commitments) to one or more assignees (each, an “Assignee”), with the prior written consent (such consent not be unreasonably withheld or delayed) of:

(A) Administrative Borrower; provided, that no consent of Administrative Borrower shall be required (1) if an Event of Default has occurred and is continuing, or (2) in connection with an assignment to a Person that is a Lender or an Affiliate (other than natural persons) of a Lender; provided further, that Administrative Borrower shall be deemed to have consented to a proposed assignment unless Administrative Borrower objects thereto by written notice to Agent within 5 Business Days after having received notice thereof; and

(B) Agent, Swing Lender, and Issuing Bank.

(ii) Assignments shall be subject to the following additional conditions:

(A) no assignment may be made (i) so long as no Event of Default has occurred and is continuing, to an Ineligible Institution, (ii) so long as no Event of Default has occurred and is continuing, to a Competitor, or (iii) to a natural person,

(B) no assignment may be made to a Loan Party or an Affiliate of a Loan Party,

(C) the amount of the Commitments and the other rights and obligations of the assigning Lender hereunder and under the other Loan Documents subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to Agent) shall be in a minimum amount (unless waived by Agent) of \$5,000,000 (except such minimum amount shall not apply to (I) an assignment or delegation by any Lender to any other Lender, an Affiliate of any Lender, or a Related Fund of such Lender or (II) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least \$5,000,000),

(D) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement,

(E) the parties to each assignment shall execute and deliver to Agent an Assignment and Acceptance; provided, that Borrowers and Agent may continue to deal solely and directly with the assigning Lender in connection with the interest so assigned to an Assignee until written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Borrowers and Agent by such Lender and the Assignee,

(F) unless waived by Agent, the assigning Lender or Assignee has paid to Agent, for Agent's separate account, a processing fee in the amount of \$3,500, and

(G) the assignee, if it is not a Lender, shall deliver to Agent an Administrative Questionnaire in a form approved by Agent (the "Administrative Questionnaire").

(k) From and after the date that Agent receives the executed Assignment and Acceptance and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall be a "Lender" and shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 10.3) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Section 15 and Section 17.9(a).

(l) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Borrower or the performance or observance by any Borrower of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms

that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (v) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(m) Immediately upon Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 13.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender *pro tanto*.

(n) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrowers, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender (other than a waiver of default interest), or (E) decreases

the amount or postpones the due dates of scheduled principal repayments or prepayments or premiums payable to such Participant through such Lender, (v) no participation shall be sold to a natural person, (vi) no participation shall be sold to a Loan Party or an Affiliate of a Loan Party, and (vii) all amounts payable by Borrowers hereunder shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrowers, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(o) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 17.9, disclose all documents and information which it now or hereafter may have relating to Parent, any Borrower and their Subsidiaries and their respective businesses.

(p) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR § 203.24, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law.

(q) Agent (as a non-fiduciary agent on behalf of Borrowers) shall maintain, or cause to be maintained, a register (the "Register") on which it enters the name and address of each Lender as the registered owner of the Revolving Loans (and the principal amount thereof and stated interest thereon) held by such Lender (each, a "Registered Loan"). Other than in connection with an assignment by a Lender of all or any portion of its portion of the Revolving Loan to an Affiliate of such Lender or a Related Fund of such Lender (i) a Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide) and (ii) any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or

more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any evidencing the same), Borrowers shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary. In the case of any assignment by a Lender of all or any portion of its Revolving Loan to an Affiliate of such Lender or a Related Fund of such Lender, and which assignment is not recorded in the Register, the assigning Lender, on behalf of Borrowers, shall maintain a register comparable to the Register.

(r) In the event that a Lender sells participations in the Registered Loan, such Lender, as a non-fiduciary agent on behalf of Borrowers, shall maintain (or cause to be maintained) a register on which it enters the name of all participants in the Registered Loans held by it (and the principal amount (and stated interest thereon) of the portion of such Registered Loans that is subject to such participations) (the "Participant Register"). A Registered Loan (and the Registered Note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register.

(s) Agent shall make a copy of the Register (and each Lender shall make a copy of its Participant Register in the extent it has one) available for review by Borrowers from time to time as Borrowers may reasonably request.

13.2 **Successors.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, that except to the extent specifically permitted by the terms and provisions of this Agreement, neither Parent nor any Borrower may assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by the Lenders shall release Parent or any Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 13.1 and, except as expressly required pursuant to Section 13.1, no consent or approval by Parent or any Borrower is required in connection with any such assignment.

14. AMENDMENTS; WAIVERS.

14.1 Amendments and Waivers.

(d) No amendment, waiver or other modification of any provision of this Agreement or any other Loan Document (other than Bank Product Agreements or the Fee Letter), and no consent with respect to any departure by Parent or any Borrower therefrom, shall be effective

unless the same shall be in writing and signed by the Required Lenders (or by Agent at the written request of the Required Lenders) and the Loan Parties that are party thereto and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, that no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders directly affected thereby and all of the Loan Parties that are party thereto, do any of the following:

- (v) increase the amount of or extend the expiration date of any Commitment of any Lender,
- (vi) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document,
- (vii) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document (except (y) in connection with the waiver of applicability of Section 2.6(c) (which waiver shall be effective with the written consent of the Required Lenders), and (z) that any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the rate of interest or a reduction of fees for purposes of this clause (iii)),
- (viii) amend, modify, or eliminate this Section or any provision of this Agreement providing for consent or other action by all Lenders,
- (ix) amend, modify, or eliminate Section 3.1 or 3.2,
- (x) amend, modify, or eliminate Section 15.11,
- (xi) other than as permitted by Section 15.11, release Agent's Lien in and to any of the Collateral,
- (xii) amend, modify, or eliminate the definitions of "Required Lenders" or "Pro Rata Share",
- (xiii) contractually subordinate any of Agent's Liens,
- (xiv) other than in connection with a merger, liquidation, dissolution or sale of such Person expressly permitted by the terms hereof or the other Loan Documents, release any Borrower or any Guarantor from any obligation for the payment of money or consent to the assignment or transfer by any Borrower or any Guarantor of any of its rights or duties under this Agreement or the other Loan Documents, or

(xv) amend, modify, or eliminate any of the provisions of Section 2.4(b)(i), (ii) or (iii) or Section 2.4(e) or (f);

(e) No amendment, waiver, modification, or consent shall amend, modify, waive, or eliminate,

(i) the definition of, or any of the terms or provisions of, the Fee Letter, without the written consent of Agent and Borrowers (and shall not require the written consent of any of the Lenders),

(ii) any provision of Section 15 pertaining to Agent, or any other rights or duties of Agent under this Agreement or the other Loan Documents, without the written consent of Agent, Borrowers, and the Required Lenders;

(f) No amendment, waiver, modification, elimination, or consent shall amend, without written consent of Agent, Borrowers and the Supermajority Lenders, modify, or eliminate the definition of Borrowing Base or any of the defined terms (including the definitions of Eligible Accounts, Eligible Unbilled Accounts, Eligible Finished Goods Inventory, Eligible Raw Material Inventory, Eligible Work-in-Process Inventory and Eligible Inventory) that are used in such definition to the extent that any such change results in more credit being made available to Borrowers based upon the Borrowing Base, but not otherwise, or the definition of Maximum Revolver Amount, or change Section 2.1(c);

(g) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Issuing Bank, or any other rights or duties of Issuing Bank under this Agreement or the other Loan Documents, without the written consent of Issuing Bank, Agent, Borrowers, and the Required Lenders;

(h) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Swing Lender, or any other rights or duties of Swing Lender under this Agreement or the other Loan Documents, without the written consent of Swing Lender, Agent, Borrowers, and the Required Lenders; and

(i) Anything in this Section 14.1 to the contrary notwithstanding, (i) any amendment, modification, elimination, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of Parent or any Borrower, shall not require consent by or the agreement of any Loan Party, and (ii) any amendment, waiver, modification, elimination, or consent of or with respect to any provision of this Agreement or any other Loan Document may be entered into without the consent of, or over

the objection of, any Defaulting Lender other than any of the matters governed by Section 14.1(a)(i) through (iii) that affect such Lender.

14.2 Replacement of Certain Lenders.

(e) If (i) any action to be taken by the Lender Group or Agent hereunder requires the consent, authorization, or agreement of all Lenders or all Lenders affected thereby and if such action has received the consent, authorization, or agreement of the Required Lenders but not of all Lenders or all Lenders affected thereby, or (ii) any Lender makes a claim for compensation under Section 16, then Borrowers or Agent, upon at least 5 Business Days prior irrevocable notice, may permanently replace any Lender that failed to give its consent, authorization, or agreement (a “Non-Consenting Lender”) or any Lender that made a claim for compensation (a “Tax Lender”) with one or more Replacement Lenders, and the Non-Consenting Lender or Tax Lender, as applicable, shall have no right to refuse to be replaced hereunder. Such notice to replace the Non-Consenting Lender or Tax Lender, as applicable, shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

(f) Prior to the effective date of such replacement, the Non-Consenting Lender or Tax Lender, as applicable, and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Non-Consenting Lender or Tax Lender, as applicable, being repaid in full its share of the outstanding Obligations (without any premium or penalty of any kind whatsoever, but including (i) all interest, fees and other amounts that may be due in payable in respect thereof, and (ii) an assumption of its Pro Rata Share of participations in the Letters of Credit). If the Non-Consenting Lender or Tax Lender, as applicable, shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, Agent may, but shall not be required to, execute and deliver such Assignment and Acceptance in the name or and on behalf of the Non-Consenting Lender or Tax Lender, as applicable, and irrespective of whether Agent executes and delivers such Assignment and Acceptance, the Non-Consenting Lender or Tax Lender, as applicable, shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Non-Consenting Lender or Tax Lender, as applicable, shall be made in accordance with the terms of Section 13.1. Until such time as one or more Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Non-Consenting Lender or Tax Lender, as applicable, hereunder and under the other Loan Documents, the Non-Consenting Lender or Tax Lender, as applicable, shall remain obligated to make the Non-Consenting Lender’s or Tax Lender’s, as applicable, Pro Rata Share of Revolving Loans and to purchase a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of participations in such Letters of Credit.

14.3 No Waivers; Cumulative Remedies. No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent

or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by Parent and Borrowers of any provision of this Agreement. Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

15. AGENT; THE LENDER GROUP.

15.1 **Appointment and Authorization of Agent.** Each Lender hereby designates and appoints Wells Fargo as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to designate, appoint, and authorize) Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as agent for and on behalf of the Lenders (and the Bank Product Providers) on the conditions contained in this Section 15. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender (or Bank Product Provider), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the

Collateral, payments and proceeds of Collateral, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, (c) make Revolving Loans, for itself or on behalf of Lenders, as provided in the Loan Documents, (d) exclusively receive, apply, and distribute payments and proceeds of the Collateral as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to Parent, any Borrower or any of their Subsidiaries, the Obligations, the Collateral, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

15.2 **Delegation of Duties.** Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

15.3 **Liability of Agent.** None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders (or Bank Product Providers) for any recital, statement, representation or warranty made by Parent, any Borrower or any of their Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Parent, any Borrower or any of their Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lenders (or Bank Product Providers) to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of Parent or any Borrower or any of their Subsidiaries.

15.4 **Reliance by Agent.** Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed,

sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrowers or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders (and, if it so elects, the Bank Product Providers) against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders (and Bank Product Providers).

15.5 **Notice of Default or Event of Default.** Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or Borrowers referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a “notice of default.” Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 15.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9; provided, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

15.6 **Credit Decision.** Each Lender (and Bank Product Provider) acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of Parent and any Borrower and their Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender (or Bank Product Provider). Each Lender represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of an investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Parent and each Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its

own decision to enter into this Agreement and to extend credit to Parent and Borrowers. Each Lender also represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Parent and each Borrower or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender (or Bank Product Provider) with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Parent and any Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that Agent does not have any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender (or Bank Product Provider) with any credit or other information with respect to Parent, any Borrower, their Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent's or their Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement (or such Bank Product Provider entered into a Bank Product Agreement).

15.7 **Costs and Expenses; Indemnification.** Agent may incur and pay Lender Group Expenses to the extent Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrowers are obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from payments or proceeds of the Collateral received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders (or Bank Product Providers). In the event Agent is not reimbursed for such costs and expenses by Parent, any Borrower or any of their Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's ratable thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis, shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrowers and without limiting the obligation of Borrowers to do so) from and against any and all Indemnified Liabilities; provided,

that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make a Revolving Loan or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's ratable share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrowers. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

15.8 **Agent in Individual Capacity.** Wells Fargo and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Parent and any Borrower and their Subsidiaries and Affiliates and any other Person party to any Loan Document as though Wells Fargo were not Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, Wells Fargo or its Affiliates may receive information regarding Parent, any Borrower or their Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Parent, such Borrower or such other Person and that prohibit the disclosure of such information to the Lenders (or Bank Product Providers), and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include Wells Fargo in its individual capacity.

15.9 **Successor Agent.** Agent may resign as Agent upon 30 days (10 days if an Event of Default has occurred and is continuing) prior written notice to the Lenders (unless such notice is waived by the Required Lenders) and Borrowers (unless such notice is waived by Borrowers) and without any notice to the Bank Product Providers. If Agent resigns under this Agreement, the Required Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned), appoint a successor Agent for the Lenders (and the Bank Product Providers). If, at the time that Agent's resignation is effective, it is acting as Issuing Bank or the Swing Lender, such resignation shall also operate to effectuate its resignation as Issuing Bank or the Swing Lender, as

applicable, and it shall automatically be relieved of any further obligation to issue Letters of Credit, or to make Swing Loans. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and Borrowers, a successor Agent. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term “Agent” shall mean such successor Agent and the retiring Agent’s appointment, powers, and duties as Agent shall be terminated. After any retiring Agent’s resignation hereunder as Agent, the provisions of this Section 15 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent’s notice of resignation, the retiring Agent’s resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

15.10 **Lender in Individual Capacity.** Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Parent, any Borrower and their Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group (or the Bank Product Providers). The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding Parent, any Borrower or their Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Parent, such Borrower or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

15.11 **Collateral Matters.**

(a) The Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and

satisfaction in full by the Loan Parties of all of the Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Borrowers certify to Agent that the sale or disposition is permitted under Section 6.4 (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which neither Parent, nor any Borrower or any of their Subsidiaries owned any interest at the time Agent's Lien was granted nor at any time thereafter, (iv) constituting property leased or licensed to Parent, a Borrower or any of their Subsidiaries under a lease or license that has expired or is terminated in a transaction permitted under this Agreement, or (v) in connection with a credit bid or purchase authorized under this Section 15.11. The Loan Parties and the Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, based upon the instruction of the Required Lenders, to (a) consent to the sale of, credit bid, or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code, (b) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, or (c) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any other sale or foreclosure conducted or consented to by Agent in accordance with applicable law in any judicial action or proceeding or by the exercise of any legal or equitable remedy. In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders and the Bank Product Providers shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not impair or unduly delay the ability of Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such contingent or unliquidated claims cannot be estimated without impairing or unduly delaying the ability of Agent to credit bid at such sale or other disposition, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the Collateral that is the subject of such credit bid or purchase) and the Lenders and the Bank Product Providers whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the Collateral that is the subject of such credit bid or purchase (or in the Equity Interests of the any entities that are used to consummate such credit bid or purchase), and (ii) Agent, based upon the instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by any entities used to consummate such credit bid or purchase and in connection therewith Agent may reduce the Obligations owed to the Lenders and the Bank Product Providers (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders (without requiring the

authorization of the Bank Product Providers), or (z) otherwise, the Required Lenders (without requiring the authorization of the Bank Product Providers). Upon request by Agent or Borrowers at any time, the Lenders will (and if so requested, the Bank Product Providers will) confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 15.11; provided, that (1) anything to the contrary contained in any of the Loan Documents notwithstanding, Agent shall not be required to execute any document or take any action necessary to evidence such release on terms that, in Agent's opinion, could expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly released) upon (or obligations of Borrowers in respect of) any and all interests retained by any Loan Party, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Each Lender further hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to irrevocably authorize) Agent, at its option and in its sole discretion, to subordinate any Lien granted to or held by Agent under any Loan Document to the holder of any Permitted Lien on such property if such Permitted Lien secures Permitted Purchase Money Indebtedness.

(b) Agent shall have no obligation whatsoever to any of the Lenders (or the Bank Product Providers) (i) to verify or assure that the Collateral exists or is owned by Parent, Borrowers or their Subsidiaries or is cared for, protected, or insured or has been encumbered, (ii) to verify or assure that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, (iii) to verify or assure that any particular items of Collateral meet the eligibility criteria applicable in respect thereof, (iv) to impose, maintain, increase, reduce, implement, or eliminate any particular reserve hereunder or to determine whether the amount of any reserve is appropriate or not, or (v) to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender (or Bank Product Provider) as to any of the foregoing, except as otherwise expressly provided herein.

(c) Upon the termination of the Commitments and payment and satisfaction in full by the Loan Parties of all of the Obligations, promptly following a request by any Borrower, Agent shall deliver to Borrower a release of the Loan Documents (and releases or termination statements in proper form) with respect to the assets of any Subsidiary Transferred pursuant to a transaction permitted by the Loan Documents and with respect to any pledge of the Equity Interests or Indebtedness of such Subsidiary pursuant to any such transaction.

15.12 **Restrictions on Actions by Lenders; Sharing of Payments.**

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to Parent, any Borrower or any of their Subsidiaries or any deposit accounts of Parent, any Borrower or any of their Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against any Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

15.13 **Agency for Perfection.** Agent hereby appoints each other Lender (and each Bank Product Provider) as its agent (and each Lender hereby accepts (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to accept) such appointment) for the purpose of perfecting Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

15.14 **Payments by Agent to the Lenders.** All payments to be made by Agent to the Lenders (or Bank Product Providers) shall be made by bank wire transfer of immediately available

funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

15.15 **Concerning the Collateral and Related Loan Documents.** Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to agree) that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders (and such Bank Product Provider).

15.16 **Field Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information.** By becoming a party to this Agreement, each Lender:

(f) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field examination report respecting Parent, any Borrower or any of their Subsidiaries (each, a "Report") prepared by or at the request of Agent, and Agent shall so furnish each Lender with such Reports,

(g) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(h) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any field examination will inspect only specific information regarding Parent, Borrowers and their Subsidiaries and will rely significantly upon Parent's, Borrowers' and their Subsidiaries' books and records, as well as on representations of Borrowers' personnel,

(i) agrees to keep all Reports and other material, non-public information regarding Parent, Borrowers and their Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.9, and

(j) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans

of Borrowers, and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

(k) In addition to the foregoing, (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by Parent, any Borrower or any of their Subsidiaries to Agent that has not been contemporaneously provided by Parent, such Borrower or such Subsidiary to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from Parent, any Borrower or any of their Subsidiaries, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Borrowers the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Parent, such Borrower or such Subsidiary, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Borrowers a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

15.17 **Several Obligations; No Liability.** Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis (except as otherwise specifically provided herein), according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to any Borrower or any other Person for any failure by any other Lender (or Bank Product Provider) to fulfill its obligations to make credit available hereunder, nor to advance for such Lender (or Bank Product Provider) or on its behalf, nor to take any other action on behalf of such Lender (or Bank Product Provider) hereunder or in connection with the financing contemplated herein.

16. WITHHOLDING TAXES.

16.1 **Payments.** All payments made by any Loan Party hereunder or under any note or other Loan Document will be made without setoff, counterclaim, or other defense. In addition, all such payments will be made free and clear of, and without deduction or withholding for, any present or future Indemnified Taxes, and in the event any deduction or withholding of Indemnified Taxes is required, such Loan Party shall comply with the next sentence of this Section 16.1. If any Indemnified Taxes are so levied or imposed, the Loan Parties agree to pay the full amount of such Indemnified Taxes and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 16.1 after withholding or deduction for or on account of any Indemnified Taxes, will not be less than the amount provided for herein. Parent and Borrowers will furnish to Agent as promptly as possible after the date the payment of any Indemnified Tax is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by Parent or such Borrower. Each of Parent and each Borrower agrees to pay any present or future stamp, value added or documentary taxes or any other excise or property taxes, charges, or similar levies that arise from any payment made hereunder or from the execution, delivery, performance, recordation, or filing of, or otherwise with respect to this Agreement or any other Loan Document. If any claim is made by a Lender pursuant to this Section 16, Borrower may replace such Lender pursuant to the procedures set forth in Section 2.13(b).

16.2 **Exemptions.**

(a) If a Lender or Participant is entitled to claim an exemption or reduction from United States withholding tax, such Lender or Participant agrees with and in favor of Agent, to deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) one of the following before receiving its first payment under this Agreement:

(xvi) if such Lender or Participant is entitled to claim an exemption from United States withholding tax pursuant to the portfolio interest exception, (A) a statement of the Lender or Participant, signed under penalty of perjury, that it is not a (I) a “bank” as described in Section 881(c)(3)(A) of the IRC, (II) a 10% shareholder of Parent (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to Borrowers within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN or Form W-8IMY (with proper attachments);

(xvii) if such Lender or Participant is entitled to claim an exemption from, or a reduction of, withholding tax under a United States tax treaty, a properly completed and executed copy of IRS Form W-8BEN;

(xviii) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because it is effectively

connected with a United States trade or business of such Lender, a properly completed and executed copy of IRS Form W-8ECI;

(xix) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because such Lender or Participant serves as an intermediary, a properly completed and executed copy of IRS Form W-8IMY (with proper attachments); or

(xx) a properly completed and executed copy of any other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax.

(b) Each Lender or Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(c) If a Lender or Participant claims an exemption from withholding tax in a jurisdiction other than the United States, such Lender or such Participant agrees with and in favor of Agent, to deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement, but only if such Lender or such Participant is legally able to deliver such forms, provided, that nothing in this Section 16.2(c) shall require a Lender or Participant to disclose any information that it deems to be confidential (including without limitation, its tax returns). Each Lender and each Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If a Lender or Participant claims exemption from, or reduction of, withholding tax and such Lender or Participant sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Loan Parties to such Lender or Participant, such Lender or Participant agrees to notify Agent (or, in the case of a sale of a participation interest, to the Lender granting the participation only) of the percentage amount in which it is no longer the beneficial owner of Obligations of Loan Parties to such Lender or Participant. To the extent of such percentage amount, Agent will treat such Lender's or such Participant's documentation provided pursuant to Section 16.2(a) or 16.2(c) as no longer valid. With respect to such percentage amount, such Participant or Assignee may provide new documentation, pursuant to Section 16.2(a) or 16.2(c), if applicable. Parent and Borrowers agree that each Participant shall be entitled to the benefits of this

Section 16 with respect to its participation in any portion of the Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 16 with respect thereto.

16.3 **Reductions.**

(a) If a Lender or a Participant is subject to an applicable withholding tax, Agent (or, in the case of a Participant, the Lender granting the participation) may withhold from any payment to such Lender or such Participant an amount equivalent to the applicable withholding tax. If the forms or other documentation required by Section 16.2(a) or 16.2(c) are not delivered to Agent (or, in the case of a Participant, to the Lender granting the participation), then Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any payment to such Lender or such Participant not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(b) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent (or, in the case of a Participant, to the Lender granting the participation) did not properly withhold tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by Agent (or, in the case of a Participant, to the Lender granting the participation), as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent (or, in the case of a Participant, to the Lender granting the participation only) under this Section 16, together with all costs and expenses (including attorneys fees and expenses). The obligation of the Lenders and the Participants under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

16.4 **Refunds.** If Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes to which Borrowers have paid additional amounts pursuant to this Section 16, so long as no Default or Event of Default has occurred and is continuing, it shall pay over such refund to Borrowers (but only to the extent of payments made, or additional amounts paid, by Borrowers under this Section 16 with respect to Indemnified Taxes giving rise to such a refund), net of all out-of-pocket expenses of Agent or such Lender and without interest (other than any interest paid by the applicable Governmental Authority with respect to such a refund); provided, that Borrowers, upon the request of Agent or such Lender, agrees to repay the amount paid over to

Borrowers (plus any penalties, interest or other charges, imposed by the applicable Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Agent hereunder) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything in this Agreement to the contrary, this Section 16 shall not be construed to require Agent or any Lender to make available its tax returns (or any other information which it deems confidential) to Borrowers or any other Person.

17. GENERAL PROVISIONS.

17.1 **Effectiveness.** This Agreement shall be binding and deemed effective when executed by Parent, each Borrower, Agent, and each Lender whose signature is provided for on the signature pages hereof.

17.2 **Section Headings.** Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3 **Interpretation.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or Parent or any Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4 **Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5 **Bank Product Providers.** Each Bank Product Provider in its capacity as such shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Agent is acting. Agent hereby agrees to act as agent for such Bank Product Providers and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Agent as its agent and to have accepted the benefits of the Loan Documents. It is understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Agent shall have the right, but shall have no obligation, to establish, maintain, relax, or release reserves in respect of the Bank Product Obligations and that if reserves

are established there is no obligation on the part of Agent to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to Agent as to the amounts that are due and owing to it and such written certification is received by Agent a reasonable period of time prior to the making of such distribution. Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the applicable Bank Product Provider. In the absence of an updated certification, Agent shall be entitled to assume that the amount due and payable to the applicable Bank Product Provider is the amount last certified to Agent by such Bank Product Provider as being due and payable (less any distributions made to such Bank Product Provider on account thereof). Borrowers may obtain Bank Products from any Bank Product Provider, although Borrowers are not required to do so. Each Borrower acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Guarantors.

17.6 **Debtor-Creditor Relationship.** The relationship between the Lenders and Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.7 **Counterparts; Electronic Execution.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original

executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

17.8 Revival and Reinstatement of Obligations; Certain Waivers.

(a) If any member of the Lender Group or any Bank Product Provider repays, refunds, restores, or returns in whole or in part, any payment or property (including any proceeds of Collateral) previously paid or transferred to such member of the Lender Group or such Bank Product Provider in full or partial satisfaction of any Obligation or on account of any other obligation of any Loan Party under any Loan Document or any Bank Product Agreement, because the payment, transfer, or the incurrence of the obligation so satisfied is asserted or declared to be void, voidable, or otherwise recoverable under any law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent transfers, preferences, or other voidable or recoverable obligations or transfers (each, a "Voidable Transfer"), or because such member of the Lender Group or Bank Product Provider elects to do so on the reasonable advice of its counsel in connection with a claim that the payment, transfer, or incurrence is or may be a Voidable Transfer, then, as to any such Voidable Transfer, or the amount thereof that such member of the Lender Group or Bank Product Provider elects to repay, restore, or return (including pursuant to a settlement of any claim in respect thereof), and as to all reasonable costs, expenses, and attorneys' fees of such member of the Lender Group or Bank Product Provider related thereto, (i) the liability of the Loan Parties with respect to the amount or property paid, refunded, restored, or returned will automatically and immediately be revived, reinstated, and restored and will exist and (ii) Agent's Liens securing such liability shall be effective, revived, and remain in full force and effect, in each case, as fully as if such Voidable Transfer had never been made. If, prior to any of the foregoing, (A) Agent's Liens shall have been released or terminated or (B) any provision of this Agreement shall have been terminated or cancelled, Agent's Liens, or such provision of this Agreement, shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligation of any Loan Party in respect of such liability or any Collateral securing such liability.

(b) Anything to the contrary contained herein notwithstanding, if Agent or any Lender accepts a guaranty of only a portion of the Obligations pursuant to any guaranty, each of Parent and each Borrower hereby waives its right under Section 2822(a) of the California Civil Code or any similar laws of any other applicable jurisdiction to designate the portion of the Obligations satisfied by the applicable guarantor's partial payment.

17.9 Confidentiality.

(d) Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding Parent, Borrowers and their Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information")

shall be treated by Agent and the Lenders in a confidential manner, shall not be used other than in connection with the administration of the Loans and performance of the Loan Documents, and shall not be disclosed by Agent and the Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group and to employees, directors and officers of any member of the Lender Group (the Persons in this clause (i), “Lender Group Representatives”) on a “need to know” basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Providers), provided that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.9, (iii) as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such information, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrowers with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrowers pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrowers, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process, provided, that, (x) prior to any disclosure under this clause (vi) the disclosing party agrees to provide Borrowers with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior written notice to Borrowers pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Agent or the Lenders or the Lender Group Representatives), (viii) in connection with any assignment, participation or pledge of any Lender’s interest under this Agreement, provided that prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information either subject to the terms of this Section 17.9 or pursuant to confidentiality requirements substantially similar to those contained in this Section 17.9 (and such Person may disclose such Confidential Information to Persons employed or engaged by them as described in clause (i) above), (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; provided, that, prior to any disclosure to any Person (other than any Loan Party, Agent, any Lender, any of their respective Affiliates, or their respective counsel) under this clause (ix) with respect to litigation involving any Person (other than any Borrower, Agent, any Lender, any of their respective Affiliates,

or their respective counsel), the disclosing party agrees to provide Borrowers with prior written notice thereof, and (x) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(e) Anything in this Agreement to the contrary notwithstanding, Agent may disclose information concerning the terms and conditions of this Agreement and the other Loan Documents to loan syndication and pricing reporting services or in its marketing or promotional materials, with such information to consist of deal terms and other information customarily found in such publications or marketing or promotional materials and may otherwise use the name, logos, and other insignia of any Borrower or the other Loan Parties and the Commitments provided hereunder in any “tombstone” or other advertisements, on its website or in other marketing materials of the Agent.

(f) The Loan Parties hereby acknowledge that Agent or its Affiliates may make available to the Lenders materials or information provided by or on behalf of Borrowers hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on IntraLinks, SyndTrak or another similar electronic system (the “Platform”) and certain of the Lenders may be “public-side” Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a “Public Lender”). The Loan Parties shall be deemed to have authorized Agent and its Affiliates and the Lenders to treat Borrower Materials marked “PUBLIC” or otherwise at any time filed with the SEC as not containing any material non-public information with respect to the Loan Parties or their securities for purposes of United States federal and state securities laws. All Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated as “Public Investor” (or another similar term). Agent and its Affiliates and the Lenders shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” or that are not at any time filed with the SEC as being suitable only for posting on a portion of the Platform not marked as “Public Investor” (or such other similar term).

17.10 **Survival.** All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Agent, Issuing Bank, or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of, or any accrued interest on, any Loan or any fee or any other amount payable under this Agreement is outstanding or unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or been terminated.

17.11 **Patriot Act.** Each Lender that is subject to the requirements of the Patriot Act hereby notifies Borrowers that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of each Borrower and other information that will allow such Lender to identify each Borrower in accordance with the Patriot Act. In addition, if Agent is required by law or regulation or internal policies to do so, it shall have the right to periodically conduct (a) Patriot Act searches, OFAC/PEP searches, and customary individual background checks for the Loan Parties and (b) OFAC/PEP searches and customary individual background checks for the Loan Parties' senior management and key principals, and each Borrower agrees to cooperate in respect of the conduct of such searches and further agrees that the reasonable costs and charges for such searches shall constitute Lender Group Expenses hereunder and be for the account of Borrowers.

17.12 **Integration.** This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof. The foregoing to the contrary notwithstanding, all Bank Product Agreements, if any, are independent agreements governed by the written provisions of such Bank Product Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreement.

17.13 **SeaSpine Orthopedics as Agent for Borrowers.** Each Borrower hereby irrevocably appoints SeaSpine Orthopedics as the borrowing agent and attorney-in-fact for all Borrowers (the "Administrative Borrower") which appointment shall remain in full force and effect unless and until Agent shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (a) to provide Agent with all notices with respect to Revolving Loans and Letters of Credit obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and the other Loan Documents (and any notice or instruction provided by Administrative Borrower shall be deemed to be given by Borrowers hereunder and shall bind each Borrower), (b) to receive notices and instructions from members of the Lender Group (and any notice or instruction provided by any member of the Lender Group to the Administrative Borrower in accordance with the terms hereof shall be deemed to have been given to each Borrower), and (c) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Revolving Loans and Letters of Credit and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. It is understood that the handling of the Loan Account and Collateral in a combined fashion, as more fully set forth herein, is done solely as an accommodation to Borrowers in order to utilize the collective borrowing powers of Borrowers in the most efficient and economical manner and at their request, and that Lender Group shall not incur liability to any

Borrower as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loan Account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group. To induce the Lender Group to do so, and in consideration thereof, each Borrower hereby jointly and severally agrees to indemnify each member of the Lender Group and hold each member of the Lender Group harmless against any and all liability, expense, loss or claim of damage or injury, made against the Lender Group by any Borrower or by any third party whosoever, arising from or incurred by reason of (i) the handling of the Loan Account and Collateral of Borrowers as herein provided, or (ii) the Lender Group's relying on any instructions of the Administrative Borrower, except that Borrowers will have no liability to the relevant Agent-Related Person or Lender-Related Person under this Section 17.13 with respect to any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Agent-Related Person or Lender-Related Person, as the case may be.

[Signature pages to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

PARENT:

SEASPINE HOLDINGS CORPORATION, a Delaware corporation

By: /s/ John Bostjancic
John Bostjancic
Chief Financial Officer

BORROWERS:

SEASPINE ORTHOPEDICS CORPORATION, a Delaware corporation

By: /s/ John Bostjancic
John Bostjancic
Chief Financial Officer

SEASPINE, INC., a Delaware corporation

By: /s/ John Bostjancic
John Bostjancic
Chief Financial Officer

ISOTIS, INC., a Delaware corporation

By: /s/ John Bostjancic
John Bostjancic
Chief Financial Officer

(Signature Page to Credit Agreement)

SEASPINE SALES LLC, a Delaware limited liability company

By: SeaSpine, Inc., its sole member

By: /s/ John Bostjancic
Chief Financial Officer

John Bostjancic

ISOTIS ORTHOBIOLOGICS, INC., a Washington corporation

By: /s/ John Bostjancic
Chief Financial Officer

John Bostjancic

THEKEN SPINE, LLC, an Ohio limited liability company

By: SeaSpine Orthopedics Corporation, its sole member

By: /s/ John Bostjancic
John Bostjancic
Chief Financial Officer

(Signature Page to Credit Agreement)

**WELLS FARGO BANK, NATIONAL
ASSOCIATION**, a national banking
association, as Agent and as a Lender

By: /s/ Lloyd Van Dyke
Name: Lloyd Van Dyke
Title: Vice President

(Signature Page to Credit Agreement)

Schedule 1.1

As used in the Agreement, the following terms shall have the following definitions:

“Account” means an account (as that term is defined in the Code).

“Account Debtor” means any Person who is obligated on an Account, chattel paper, or a general intangible.

“Accounting Changes” means changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions).

“Acquired Indebtedness” means Indebtedness of a Person whose assets or Equity Interests are acquired by Parent, and Borrower or any of their respective Subsidiaries in a Permitted Acquisition; provided, that such Indebtedness (a) is either purchase money Indebtedness or a Capital Lease with respect to Equipment or mortgage financing with respect to Real Property or other Indebtedness which would be Permitted Indebtedness if incurred by Borrower, (b) was in existence prior to the date of such Permitted Acquisition, and (c) was not incurred in connection with, or in contemplation of, such Permitted Acquisition.

“Acquisition” means (a) the purchase or other acquisition by a Person or its Subsidiaries of all or substantially all of the assets of any other Person, or (b) the purchase or other acquisition (whether by means of a merger, consolidation, or otherwise) by a Person or its Subsidiaries of all or substantially all of the Equity Interests of any other Person.

“Additional Documents” has the meaning specified therefor in Section 5.12 of the Agreement.

“Administrative Borrower” has the meaning specified therefor in Section 17.13 of the Agreement.

“Administrative Questionnaire” has the meaning specified therefor in Section 13.1(a) of the Agreement.

“Affected Lender” has the meaning specified therefor in Section 2.13(b) of the Agreement.

“Affiliate” means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Equity Interests, by contract,

SCHEDULE 1.1

Page 1

or otherwise; provided, that, for purposes of the definition of Eligible Accounts and Section 6.10 of the Agreement: (a) any Person which owns directly or indirectly 20% or more of the Equity Interests having ordinary voting power for the election of directors or other members of the governing body of a Person or 20% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

“Agent” has the meaning specified therefor in the preamble to the Agreement.

“Agent-Related Persons” means Agent, together with its Affiliates, officers, directors, employees, attorneys, and agents.

“Agent’s Account” means the Deposit Account of Agent identified on Schedule A-1 to this Agreement (or such other Deposit Account of Agent that has been designated as such, in writing, by Agent to Borrowers and the Lenders).

“Agent’s Liens” means the Liens granted by Parent, each Borrower and any of their Subsidiaries to Agent under the Loan Documents and securing the Obligations.

“Agreement” means the Credit Agreement to which this Schedule 1.1 is attached.

“Applicable Margin” means, as of any date of determination and with respect to Base Rate Loans or LIBOR Rate Loans, as applicable, the applicable margin set forth in the following table that corresponds to the Average Excess Availability of Borrowers for the most recently completed month; provided, that for the period from the Closing Date through and including March 31, 2016, the Applicable Margin shall be set at the margin in the row styled “Level I”; provided further, that any time an Event of Default has occurred and is continuing, the Applicable Margin shall be set at the margin in the row styled “Level III”:

SCHEDULE 1.1

Level	Average Excess Availability	Applicable Margin Relative to Base Rate Loans (the “Base Rate Margin”)	Applicable Margin Relative to LIBOR Rate Loans (the “LIBOR Rate Margin”)
I	> \$20,000,000	1.25 percentage points	2.25 percentage points
II	≤ \$20,000,000 and > \$10,000,000	1.50 percentage points	2.50 percentage points
III	≤ \$10,000,000	1.75 percentage points	2.75 percentage points

The Applicable Margin shall be re-determined as of the first day of each fiscal month of Borrowers.

“Application Event” means the occurrence of (a) a failure by Borrowers to repay all of the Obligations in full on the Maturity Date, or (b) an Event of Default and the election by Agent or the Required Lenders to require that payments and proceeds of Collateral be applied pursuant to Section 2.4(b)(iii) of the Agreement.

“Assignee” has the meaning specified therefor in Section 13.1(a) of the Agreement.

“Assignment and Acceptance” means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1 to the Agreement.

“Authorized Person” means any one of the individuals identified on Schedule A-2 to the Agreement, as such schedule is updated from time to time by written notice from Borrowers to Agent.

“Availability” means, as of any date of determination, the amount that Borrowers are entitled to borrow as Revolving Loans under Section 2.1 of the Agreement (after giving effect to the then outstanding Revolver Usage).

“Average Excess Availability” means, with respect to any period, the sum of the aggregate amount of Excess Availability for each Business Day in such period (calculated as of the end of each respective Business Day) divided by the number of Business Days in such period.

“Bank Product” means any one or more of the following financial products or accommodations extended to Parent, any Borrower or any of their Subsidiaries by a Bank Product Provider: (a) credit cards (including commercial cards (including so-called “purchase cards”)),

SCHEDULE 1.1

“procurement cards” or “p-cards”)), (b) credit card processing services, (c) debit cards, (d) stored value cards, (e) Cash Management Services, or (f) transactions under Hedge Agreements.

“Bank Product Agreements” means those agreements entered into from time to time by Parent, any Borrower or any of their Subsidiaries with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

“Bank Product Collateralization” means providing cash collateral (pursuant to documentation reasonably satisfactory to Agent) to be held by Agent for the benefit of the Bank Product Providers (other than the Hedge Providers) in an amount determined by Agent as sufficient to satisfy the reasonably estimated credit exposure with respect to the then existing Bank Product Obligations (other than Hedge Obligations).

“Bank Product Obligations” means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by Parent and each Borrower and their Subsidiaries to any Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, (b) all Hedge Obligations, and (c) all amounts that Agent or any Lender is obligated to pay to a Bank Product Provider as a result of Agent or such Lender purchasing participations from, or executing guarantees or indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Bank Products provided by such Bank Product Provider to Parent, any Borrower or any of their Subsidiaries.

“Bank Product Provider” means Wells Fargo or any of its Affiliates, including each of the foregoing in its capacity, if applicable, as a Hedge Provider.

“Bank Product Reserves” means, as of any date of determination, those reserves that Agent deems necessary or appropriate to establish (based upon the Bank Product Providers’ determination of the liabilities and obligations of Parent and each Borrower and their Subsidiaries in respect of Bank Product Obligations) in respect of Bank Products then provided or outstanding.

“Bankruptcy Code” means title 11 of the United States Code, as in effect from time to time.

“Base Rate” means, on any date, an annual rate of interest equal to the greatest of (a) the Federal Funds Rate plus ½%, (b) the LIBOR Rate (which rate shall be calculated based upon an interest period of 1 month and shall be determined on a daily basis), plus 1 percentage point, and (c) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its “prime rate”, with the understanding that the “prime rate” is one of Wells Fargo’s base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate.

SCHEDULE 1.1

Page 4

“Base Rate Loan” means each portion of the Revolving Loans that bears interest at a rate determined by reference to the Base Rate.

“Base Rate Margin” has the meaning set forth in the definition of Applicable Margin.

“Benefit Plan” means a “defined benefit plan” (as defined in Section 3(35) of ERISA) for which Parent, any Borrower or any of their respective Subsidiaries or ERISA Affiliates has been an “employer” (as defined in Section 3(5) of ERISA) within the past six years.

“Board of Directors” means, as to any Person, the board of directors (or comparable managers) of such Person, or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

“Board of Governors” means the Board of Governors of the Federal Reserve System of the United States (or any successor).

“Borrower” and “Borrowers” have the respective meanings specified therefor in the preamble to the Agreement.

“Borrower Materials” has the meaning specified therefor in Section 17.9(c) of the Agreement.

“Borrowing” means a borrowing consisting of Revolving Loans made on the same day by the Lenders (or Agent on behalf thereof), or by Swing Lender in the case of a Swing Loan, or by Agent in the case of an Extraordinary Advance.

“Borrowing Base” means, as of any date of determination, the result of:

(a) the sum of

(i) 85% of the amount of Eligible Accounts and Eligible Unbilled Accounts multiplied by the Expected Net Value, *minus*

(ii) the aggregate amount of reserves, if any, established by Agent under Section 2.1(c) of the Agreement, *minus*

(iii) the Credit and Unapplied Collection Amount, *plus*

(b) the lowest of

(i) \$10,000,000, and

SCHEDULE 1.1

Page 5

(ii) the lowest of (A) the product of 80% multiplied by the value (calculated at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices) of (x) Eligible Finished Goods Inventory, (y) Eligible Raw Materials Inventory and (z) Eligible Work-in-Process Inventory at such time, (B) the product of 75% multiplied by the Net Recovery Percentage identified in the most recent inventory appraisal ordered and obtained by Agent multiplied by the value (calculated at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices) of (x) Eligible Finished Goods Inventory, (y) Eligible Raw Materials Inventory and (z) Eligible Work-in-Process Inventory (each such determination may be made as to different categories of Eligible Finished Goods Inventory, Eligible Raw Materials Inventory and Eligible Work-in-Process Inventory, as the case may be, based upon the Net Recovery Percentage applicable to such categories) at such time, and (C) the product of 75% multiplied by the amount resulting from the calculation set forth in subsection (a)(i) of this definition at such time, *minus*

(c) the aggregate amount of reserves, if any and without duplication, established by Agent under Section 2.1(c) of the Agreement.

"Borrowing Base Certificate" means a certificate in the form of Exhibit B-1.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in the state of California, except that, if a determination of a Business Day shall relate to a LIBOR Rate Loan, the term "Business Day" also shall exclude any day on which banks are closed for dealings in Dollar deposits in the London interbank market.

"Capital Expenditures" means, with respect to any Person for (i) the month ended (w) July 31, 2015, \$1,079,000, (x) August 31, 2015, \$995,000, (y) September 30, 2015, \$685,000 and (z) October 31, 2015, \$1,400,000 and (ii) any other period, the amount of all expenditures by such Person and its Subsidiaries during such period, in all cases that are capital expenditures as determined in accordance with GAAP, whether such expenditures are paid in cash or financed, but excluding, without duplication (a) expenditures made during such period in connection with the replacement, substitution, or restoration of assets or properties pursuant to Section 2.4(e)(ii) of the Agreement, (b) with respect to the purchase price of assets that are purchased substantially contemporaneously with the trade-in of existing assets during such period, the amount that the gross amount of such purchase price is reduced by the credit granted by the seller of such assets for the assets being traded in at such time, (c) expenditures made during such period to consummate one or more Permitted Acquisitions, (d) expenditures made during such period to the extent made with the identifiable proceeds of an equity investment in Parent, a Borrower or any of their Subsidiaries which equity investment is made substantially contemporaneously with the making of the expenditure, (e) capitalized software development costs to the extent such costs are deducted from net earnings under the definition of EBITDA for such period, (f) expenditures made with proceeds

SCHEDULE 1.1

Page 6

of insurance, and (g) expenditures during such period that, pursuant to a written agreement, are reimbursed by a third Person (excluding Parent, any Borrower or any of their Affiliates).

“Capitalized Lease Obligation” means that portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

“Capital Lease” means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

“Cash Equivalents” means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 1 year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within 1 year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor’s Rating Group (“S&P”) or Moody’s Investors Service, Inc. (“Moody’s”), (c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody’s, (d) certificates of deposit, time deposits, overnight bank deposits or bankers’ acceptances maturing within 1 year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank having at the date of acquisition thereof combined capital and surplus of not less than \$1,000,000,000, (e) Deposit Accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or recognized securities dealer having combined capital and surplus of not less than \$1,000,000,000, having a term of not more than seven days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above.

“Cash Management Services” means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other customary cash management arrangements.

SCHEDULE 1.1

Page 7

“CFC” means a controlled foreign corporation (as that term is defined in the IRC).

“CHAMPVA” means, collectively, the Civilian Health and Medical Program of the Department of Veterans Affairs, and all laws, rules, regulations, manuals, orders, guidelines or requirements (whether or not having the force of law) pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

“Change in Law” means the occurrence after the date of the Agreement of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation, judicial ruling, judgment or treaty or in the administration, interpretation, implementation or application by any Governmental Authority of any law, rule, regulation, guideline or treaty, or (c) the making or issuance by any Governmental Authority of any request, rule, guideline or directive, whether or not having the force of law; provided that notwithstanding anything in the Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities shall, in each case, be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Change of Control” means that:

(a) the occurrence of a change in the composition of the Board of Directors of Parent or any Borrower such that a majority of the members of such Board of Directors are not Continuing Directors; or

(b) Parent fails to own and control, directly or indirectly, 100% of the Equity Interests of each other Loan Party.

“Closing Date” means the date of the making of the initial Revolving Loan (or other extension of credit) under the Agreement.

“CMS” means The Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services, and any Governmental Authority successor thereto.

“Code” means the California Uniform Commercial Code, as in effect from time to time.

“Collateral” means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by Parent, any Borrower or any of their Subsidiaries in or upon which a Lien is granted by such Person in favor of Agent or the Lenders under any of the Loan Documents.

SCHEDULE 1.1

Page 8

“Collateral Access Agreement” means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in Parent’s, any Borrower’s or any of their Subsidiaries’ books and records, Equipment, or Inventory, in each case, in form and substance reasonably satisfactory to Agent.

“Collections” means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, cash proceeds of asset sales, rental proceeds, and tax refunds).

“Commitment” means, with respect to each Lender, its Revolver Commitment, and, with respect to all Lenders, their Revolver Commitments, in each case as such Dollar amounts are set forth beside such Lender’s name under the applicable heading on Schedule C-1 to the Agreement or in the Assignment and Acceptance pursuant to which such Lender became a Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

“Competitor” means any Person which is a direct competitor of Borrowers or any of their Subsidiaries if, at the time of a proposed assignment, Agent and the assigning Lender have actual knowledge that such Person is a direct competitor of Borrowers or any of their Subsidiaries; provided, that in connection with any assignment or participation, the Assignee or Participant with respect to such proposed assignment or participation that is an investment bank, a commercial bank, a finance company, a fund, or other Person which merely has an economic interest in any such direct competitor, and is not itself such a direct competitor of Borrowers or any of their Subsidiaries, shall not be deemed to be a direct competitor for the purposes of this definition.

“Compliance Certificate” means a certificate substantially in the form of Exhibit C-1 to the Agreement delivered by the chief financial officer of Parent to Agent.

“Confidential Information” has the meaning specified therefor in Section 17.9(a) of the Agreement.

“Continuing Director” means (a) any member of the Board of Directors who was a director (or comparable manager) of Parent or any Borrower, as the case may be, on the Closing Date, and (b) any individual who becomes a member of the Board of Directors after the Closing Date if such individual was approved, appointed or nominated for election to the Board of Directors by either the Permitted Holders or a majority of the Continuing Directors.

“Control Agreement” means a control agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by Parent or any Borrower, Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

SCHEDULE 1.1

Page 9

“Copyright Security Agreement” has the meaning specified therefor in the Guaranty and Security Agreement.

“Covenant Testing Period” means a period (a) commencing on the last day of the fiscal month of Parent and Borrowers most recently ended prior to a Covenant Trigger Event for which Borrowers are required to deliver to Agent monthly, quarterly or annual financial statements pursuant to Schedule 5.1 to this Agreement, and (b) continuing through and including the first day after such Covenant Trigger Event that the Total Liquidity is equal to or greater than the Threshold Amount for thirty (30) consecutive days.

“Covenant Trigger Event” means any date on which the Total Liquidity is less than the Threshold Amount.

“Credit and Unapplied Collection Amount” means, at any time, the sum of (a) any credit charges of any Account Debtors of Eligible Accounts that are aged greater than the number of days allowed for the applicable Account Debtor for Eligible Accounts from the invoice date and (b) any collections that have been received by a Borrower but have not yet been applied to an invoice.

“Default” means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

“Defaulting Lender” means any Lender that (a) has failed to fund any amounts required to be funded by it under the Agreement on the date that it is required to do so under the Agreement (including the failure to make available to Agent amounts required pursuant to a Settlement or to make a required payment in connection with a Letter of Credit Disbursement), (b) notified Parent, Borrowers, Agent, or any Lender in writing that it does not intend to comply with all or any portion of its funding obligations under the Agreement, (c) has made a public statement to the effect that it does not intend to comply with its funding obligations under the Agreement or under other agreements generally (as reasonably determined by Agent) under which it has committed to extend credit, (d) failed, within 1 Business Day after written request by Agent, to confirm that it will comply with the terms of the Agreement relating to its obligations to fund any amounts required to be funded by it under the Agreement, (e) otherwise failed to pay over to Agent or any other Lender any other amount required to be paid by it under the Agreement on the date that it is required to do so under the Agreement or (f) (i) becomes or is insolvent or has a parent company that has become or is insolvent or (ii) becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian or appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment.

SCHEDULE 1.1

Page 10

“Defaulting Lender Rate” means (a) for the first 3 days from and after the date the relevant payment is due, the Base Rate, and (b) thereafter, the interest rate then applicable to Revolving Loans that are Base Rate Loans (inclusive of the Base Rate Margin applicable thereto).

“Deposit Account” means any deposit account (as that term is defined in the Code).

“Designated Account” means the Deposit Account of the Loan Parties identified on Schedule D-1 to the Agreement (or such other Deposit Account of any Loan Party located at Designated Account Bank that has been designated as such, in writing, by Borrowers to Agent).

“Designated Account Bank” has the meaning specified therefor in Schedule D-1 to the Agreement (or such other bank that is located within the United States that has been designated as such, in writing, by Borrowers to Agent).

“Disqualified Equity Interests” shall mean any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 180 days after the Maturity Date.

“Dollars” or “\$” means United States dollars.

“Drawing Document” means any Letter of Credit or other document presented for purposes of drawing under any Letter of Credit.

“Earn-Outs” shall mean unsecured liabilities of a Loan Party arising under an agreement to make any deferred payment as a part of the Purchase Price for a Permitted Acquisition, including performance bonuses or consulting payments in any related services, employment or similar agreement, in an amount that is subject to or contingent upon the revenues, income, cash flow or profits (or the like) of the target of such Permitted Acquisition.

“EBITDA” means, with respect to any fiscal period,

SCHEDULE 1.1

Page 11

(a) Parent's and each of its direct and indirect Subsidiaries' consolidated net earnings (or loss),

minus

(b) without duplication, the sum of the following amounts of Parent and each of its direct and indirect Subsidiaries for such period to the extent included in determining consolidated net earnings (or loss) for such period:

(i) extraordinary gains,

(ii) interest income,

plus

(c) without duplication, the sum of the following amounts of Parent and each of its direct and indirect Subsidiaries for such period to the extent included in determining consolidated net earnings (or loss) for such period:

(i) non-cash extraordinary losses,

(ii) non-cash impairment charges to fixed assets or intangible assets,

(iii) Interest Expense,

(iv) provisions for income taxes,

(v) depreciation and amortization for such period,

(vi) non-cash equity compensation charges, and

(vii) and other non-cash charges or non-recurring charges approved by Agent in its reasonable discretion, in each case, determined on a consolidated basis in accordance with GAAP.

For the purposes of calculating EBITDA for any period of twelve-month period (each, a "Reference Period"), if at any time during such Reference Period (and after the Closing Date), Parent or any of its Subsidiaries shall have made a Permitted Acquisition, EBITDA for such Reference Period shall be calculated after giving *pro forma* effect thereto (including *pro forma* adjustments arising out of events which are directly attributable to such Permitted Acquisition, are factually supportable, and are expected to have a continuing impact, in each case to be mutually and reasonably agreed upon by Parent, Borrowers and Agent) or in such other manner acceptable

SCHEDULE 1.1

Page 12

to Agent as if any such Permitted Acquisition or adjustment occurred on the first day of such Reference Period. Further, for the purposes of calculating EBITDA, no more than twenty percent 20% of EBITDA shall be attributable to foreign Subsidiaries which are not Loan Parties.

“Eligible Accounts” means those Accounts created by a Borrower in the ordinary course of its business, that arise out of such Borrower’s sale of goods or rendition of services, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised from time to time by Agent in Agent’s Permitted Discretion to address the results of any field examination performed by (or on behalf of) Agent from time to time after the Closing Date. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits, unapplied cash, taxes, discounts, credits, allowances, and rebates. Eligible Accounts shall not include the following:

- (a) Accounts that the Account Debtor has failed to pay within 120 days of original invoice date,
- (b) Accounts owed by an Account Debtor (or its Affiliates) where 50% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,
- (c) Accounts with respect to which the Account Debtor is a natural person, an Affiliate of any Borrower or an employee or agent of any Borrower or any Affiliate of any Borrower,
- (d) Accounts arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional,
- (e) Accounts that are not payable in Dollars,
- (f) Accounts with respect to which the Account Debtor either (i) does not maintain its principal executive office in the United States, or (ii) is not organized under the laws of the United States or any state thereof, or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof,
- (g) Accounts with respect to which the Account Debtor is either (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which Borrowers have complied, to the reasonable satisfaction of Agent, with the Assignment of Claims Act, 31 USC § 3727) (but not an Account Debtor making payments under a Government Reimbursement Program), or (ii) any state of the United States,

SCHEDULE 1.1

Page 13

(h) Accounts with respect to which the Account Debtor is not a Third Party Payor,

(i) Accounts with respect to which the Account Debtor is a creditor of a Borrower, has or has asserted a right of recoupment, chargeback, rebate or setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of recoupment, chargeback, rebate or setoff, or dispute,

(j) Accounts with respect to an Account Debtor whose total obligations owing to Borrowers exceed 20% (such percentage, as applied to a particular Account Debtor, being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, that, in each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined by Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,

(k) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which any Borrower has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(l) Accounts, the collection of which, Agent, in its Permitted Discretion, believes to be doubtful, including by reason of the Account Debtor's financial condition,

(m) Accounts that are not subject to a valid and perfected first priority Agent's Lien,

(n) Accounts with respect to which (i) the goods giving rise to such Account have not been shipped and billed to the Account Debtor, or (ii) the services giving rise to such Account have not been performed and billed to the Account Debtor; provided, that Eligible Unbilled Accounts shall be included in the Borrowing Base as provided in the definition thereof,

(o) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity,

(p) Accounts that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by the applicable Borrower of the subject contract for goods or services,

(q) Accounts owned by a target acquired in connection with a Permitted Acquisition, until the completion of an appraisal and field examination (or such other diligence as Agent shall require) with respect to such target, in each case, reasonably satisfactory to Agent (which appraisal

SCHEDULE 1.1

and field examination or diligence may be conducted prior to the closing of such Permitted Acquisition), or

- (r) Accounts arising out of a settlement or expected settlement.

“Eligible Finished Goods Inventory” shall mean Inventory that qualifies as Eligible Inventory and is first quality finished goods held for sale in the ordinary course of Borrowers’ business consisting of spinal fusion hardware products and orthobiologics products.

“Eligible Inventory” means Inventory of a Borrower, that complies with each of the representations and warranties respecting Eligible Inventory made in the Loan Documents, and that is not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised from time to time by Agent in Agent’s Permitted Discretion to address the results of any field examination or appraisal performed by Agent from time to time after the Closing Date. In determining the amount to be so included, Inventory shall be valued at the lower of cost or market on a basis consistent with Borrowers’ historical accounting practices and the most recent appraisals of such Inventory obtained by Agent. An item of Inventory shall not be included in Eligible Inventory if:

- (a) a Borrower does not have good, valid, and marketable title thereto,
- (b) a Borrower does not have actual and exclusive possession thereof (either directly or through a bailee or agent of a Borrower),
- (c) it is located on real property leased by a Borrower or in a contract warehouse, in each case, unless it is subject to a Collateral Access Agreement executed by the lessor or warehouseman, as the case may be, or a Landlord Reserve is in effect for such location, and unless it is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises,
- (d) it is the subject of a bill of lading or other document of title,
- (e) it is not subject to a valid and perfected first priority Agent’s Lien,
- (f) it consists of goods returned or rejected by a Borrower’s customers or that are subject to a recall,
- (g) it consists of goods that are obsolete or slow moving, restrictive or custom items, work-in-process (other than Eligible Work-In-Process Inventory), raw materials (other than Eligible Raw Materials Inventory), or goods that constitute spare parts, surgical kits, surgical instruments, packaging and shipping materials, supplies used or consumed in Borrowers’ business, bill and hold goods, defective goods, “seconds,” or Inventory acquired on consignment,

SCHEDULE 1.1

(h) it is subject to Intellectual Property or a license of Intellectual Property (including Patent Licenses), unless (1) Agent is satisfied that such Inventory can be freely sold by Agent on and after the occurrence of an Event of a Default despite any rights of such creditors, including after foreclosure and (2) with respect to any such Intellectual Property or license of Intellectual Property (including Patent Licenses) acquired after the Closing Date, such creditors or their representative have expressly acknowledged and consented to (without condition or qualification) the license, sublicense or grant to Agent of the right to use such Intellectual Property or license of Intellectual Property (including Patent Licenses) on the terms set forth in the Guaranty and Security Agreement, the respective Intellectual Property Security Agreement and any other applicable Loan Document,

(i) it was acquired in connection with a Permitted Acquisition, until the completion of an appraisal and field examination (or such other diligence as Agent shall require) of such Inventory, in each case, reasonably satisfactory to Agent (which appraisal and field examination may be conducted prior to the closing of such Permitted Acquisition),

(j) it consists of drugs (as such term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301 et seq.),

(k) it is not in compliance with all Public Health Laws and standards imposed by the FDA or any other Governmental Authority having regulatory authority over such Inventory, its use or sale,

(l) it consists of any Inventory being sold to Keystone Dental, Inc., a Delaware corporation, until such time as Agent has received evidence satisfactory to Agent that such Lien has been removed of record,

(m) it is subject to a Patent or Patent License that expires within the following 180 days; or

(n) it is owned by IsoTis Orthobiologics and is within 180 days of expiration.

“Eligible Raw Material Inventory” shall mean Inventory that qualifies as Eligible Inventory and consists of goods that are first quality raw materials consisting of orthobiologics products (but not spinal fusion hardware products).

“Eligible Unbilled Accounts” means Accounts that otherwise qualify as Eligible Accounts except that an invoice, statement or other billing document has not been sent to the applicable Account Debtor; provided, that any such Account shall cease to be an Eligible Unbilled Account on the date that (a) an invoice, statement or other billing document is sent to the applicable Account Debtor or (b) is more than 30 days after the most recent date on which such services, goods or

SCHEDULE 1.1

merchandise were provided by a Borrower; provided, however, the aggregate amount of Eligible Unbilled Accounts shall at no time exceed \$3,000,000.

“Eligible Transferee” means (a) any Lender (other than a Defaulting Lender), any Affiliate of any Lender and any Related Fund of any Lender; and (b) (i) a commercial bank organized under the laws of the United States or any state thereof, and having total assets in excess of \$1,000,000,000; (ii) a savings and loan association or savings bank organized under the laws of the United States or any state thereof, and having total assets in excess of \$1,000,000,000; (iii) a commercial bank organized under the laws of any other country or a political subdivision thereof; provided that (A) (x) such bank is acting through a branch or agency located in the United States or (y) such bank is organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development or a political subdivision of such country, and (B) such bank has total assets in excess of \$1,000,000,000; (d) any other entity (other than a natural person) that is an “accredited investor” (as defined in Regulation D under the Securities Act) that extends credit or buys loans as one of its businesses including insurance companies, investment or mutual funds and lease financing companies, and having total assets in excess of \$1,000,000,000; and (f) during the continuation of an Event of Default, any other Person approved by Agent.

“Eligible Work-in-Process Inventory” shall mean Inventory that qualifies as Eligible Inventory and consists of goods that are first quality work-in-process consisting of orthobiologics products (but not spinal fusion hardware products); provided that, anything to the contrary contained herein notwithstanding, the value of such Inventory shall not include the value of any labor or other services rendered to produce such Inventory.

“Environmental Action” means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other written communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials (a) from any assets, properties, or businesses of any Borrower, any Subsidiary of any Borrower, or any of their predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by any Borrower, any Subsidiary of any Borrower, or any of their predecessors in interest.

“Environmental Law” means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on Parent, any Borrower or any of their Subsidiaries, relating to the environment, the effect of the environment on

SCHEDULE 1.1

employee health (other than occupational and safety laws), or Hazardous Materials, in each case as amended from time to time.

“Environmental Liabilities” means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

“Environmental Lien” means any Lien in favor of any Governmental Authority for Environmental Liabilities.

“Equipment” means equipment (as that term is defined in the Code).

“Equity Interest” means, with respect to a Person, all of the shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in such Person, whether voting or nonvoting, including capital stock (or other ownership or profit interests or units), preferred stock, or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

“ERISA Affiliate” means (a) any Person subject to ERISA whose employees are treated as employed by the same employer as the employees of Parent or any of its direct or indirect Subsidiaries under IRC Section 414(b), (b) any trade or business subject to ERISA whose employees are treated as employed by the same employer as the employees of Parent or any of its direct or indirect Subsidiaries under IRC Section 414(c), (c) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any organization subject to ERISA that is a member of an affiliated service group of which Parent or any of its direct or indirect Subsidiaries is a member under IRC Section 414(m), or (d) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any Person subject to ERISA that is a party to an arrangement with Parent or any of its direct or indirect Subsidiaries and whose employees are aggregated with the employees of Parent or any of its direct or indirect Subsidiaries under IRC Section 414(o).

“Event of Default” has the meaning specified therefor in Section 8 of the Agreement.

“Excess Availability” means, as of any date of determination, the amount equal to Availability *minus* the aggregate amount, if any, of all trade payables of Parent, Borrowers and their Subsidiaries aged in excess of historical levels with respect thereto and not subject to a bona fide

dispute and all book overdrafts of Parent, Borrowers and their Subsidiaries in excess of historical practices with respect thereto, in each case as determined by Agent in its Permitted Discretion.

“Exchange Act” means the Securities Exchange Act of 1934, as in effect from time to time.

“Excluded Taxes” means (i) any tax imposed on the net income (however denominated) or net profits of any Lender or any Participant (including any branch profits or franchise taxes), in each case imposed by the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender or such Participant is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender’s or such Participant’s principal office is located in each case as a result of a present or former connection between such Lender or such Participant and the jurisdiction or taxing authority imposing the tax (other than any such connection arising solely from such Lender or such Participant having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under the Agreement or any other Loan Document); (ii) taxes resulting from a Lender’s or a Participant’s failure to comply with the requirements of Section 16.2 of the Agreement, (iii) any United States federal withholding taxes that would be imposed on amounts payable to a Foreign Lender based upon the law (and the applicable withholding rate) in effect at the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), except that Taxes shall include (A) any amount that such Foreign Lender (or its assignor, if any) was previously entitled to receive pursuant to Section 16.1 of the Agreement, if any, with respect to such withholding tax at the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), and (B) additional United States federal withholding taxes that may be imposed after the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), as a result of a change in law, rule, regulation, order or other decision with respect to any of the foregoing by any Governmental Authority, and (iv) any United States federal withholding taxes imposed under FATCA.

“Expected Net Value” means percentages that Agent reasonably deems necessary or appropriate, adjusted from time to time to reduce Eligible Accounts by payor class (e.g., Medicare, Medicaid, commercial insurance, etc.) based upon Borrower’s historical collection history, contractual allowances, returns, rebates, discounts, credits and other allowances that may result in the non-payment or diminution in value of Eligible Accounts.

“Extraordinary Advances” has the meaning specified therefor in Section 2.3(d)(iii) of the Agreement.

“FATCA” means Sections 1471 through 1474 of the IRC, as of the date of the Agreement (or any amended or successor version that is substantively comparable and not materially more

onerous to comply with) and any current or future regulations or official interpretations thereof, and any applicable intergovernmental agreement with respect thereto.

“Fee Letter” means that certain fee letter, dated as of even date with the Agreement, among Borrowers and Agent, in form and substance reasonably satisfactory to Agent.

“Federal Funds Rate” means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal funds brokers of recognized standing selected by it.

“Fixed Charges” means, with respect to any fiscal period and with respect to Parent and each of its direct and indirect Subsidiaries determined on a consolidated basis in accordance with GAAP, in all cases, the sum, without duplication, of (a) Interest Expense accrued (other than interest paid-in-kind, amortization of financing fees, and other non-cash Interest Expense) during such period, (b) principal payments in respect of Indebtedness that are required to be paid, plus all payments made under settlement agreements to which Parent or any of its Subsidiaries is a party, in each case, during such period, (c) all federal, state, and local income taxes paid or required to be paid during such period, (d) all fees paid during such period to the extent not deducted in the calculation of EBITDA (including paid pursuant to the Transition Agreements) and (e) all Restricted Payments paid (whether in cash or other property, other than common Equity Interest) during such period. Further, for the purposes of calculating Fixed Charges, no more than twenty percent 20% of Fixed Charges shall be attributable to foreign Subsidiaries which are not Loan Parties.

“Fixed Charge Coverage Ratio” means, with respect to any fiscal period and with respect to Parent and each of its direct and indirect Subsidiaries determined on a consolidated basis in accordance with GAAP, the ratio of (a) EBITDA for such period *minus* Capital Expenditures made (to the extent not already incurred in a prior period and excluding Capital Expenditures that are financed (other than with Revolving Loans)) or incurred during such period, to (b) Fixed Charges for such period.

“Flow of Funds Agreement” means a flow of funds agreement, dated as of even date herewith, in form and substance reasonably satisfactory to Agent, executed and delivered by each Loan Party and Agent.

“Foreign Lender” means any Lender or Participant that is not a United States person within the meaning of IRC section 7701(a)(30).

SCHEDULE 1.1

Page 20

“Funded Indebtedness” means, as of any date of determination, all Indebtedness for borrowed money or letters of credit of Parent and each of the Borrowers, determined on a consolidated basis in accordance with GAAP, that by its terms matures more than one year after the date of determination, and any such Indebtedness maturing within one year from such date that is renewable or extendable at the option of Parent and each of the Borrowers, as applicable, to a date more than one year from such date, including, in any event, but without duplication, with respect to Parent and the Borrowers, the Revolver Usage and the amount of their Capitalized Lease Obligations.

“Funding Date” means the date on which a Borrowing occurs.

“Funding Losses” has the meaning specified therefor in Section 2.12(b)(ii) of the Agreement.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

“Governing Documents” means, with respect to any Person, the certificate or articles of incorporation, by-laws, or other organizational documents of such Person.

“Government Account Debtor” means the United States government or a political subdivision thereof, or any state, county or municipality or department, agency or instrumentality thereof, that is responsible for payment of an Account under any Government Reimbursement Program, or any agent, administrator, intermediary or carrier for the foregoing.

“Government Receivable” means any Account that is payable by a Government Account Debtor pursuant to a Government Reimbursement Program.

“Government Receivables Lockbox Account” means a Deposit Account of the Borrower that is used exclusively for the receipt of Collections of Government Receivables.

“Government Reimbursement Program” means (a) Medicare, (b) Medicaid, (c) the Federal Employees Health Benefit Program under 5 U.S.C. § § 8902 et seq., (d) TRICARE, (e) CHAMPVA, or (f) if applicable within the context of this Agreement, any agent, administrator, administrative contractor, intermediary or carrier for any of the foregoing.

“Governmental Authority” means the government of any nation or any political subdivision thereof, whether at the national, state, territorial, provincial, municipal or any other level, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of, or pertaining to, government (including any supra-national bodies such as the European Union or the European Central Bank). The term “Governmental Authority” shall further include any institutional

SCHEDULE 1.1

Page 21

review board, ethics committee, data monitoring committee, or other committee or entity with defined authority to oversee Regulatory Matters or any agency, branch or other governmental body charged with the responsibility and/or vested with the authority to administer and/or enforce any Public Health Laws.

“Guarantor” means (a) Parent, (b) each Subsidiary of Parent (other than IsoTis International and any CFC or any foreign Subsidiary of any CFC), and (c) each other Person that becomes a guarantor after the Closing Date pursuant to Section 5.11 of the Agreement.

“Guaranty and Security Agreement” means a guaranty and security agreement, dated as of even date with the Agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by Parent and each of the Borrowers and each of the Guarantors to Agent.

“Hazardous Materials” means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or “EP toxicity”, (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

“Health Care Laws” means all Requirements of Law relating to: (a) fraud and abuse (including the following statutes, as amended, modified or supplemented from time to time and any successor statutes thereto and regulations promulgated from time to time thereunder: the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Stark Law (42 U.S.C. § 1395nn and § 1395(q)), the civil False Claims Act (31 U.S.C. § 3729 et seq.), the federal health care program exclusion provisions (42 U.S.C. § 1320a-7), the Civil Monetary Penalties Act (42 U.S.C. § 1320a-7a), and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173)); (b) any Government Reimbursement Program; (c) the licensure or regulation of healthcare providers, suppliers, professionals, facilities or payors (including all statutes and regulations administered by any Regulatory Authority); (d) the operation of any health care facility or the provision of, or payment for, items or supplies; (e) quality, safety certification and accreditation standards and requirements; (f) the billing, coding or submission of claims or collection of accounts receivable or refund of overpayments; (g) HIPAA; (h) the practice of medicine and other health care professions or the organization of medical or professional entities; (i) fee-splitting prohibitions; (j) requirements for maintaining federal, state and local tax-exempt status of Borrower; (k) charitable trusts or charitable solicitation laws; (l) health planning or rate-setting laws, including

SCHEDULE 1.1

Page 22

laws regarding certificates of need and certificates of exemption; and (m) any and all other applicable federal, state or local health care laws, rules, codes, regulations, manuals, orders, ordinances, professional or ethical rules, administrative guidance and requirements, as the same may be amended, modified or supplemented from time to time.

“Health Care Permits” means any and all permits, licenses, authorizations, certificates, certificates of need, accreditations and plans of third-party accreditation agencies that are (a) necessary to enable any Borrower to operate any health care facility or participate in and receive payment under any Government Reimbursement Program or other Third Party Payor Arrangement, as applicable, or otherwise continue to conduct its business as it is conducted on the Closing Date, or (b) required under any Health Care Law.

“Health Care Proceeding” means any inquiries, investigations, probes, audits, hearings, litigation or proceedings (in each case, whether civil, criminal, administrative or investigative) concerning any alleged or actual non-compliance by any Loan Party with any Health Care Laws or the requirements of any Health Care Permit or Third Party Payor Arrangement or the business affairs, practices, licensing or reimbursement entitlements of any Borrower (including, without limitation, inquiries involving the Comprehensive Error Rate Testing and any inquiries, investigations, probes, audits or procedures initiated by a Fiscal Intermediary/Medicare Administrator Contractor, a Medicaid Integrity Contractor, a Recovery Audit Contractor, a Program Safeguard Contractor, a Zone Program Integrity Contractor, an Attorney General, the Office of Inspector General, the Department of Justice or any similar governmental agencies or contractors for such agencies).

“Hedge Agreement” means a “swap agreement” as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

“Hedge Obligations” means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of Parent, Borrowers and their Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Hedge Providers.

“Hedge Provider” means Wells Fargo or any of its Affiliates.

“Indebtedness” as to any Person means (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other financial products, (c) all obligations of such Person as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed, (e) all obligations of such Person to pay the deferred purchase price of assets (other than trade payables incurred in the ordinary course

of business and repayable in accordance with customary trade practices and, for the avoidance of doubt, other than royalty payments payable in the ordinary course of business in respect of non-exclusive licenses), (f) all monetary obligations of such Person owing under Hedge Agreements (which amount shall be calculated based on the amount that would be payable by such Person if the Hedge Agreement were terminated on the date of determination), (g) any Disqualified Equity Interests of such Person, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above. For purposes of this definition, (i) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, and (ii) the amount of any Indebtedness which is limited or is non-recourse to a Person or for which recourse is limited to an identified asset shall be valued at the lesser of (A) if applicable, the limited amount of such obligations, and (B) if applicable, the fair market value of such assets securing such obligation.

“Indemnified Liabilities” has the meaning specified therefor in Section 10.3 of the Agreement.

“Indemnified Person” has the meaning specified therefor in Section 10.3 of the Agreement.

“Indemnified Taxes” means, any Taxes other than Excluded Taxes.

“Ineligible Institution” shall mean the Persons identified in writing to Agent by Borrowers on or prior to the Closing Date, which list of Persons is consented to in writing by Agent (such consent not to be unreasonably withheld or delayed).

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

“Integra Supply Agreements” means the collective reference to that certain (i) Mozaik Supply Agreement (Integra as Supplier) effective as of July 1, 2015 by and between Integra LifeSciences Corporation, a Delaware corporation, and SeaSpine Orthopedics and (ii) Microfib Supply Agreement (Integra as Supplier) effective as of July 1, 2015 by and between Integra LifeSciences Corporation, a Delaware corporation, and SeaSpine Orthopedics, as each of the same may be amended, restated, modified or otherwise supplemented from time to time.

“Intellectual Property” means (a) all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published

or unpublished, any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, trade names, service marks, mask works, rights of use of any name, domain names, or any other similar rights, any applications therefor, whether registered or not, and (b) the goodwill of the business or that portion of the business represented by the mark and of any Person connected with and symbolized thereby, know-how, operating manuals, trade secret rights, clinical and non-clinical data, and rights to unpatented inventions.

“Intellectual Property Security Agreement” means each of, and “Intellectual Property Security Agreements” means the collective reference to, the Copyright Security Agreements, Patent Security Agreements and Trademark Security Agreements.

“Intercompany Subordination Agreement” means an intercompany subordination agreement, dated as of even date with the Agreement, executed and delivered by Parent and each of its Subsidiaries, and Agent, the form and substance of which is reasonably satisfactory to Agent.

“Interest Expense” means, for any period, the aggregate of the interest expense of Parent and Borrowers (including the interest portion of the rent under capitalized leases) for such period, determined on a consolidated basis in accordance with GAAP.

“Interest Period” means, with respect to each LIBOR Rate Loan, a period commencing on the date of the making of such LIBOR Rate Loan (or the continuation of a LIBOR Rate Loan or the conversion of a Base Rate Loan to a LIBOR Rate Loan) and ending 1, 2, 3 or 6 months thereafter; provided, that (a) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (b) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (c) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is 1, 2, 3 or 6 months after the date on which the Interest Period began, as applicable, and (d) Borrowers may not elect an Interest Period which will end after the Maturity Date.

“Inventory” means inventory (as that term is defined in the Code).

“Inventory Reserves” means, as of any date of determination, (a) Landlord Reserves, and (b) those reserves that Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.1(c), to establish and maintain (including reserves for slow moving Inventory, Inventory with no value, Inventory shrinkage and for deferred manufacturing costs) with respect to Eligible Inventory or the Maximum Revolver Amount.

SCHEDULE 1.1

Page 25

“Investment” means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding (a) commission, travel, and similar advances to officers, directors, agents and employees of and consultants to such Person made in the ordinary course of business, and (b) *bona fide* accounts receivable arising in the ordinary course of business), or acquisitions of Indebtedness, Equity Interests, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustment for increases or decreases in value, or write-ups, write-downs, or write-offs with respect to such Investment.

“IRC” means the Internal Revenue Code of 1986, as in effect from time to time.

“ISP” means, with respect to any Letter of Credit, the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any subsequent revision thereof adopted by the International Chamber of Commerce on the date such Letter of Credit is issued.

“IsoTis Acquisition” means any Acquisition by IsoTis International (or effected by a CFC owned directly or indirectly by Parent) of Borrower on or after the Closing Date so long as:

(a) no Default or Event of Default shall have occurred and be continuing, and

(b) (i) to the extent Borrowers have provided Agent with written confirmation, supported by reasonably detailed calculations, that on a *pro forma* basis, Borrowers would have been in compliance with the Fixed Charge Coverage Ratio of at least 1.10:1.00 for the most recent twelve-month period then ended, Borrowers shall have Total Liquidity of at least \$12,500,000 consisting of Excess Availability of at least \$3,500,000, and (ii) to the extent Borrowers have not provided to Agent such evidence of compliance on a *pro forma* basis with the Fixed Charge Coverage Ratio of at least 1.10:1.00 for the most recent twelve-month period then ended, Borrowers shall have Total Liquidity of at least \$13,500,000 consisting of Excess Availability of at least \$3,500,000.

“IsoTis International” means IsoTis International SARL, a limited liability company organized under the laws of Switzerland (formerly known as IsoTis International SA, a limited liability company organized under laws of Switzerland), together with its successors and assigns.

“Issuer Document” means, with respect to any Letter of Credit, a letter of credit application, a letter of credit agreement, or any other document, agreement or instrument entered into (or to be entered into) by a Borrower in favor of Issuing Bank and relating to such Letter of Credit.

SCHEDULE 1.1

Page 26

“Issuing Bank” means Wells Fargo or any other Lender that, at the request of Borrowers and with the consent of Agent, agrees, in such Lender’s sole discretion, to become an Issuing Bank for the purpose of issuing Letters of Credit pursuant to Section 2.11 of the Agreement, and Issuing Bank shall be a Lender.

“knowledge” means, with respect to any Loan Party, the actual knowledge of an executive officer, as defined in Rule 16a-1(f) of the Securities Exchange Act of 1934, of such Loan Party.

“Landlord Reserve” means, as to each location at which a Borrower has Inventory (other than Inventory on consignment) or books and records located and as to which a Collateral Access Agreement has not been received by Agent, a reserve in an amount equal to the greater of (a) the number of months’ rent for which the landlord will have, under applicable law, a Lien in the Inventory of such Borrower to secure the payment of rent or other amounts under the lease relative to such location, or (b) 3 months’ rent under the lease relative to such location.

“Lender” has the meaning set forth in the preamble to the Agreement, shall include Issuing Bank and the Swing Lender, and shall also include any other Person made a party to the Agreement pursuant to the provisions of Section 13.1 of the Agreement and “Lenders” means each of the Lenders or any one or more of them.

“Lender Group” means each of the Lenders (including Issuing Bank and the Swing Lender) and Agent, or any one or more of them.

“Lender Group Expenses” means all (a) costs or expenses (including taxes and insurance premiums) required to be paid by Parent, any Borrower or any of their Subsidiaries under any of the Loan Documents that are paid, advanced, or incurred by the Lender Group, (b) documented out-of-pocket fees or charges paid or incurred by Agent in connection with the Lender Group’s transactions with Parent, each Borrower and each of their Subsidiaries under any of the Loan Documents, including, photocopying, notarization, couriers and messengers, telecommunication, public record searches, filing fees, recording fees, publication, real estate surveys, real estate title policies and endorsements, and environmental audits, (c) Agent’s customary fees and charges imposed or incurred in connection with any background checks or OF AC/PEP searches related to Parent, any Borrower or any of their Subsidiaries, (d) Agent’s customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of any Borrower (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith, (e) customary charges imposed or incurred by Agent resulting from the dishonor of checks payable by or to any Loan Party, (f) reasonable documented out-of-pocket costs and expenses paid or incurred by the Lender Group to correct any default or enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping,

SCHEDULE 1.1

Page 27

selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (g) field examination, appraisal, and valuation fees and expenses of Agent related to any field examinations, appraisals, or valuation to the extent of the fees and charges (and up to the amount of any limitation) provided in Section 2.10 of the Agreement, (h) Agent's reasonable costs and expenses (including reasonable documented attorneys' fees and expenses) relative to third party claims or any other lawsuit or adverse proceeding paid or incurred, whether in enforcing or defending the Loan Documents or otherwise in connection with the transactions contemplated by the Loan Documents, Agent's Liens in and to the Collateral, or the Lender Group's relationship with Parent, any Borrower or any of their Subsidiaries, (i) Agent's reasonable documented costs and expenses (including reasonable documented attorneys' fees and due diligence expenses) incurred in advising, structuring, drafting, reviewing, administering (including travel, meals, and lodging), syndicating (including reasonable costs and expenses relative to CUSIP, DXSyndicate™, SyndTrak or other communication costs incurred in connection with a syndication of the loan facilities), or amending, waiving, or modifying the Loan Documents, and (j) Agent's and each Lender's reasonable documented costs and expenses (including reasonable documented attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning Parent, any Borrower or any of their Subsidiaries or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether a lawsuit or other adverse proceeding is brought, or in taking any enforcement action or any Remedial Action with respect to the Collateral.

"Lender Group Representatives" has the meaning specified therefor in Section 17.9 of the Agreement.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, officers, directors, employees, attorneys, and agents.

"Letter of Credit" means a letter of credit (as that term is defined in the Code) issued by Issuing Bank.

"Letter of Credit Collateralization" means either (a) providing cash collateral (pursuant to documentation reasonably satisfactory to Agent, including provisions that specify that the Letter of Credit Fees and all commissions, fees, charges and expenses provided for in Section 2.11(k) of the Agreement (including any fronting fees) will continue to accrue while the Letters of Credit are outstanding) to be held by Agent for the benefit of the Revolving Lenders in an amount equal to 105% of the then existing Letter of Credit Usage, (b) delivering to Agent documentation executed by all beneficiaries under the Letters of Credit, in form and substance reasonably satisfactory to Agent and Issuing Bank, terminating all of such beneficiaries' rights under the Letters of Credit, or

SCHEDULE 1.1

Page 28

(c) providing Agent with a standby letter of credit, in form and substance reasonably satisfactory to Agent, from a commercial bank acceptable to Agent (in its sole discretion) in an amount equal to 105% of the then existing Letter of Credit Usage (it being understood that the Letter of Credit Fee and all fronting fees set forth in the Agreement will continue to accrue while the Letters of Credit are outstanding and that any such fees that accrue must be an amount that can be drawn under any such standby letter of credit).

“Letter of Credit Disbursement” means a payment made by Issuing Bank pursuant to a Letter of Credit.

“Letter of Credit Exposure” means, as of any date of determination with respect to any Lender, such Lender’s Pro Rata Share of the Letter of Credit Usage on such date.

“Letter of Credit Fee” has the meaning specified therefor in Section 2.6(b) of the Agreement.

“Letter of Credit Indemnified Costs” has the meaning specified therefor in Section 2.11(f) of the Agreement.

“Letter of Credit Related Person” has the meaning specified therefor in Section 2.11(f) of the Agreement.

“Letter of Credit Usage” means, as of any date of determination, the aggregate undrawn amount of all outstanding Letters of Credit.

“LIBOR Deadline” has the meaning specified therefor in Section 2.12(b)(i) of the Agreement.

“LIBOR Notice” means a written notice in the form of Exhibit L-1 to the Agreement.

“LIBOR Option” has the meaning specified therefor in Section 2.12(a) of the Agreement.

“LIBOR Rate” means the rate per annum as reported on Reuters Screen LIBOR01 Page (or any successor page) two (2) Business Days prior to the commencement of the requested Interest Period, for a term, and in an amount, comparable to the Interest Period and the amount of the LIBOR Rate Loan requested (whether as an initial LIBOR Rate Loan or as a continuation of a LIBOR Rate Loan or as a conversion of a Base Rate Loan to a LIBOR Rate Loan) by Borrowers in accordance with the Agreement (and, if any such rate is below zero, the LIBOR Rate shall be deemed to be zero), which determination shall be made by Agent and shall be conclusive in the absence of manifest error.

“LIBOR Rate Loan” means each portion of a Revolving Loan that bears interest at a rate determined by reference to the LIBOR Rate.

SCHEDULE 1.1

Page 29

“LIBOR Rate Margin” has the meaning set forth in the definition of Applicable Margin.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

“Loan” shall mean any, and “Loans” shall mean the collective reference to, Revolving Loan, Swing Loan or Extraordinary Advance made (or to be made) hereunder.

“Loan Account” has the meaning specified therefor in Section 2.9 of the Agreement.

“Loan Documents” means the Agreement, the Control Agreements, the Intellectual Property Security Agreements, any Borrowing Base Certificate, the Fee Letter, the Guaranty and Security Agreement, the Intercompany Subordination Agreement, any Issuer Documents, the Letters of Credit, the Mortgages, any license or sublicense agreement granted in favor of Agent, any note or notes executed by Borrowers in connection with the Agreement and payable to any member of the Lender Group, and any other instrument or agreement entered into, now or in the future, by Parent, any Borrower or any of their Subsidiaries and any member of the Lender Group in connection with the Agreement.

“Loan Party” means Parent, any Borrower or any Guarantor.

“Margin Stock” as defined in Regulation U of the Board of Governors as in effect from time to time.

“Material Adverse Effect” means (a) a material adverse effect in the business, operations, results of operations, assets, liabilities or financial condition of Parent, Borrowers and their Subsidiaries, taken as a whole, (b) a material impairment of Parent’s, Borrowers’ and their Subsidiaries’ ability to perform their obligations under the Loan Documents to which they are parties or of the Lender Group’s ability to enforce the Obligations or realize upon the Collateral (other than as a result of an action taken or not taken that is solely in the control of Agent or the Lenders), or (c) a material impairment of the enforceability or priority of Agent’s Liens with respect to all or a material portion of the Collateral.

“Material Contract” means, with respect to any Person, agreements and contracts required to be disclosed with respect to such Person under Item 15 of Form 10-K promulgated under the Exchange Act, as amended, including the Transition Agreements and those set forth on Item B.10 of Exhibit P-1.

SCHEDULE 1.1

Page 30

“Maturity Date” means December 24, 2018; provided that if (a) Agent receives Borrowers written request by a date not later than October 24, 2018 that Borrowers would like to exercise a one-time one-year extension and no Default or Event of Default exists on such date and (b) Agent shall have received an extension fee in an amount equal to \$45,000 on or prior to December 24, 2018 (which such extension fee shall be deemed fully earned and nonrefundable on such date), then “Maturity Date” means December 24, 2019.

“Maximum Revolver Amount” means \$30,000,000.

“Measurement Period” means, as of any date of determination, for the last day of the fiscal month most recently ended (i) October 31, 2015, the trailing four-month period (multiplied by 3), (ii) November 30, 2015, the trailing five-month period (multiplied by 12/5), (iii) December 31, 2015, the trailing six-month period (multiplied by 2), (v) January 30, 2016, the trailing seven-month period (multiplied by 12/7), (vi) February 28, 2016, the trailing eight-month period (multiplied by 1.5), (vii) March 31, 2016, the trailing nine-month period (multiplied by 4/3), (viii) April 30, 2016, the trailing ten-month period (multiplied by 1.2), (ix) May 30, 2016, the trailing eleven-month period (multiplied by 12/11), and (x) June 30, 2016 and each fiscal month thereafter, the trailing-twelve month period.

“Medicaid” means, collectively, the healthcare assistance program established by Title XIX of the Social Security Act (42 U.S.C. § § 1396 et seq.) and any statutes succeeding thereto, and all laws, rules, regulations, manuals, orders, guidelines or requirements (whether or not having the force of law) pertaining to such program, including all state statutes and plans for medical assistance enacted in connection with such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

“Medicare” means, collectively, the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 U.S.C. § § 1395 et seq.) and any statutes succeeding thereto, and all laws, rules, regulations, manuals, orders, guidelines or requirements (whether or not having the force of law) pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

“Moody’s” has the meaning specified therefor in the definition of Cash Equivalents.

“Mortgages” means, individually and collectively, one or more mortgages, deeds of trust, or deeds to secure debt, executed and delivered by Parent or one of its Subsidiaries in favor of Agent, in form and substance reasonably satisfactory to Agent, that encumber the Real Property Collateral.

“Net Recovery Percentage” means, as of any date of determination, the percentage of the book value of Borrowers’ Inventory that is estimated to be recoverable in an orderly liquidation of such Inventory net of all associated costs and expenses of such liquidation, such percentage to be

SCHEDULE 1.1

Page 31

determined as to each category of Inventory and to be as specified in the most recent appraisal (prepared based on reasonable assumptions and pursuant to customary instructions) received by Agent from an appraisal company selected by Agent.

“Non-Consenting Lender” has the meaning specified therefor in Section 14.2(a) of the Agreement.

“Non-Defaulting Lender” means each Lender other than a Defaulting Lender.

“Non-Government Receivable” means an Account that is not a Government Receivable.

“Non-Government Receivables Lockbox Account” means a Deposit Account of the Borrower that is used exclusively for the receipt of Collections of Accounts that are not Government Receivables.

“Obligations” means (a) all loans (including the Revolving Loans (inclusive of Extraordinary Advances and Swing Loans)), debts, principal, interest (including any interest that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), reimbursement or indemnification obligations with respect to Letters of Credit (irrespective of whether contingent), premiums, liabilities (including all amounts charged to the Loan Account pursuant to the Agreement), obligations (including indemnification obligations), fees (including the fees provided for in the Fee Letter), Lender Group Expenses (including any fees or expenses that accrue after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), guaranties, and all covenants and duties of any other kind and description owing by any Loan Party arising out of, under, pursuant to, in connection with, or evidenced by the Agreement or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that Borrowers are required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents, and (b) all Bank Product Obligations. Without limiting the generality of the foregoing, the Obligations of Borrowers under the Loan Documents include the obligation to pay (i) the principal of the Revolving Loans, (ii) interest accrued on the Revolving Loans, (iii) the amount necessary to reimburse Issuing Bank for amounts paid or payable pursuant to Letters of Credit, (iv) Letter of Credit commissions, fees (including fronting fees) and charges, (v) Lender Group Expenses, (vi) fees payable under the Agreement or any of the other Loan Documents, and (vii) indemnities and other amounts payable by any Loan Party under any Loan Document. Any reference in the Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions,

SCHEDULE 1.1

Page 32

modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

“OFAC” means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Originating Lender” has the meaning specified therefor in Section 13.1(e) of the Agreement.

“Overadvance” means, as of any date of determination, that the Revolver Usage is greater than any of the limitations set forth in Section 2.1 or Section 2.11.

“Parent” has the meaning specified therefor in the preamble to the Agreement.

“Participant” has the meaning specified therefor in Section 13.1(e) of the Agreement.

“Participant Register” has the meaning set forth in Section 13.1(i) of the Agreement.

“Patent License” means, with respect to any Person, any license of patents or patent rights to a Borrower permitting such Borrower to use such patents or patent rights in connection with the sale and distribution of any Inventory.

“Patent Security Agreement” has the meaning specified therefor in the Guaranty and Security Agreement.

“Patriot Act” has the meaning specified therefor in Section 4.13 of the Agreement.

“Perfection Certificate” means a certificate in the form of Exhibit P-1 to the Agreement, as amended from time to time in accordance with this Agreement.

“Permits” means, with respect to any Person, any permit, approval, clearance, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its Property or products or to which such Person or any of its Property or products is subject, including all Registrations and all Health Care Permits.

“Permitted Acquisition” means any Acquisition (other than an IsoTis Acquisition) on or after the Closing Date so long as:

(a) no Default or Event of Default shall have occurred and be continuing or would result from the consummation of the proposed Acquisition and the proposed Acquisition is consensual,

SCHEDULE 1.1

Page 33

(b) no Indebtedness will be incurred, assumed, or would exist with respect to Parent, any Borrower or any of their Subsidiaries as a result of such Acquisition, other than Permitted Indebtedness and no Liens will be incurred, assumed, or would exist with respect to the assets of Parent, any Borrower or their Subsidiaries as a result of such Acquisition other than Permitted Liens,

(c) (i) to the extent Borrowers have provided Agent with written confirmation, supported by reasonably detailed calculations, that on a *pro forma* basis (including *pro forma* adjustments arising out of events which are directly attributable to such proposed Acquisition, are factually supportable, and are expected to have a continuing impact, in each case, determined as if the combination had been accomplished at the beginning of the relevant period; such eliminations and inclusions to be mutually and reasonably agreed upon by Parent and Agent) created by adding the historical combined financial statements of Parent (including the combined financial statements of any other Person or assets that were the subject of a prior Permitted Acquisition during the relevant period) to the historical consolidated financial statements of the Person to be acquired (or the historical financial statements related to the assets to be acquired) pursuant to the proposed Acquisition, Parent, Borrowers and their Subsidiaries (x) would have been in compliance with the Fixed Charge Coverage Ratio of at least 1.10:1.00 for the twelve-month period ended immediately prior to the proposed date of consummation of such proposed Acquisition, and (y) are projected to be in compliance with the Fixed Charge Coverage Ratio of at least 1.10:1.00 for the twelve-month period ended one year after the proposed date of consummation of such proposed Acquisition, Borrowers shall have Total Liquidity of at least \$7,500,000 consisting of Excess Availability of at least \$3,500,000 immediately after giving effect to the consummation of the proposed Acquisition, and (ii) to the extent Borrowers have not provided to Agent such evidence of compliance on a *pro forma* basis with the Fixed Charge Coverage Ratio of at least 1.10:1.00, Borrowers shall have Total Liquidity of at least \$12,500,000 consisting of Excess Availability of at least \$3,500,000 immediately after giving effect to the consummation of the proposed Acquisition,

(d) at any such time during the continuance of a Covenant Testing Period, (i) Parent, Borrowers and their Subsidiaries on a *pro forma* basis (as set forth above) (x) would have been in compliance with the Fixed Charge Coverage Ratio of at least 1.10:1.00 for the twelve-month period ended immediately prior to the proposed date of consummation of such proposed Acquisition, and (y) are projected to be in compliance with the Fixed Charge Coverage Ratio of at least 1.10:1.00 for the twelve-month period ended one year after the proposed date of consummation of such proposed Acquisition, and (ii) Borrowers shall have Total Liquidity of at least \$7,500,000 consisting of Excess Availability of at least \$5,000,000 immediately after giving effect to the consummation of the proposed Acquisition,

(e) Borrowers have provided Agent with its due diligence package relative to the proposed Acquisition at least fifteen (15) Business Days prior to the anticipated closing date of the proposed Acquisition, including forecasted balance sheets, profit and loss statements, and cash flow

SCHEDULE 1.1

statements of the Person or assets to be acquired, all prepared on a basis consistent with such Person's (or assets') historical financial statements, together with appropriate supporting details and a statement of underlying assumptions for the 1 year period following the date of the proposed Acquisition, on a quarter by quarter basis), in form and substance (including as to scope and underlying assumptions) reasonably satisfactory to Agent,

(f) (A) the assets being acquired or the Person whose Equity Interests are being acquired either have positive EBITDA or negative EBITDA of no less than \$10,000,000 during the 12 consecutive month period most recently concluded prior to the date of the proposed Acquisition and (B) negative EBITDA of such assets or such Person whose Equity Interests are being acquired is projected to be no less than \$5,000,000 for the twelve-month period ended one year after the proposed date of consummation, provided however,

(i) if negative EBITDA is projected to be less than \$1,000,000, but no less than \$2,500,000 for the twelve-month period ended one year after the proposed date of consummation of such proposed Acquisition, Borrowers shall have Total Liquidity of at least \$11,000,000 consisting of Excess Availability of at least \$3,500,000 immediately after giving effect to the consummation of the proposed Acquisition;

(ii) If negative EBITDA is projected to be less than \$2,500,000 but no less than \$5,000,000 for the twelve-month period ended one year after the proposed date of consummation of such proposed Acquisition, Borrowers shall have Total Liquidity of at least \$20,000,000 consisting of Excess Availability of at least \$5,000,000 immediately after giving effect to the consummation of the proposed Acquisition;

(g) Borrowers have provided Agent with written notice of the proposed Acquisition at least 15 Business Days prior to the anticipated closing date of the proposed Acquisition and, not later than 5 Business Days prior to the anticipated closing date of the proposed Acquisition, copies of the acquisition agreement and other material documents relative to the proposed Acquisition, together with all information and other diligence as Agent shall reasonably request, including financial information, regulatory information and copies of Patent Licenses being acquired or granted,

(h) the assets being acquired (other than a *de minimis* amount of assets in relation to Parent's, Borrowers' and their Subsidiaries' total assets), or the Person whose Equity Interests are being acquired, are useful in or engaged in, as applicable, the business of Parent, Borrowers and their Subsidiaries or a business reasonably related thereto, and

(i) the subject assets or Equity Interests, as applicable, are being acquired directly by Parent, a Borrower or one of their Subsidiaries that is a Loan Party (or a Person which becomes a Loan Party on or before the date of the acquisition) or is not required to become a Loan Party under

SCHEDULE 1.1

Page 35

Section 5.11 (other than in connection with an Iso Tis Acquisition), and, in connection therewith, the applicable Loan Party shall have complied with Section 5.11 or 5.12 of the Agreement, to the extent applicable, of the Agreement and in the case of the acquisition of Equity Interests the acquired Person which becomes a Loan Party pursuant to Section 5.11 shall agree to the terms of Section 2.15.

“Permitted Discretion” means a determination made in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

“Permitted Dispositions” means:

(a) sales, abandonment, or other dispositions of Equipment that is substantially worn, damaged, or obsolete or no longer used or useful in the ordinary course of business and leases or subleases of Real Property not useful in the conduct of the business of Parent, Borrowers and their Subsidiaries,

(b) sales of Inventory, equipment, real property, contract rights, or other assets to buyers in the ordinary course of business and consistent with past practices,

(c) the use or transfer of cash or Cash Equivalents in a manner that is not prohibited by the terms of the Agreement or the other Loan Documents,

(d) the licensing of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,

(e) the granting of Permitted Liens,

(f) the sale or discount, in each case without recourse, of accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof,

(g) any involuntary loss, damage or destruction of property,

(h) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property,

(i) the leasing or subleasing of assets of Parent, any Borrower or any of their Subsidiaries in the ordinary course of business,

(j) the sale or issuance of Equity Interests (other than Disqualified Equity Interests) of Parent,

(k) (i) the lapse of registered patents, trademarks, copyrights and other intellectual property of Parent, any Borrower or any of their Subsidiaries to the extent not economically desirable in the conduct of its business or (ii) the abandonment of patents, trademarks, copyrights, or other

SCHEDULE 1.1

Page 36

intellectual property rights (and applications therefor) in the ordinary course of business so long as (in each case under clauses (i) and (ii)), (A) with respect to copyrights, such copyrights are not material revenue generating copyrights, and (B) such lapse is not materially adverse to the interests of the Lender Group,

(l) [intentionally omitted],

(m) Issuances of directors' shares of CFCs if required by applicable law,

(n) the making of Permitted Investments that are expressly permitted to be made pursuant to the Agreement,

(o) so long as no Event of Default has occurred and is continuing or would immediately result therefrom, transfers of assets from Parent or any of its direct or indirect Subsidiaries to any Borrower,

(p) dispositions of assets acquired by Parent, Borrowers and their Subsidiaries pursuant to a Permitted Acquisition so long as (i) the consideration received for the assets to be so disposed is at least equal to the fair market value of such assets, (ii) the assets to be so disposed are not necessary or economically desirable in connection with the business of Parent, Borrowers and their Subsidiaries, and (iii) the assets to be so disposed are readily identifiable as assets acquired pursuant to the subject Permitted Acquisition, and

(q) sales or dispositions of assets (other than Accounts, Inventory, Equity Interests of Subsidiaries of any Borrower or any of its Subsidiaries) not otherwise permitted in clauses (a) through (o) above so long as made at fair market value and the aggregate fair market value of all assets disposed of in fiscal year (including the proposed disposition) would not exceed \$500,000.

“Permitted Holder” means Richard E. Caruso, PhD, FMR LLC and Edward C. Johnson 3d and BlackRock, Inc.

“Permitted Indebtedness” means:

(a) Indebtedness evidenced by the Agreement or the other Loan Documents,

(b) Indebtedness set forth on Schedule 4.14 to the Agreement and any Refinancing Indebtedness in respect of such Indebtedness,

(c) Permitted Purchase Money Indebtedness and any Refinancing Indebtedness in respect of such Indebtedness,

SCHEDULE 1.1

(d) endorsement of instruments or other payment items for deposit in the ordinary course of business,

(e) Indebtedness consisting of (i) unsecured guarantees incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantee and similar obligations; (ii) unsecured guarantees arising with respect to customary indemnification obligations to purchasers in connection with Permitted Dispositions; and (iii) unsecured guarantees with respect to Indebtedness of Parent or any its Subsidiaries, to the extent that the Person that is obligated under such guaranty could have incurred such underlying Indebtedness,

(f) unsecured Indebtedness of Parent or any Borrower that is incurred on the date of the consummation of a Permitted Acquisition solely for the purpose of consummating such Permitted Acquisition so long as (i) no Event of Default has occurred and is continuing or would result therefrom, (ii) such unsecured Indebtedness is not incurred for working capital purposes, (iii) such unsecured Indebtedness does not mature prior to the date that is 12 months after the Maturity Date, (iv) such unsecured Indebtedness does not amortize until 12 months after the Maturity Date, (v) such unsecured Indebtedness does not provide for the payment of interest thereon in cash or Cash Equivalents prior to the date that is 12 months after the Maturity Date, and (vi) such Indebtedness is subordinated in right of payment to the Obligations on terms and conditions reasonably satisfactory to Agent,

(g) Acquired Indebtedness in an amount not to exceed \$250,000 outstanding at any one time,

(h) Indebtedness incurred in the ordinary course of business under performance, surety, statutory, or appeal bonds,

(i) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to Parent, any Borrower or any of their Subsidiaries, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year,

(j) the incurrence by Parent, any Borrower or any of their Subsidiaries of Indebtedness under Hedge Agreements that are incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with Parent's, Borrowers' and their Subsidiaries' operations and not for speculative purposes,

SCHEDULE 1.1

(k) Indebtedness incurred in the ordinary course of business in respect of credit cards, credit card processing services, debit cards, stored value cards, commercial cards (including so-called “purchase cards”, “procurement cards” or “p-cards”), or Cash Management Services,

(l) Permitted Intercompany Advances,

(m) intentionally omitted,

(n) contingent liabilities in respect of any indemnification obligation, adjustment of purchase price, non-compete, or similar obligation of any Loan Party incurred in connection with the consummation of one or more Permitted Acquisitions,

(o) Indebtedness composing Permitted Investments,

(p) unsecured Indebtedness incurred in respect of netting services, overdraft protection, and other like services, in each case, incurred in the ordinary course of business,

(q) intentionally omitted,

(r) unsecured Indebtedness of Parent, any Borrower or any of their Subsidiaries in respect of Earn-Outs owing to sellers of assets or Equity Interests to Parent, such Borrower or any such Subsidiary that is incurred in connection with the consummation of one or more Permitted Acquisitions so long as such unsecured Indebtedness is on terms and conditions reasonably acceptable to Agent,

(s) intentionally omitted,

(t) accrual of interest, accretion or amortization of original issue discount, or the payment of interest in kind, in each case, on Indebtedness that otherwise constitutes Permitted Indebtedness,

(u) Subordinated Indebtedness, the aggregate outstanding amount of which does not exceed \$500,000, and

(v) any other unsecured Indebtedness incurred by Parent or any Borrower or any of their Subsidiaries in an aggregate outstanding amount not to exceed \$250,000 at any one time.

“Permitted Intercompany Advances” means loans (a) made by a Borrower to another Borrower or to any direct or indirect Subsidiary of any Borrower that is a Loan Party, (b) made by any CFC to a Borrower, any direct or indirect Subsidiary of any Borrower, or to any Subsidiary of any CFC and (c) made by a Borrower to IsoTis International (or another CFC) consisting solely of

clearly identifiable proceeds received from an issuance of Equity Interests by such Borrower and exclusively used by IsoTis (or such CFC) for purposes of consummating IsoTis Acquisitions.

“Permitted Investments” means:

- (a) Investments in cash and Cash Equivalents,
- (b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business,
- (c) advances made in connection with purchases of goods or services or to customers or distributors in the ordinary course of business,
- (d) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries or other resolution of claims by a Loan Party or its Subsidiaries,
- (e) Investments owned by any Loan Party or any of its Subsidiaries on the Closing Date and set forth on Schedule P-1 to the Agreement,
- (f) guarantees permitted under the definition of Permitted Indebtedness,
- (g) Permitted Intercompany Advances,
- (h) Equity Interests or other securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to a Loan Party or its Subsidiaries (in bankruptcy of customers or suppliers or otherwise outside the ordinary course of business) or as security for any such Indebtedness or claims,
- (i) deposits of cash made in the ordinary course of business to secure performance of operating leases or other contracts,
- (j) loans and advances to employees, contractors, directors and officers of Parent or any Borrower in the ordinary course of business and in an aggregate amount not to exceed \$250,000 at any one time,
- (k) Permitted Acquisitions and Investments received or retained in connection with Permitted Dispositions,
- (l) Investments in the form of capital contributions and the acquisition of Equity Interests made by any Borrower in any other Borrower (other than capital contributions to or the acquisition of Equity Interests of Parent or any Borrower),

SCHEDULE 1.1

Page 40

(m) Investments resulting from entering into (i) Bank Product Agreements, or (ii) agreements relative to Indebtedness that are permitted under clause (j) of the definition of Permitted Indebtedness,

(n) equity Investments by any Loan Party in any Subsidiary of such Loan Party which is required by law to maintain a minimum net capital requirement or as may be otherwise required by applicable law,

(o) Investments held by a Person acquired in a Permitted Acquisition to the extent that such Investments were not made in contemplation of or in connection with such Permitted Acquisition and were in existence on the date of such Permitted Acquisition, and

(p) minority Investments in any Person consisting of Equity Interests made by Parent or a Borrower if (after giving effect to such Investments) (i) no Default or Event of Default shall have occurred and be continuing, (ii) to the extent (x) Borrowers have provided Agent with written confirmation, supported by reasonably detailed calculations, that on a pro forma basis, Borrowers would have been in compliance with the Fixed Charge Coverage Ratio of at least 1.10:1.00 for the most recent twelve-month period then ended, Borrowers shall have Total Liquidity of at least \$12,500,000 consisting of Excess Availability of at least \$3,500,000, and (y) Borrowers have not provided to Agent such evidence of compliance on a pro forma basis with the Fixed Charge Coverage Ratio of at least 1.10:1.00 for the most recent twelve-month period then ended, Borrowers shall have Total Liquidity of at least \$15,500,000 consisting of Excess Availability of at least \$3,500,000 and (iii) all such Investments shall not exceed \$10,000,000 in the aggregate in any fiscal year, and

(q) so long as no Event of Default has occurred and is continuing or would result therefrom, any other Investments in an aggregate amount not to exceed \$100,000 during the term of the Agreement.

“Permitted Liens” means

(a) Liens granted to, or for the benefit of, Agent to secure the Obligations,

(b) Liens for unpaid taxes, assessments, or other governmental charges or levies that either (i) are not yet delinquent, or (ii) do not have priority over Agent’s Liens and the underlying taxes, assessments, or charges or levies are the subject of Permitted Protests,

(c) judgment Liens arising solely as a result of the existence of judgments, orders, or awards that do not constitute an Event of Default under Section 8.3 of the Agreement,

(d) Liens set forth on Schedule P-2 to the Agreement; provided, that to qualify as a Permitted Lien, any such Lien described on Schedule P-2 to the Agreement shall only secure the Indebtedness that it secures on the Closing Date and any Refinancing Indebtedness in respect thereof,

SCHEDULE 1.1

- (e) the interests of lessors under operating leases and non-exclusive licensors under license agreements,
- (f) purchase money Liens or the interests of lessors under Capital Leases to the extent that such Liens or interests secure Permitted Purchase Money Indebtedness and so long as (i) such Lien attaches only to the asset purchased or acquired and the proceeds thereof, and (ii) such Lien only secures the Indebtedness that was incurred to acquire the asset purchased or acquired or any Refinancing Indebtedness in respect thereof,
- (g) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers, incurred in the ordinary course of business and not in connection with the borrowing of money, and which Liens either (i) are for sums not yet delinquent, or (ii) are the subject of Permitted Protests,
- (h) Liens on amounts deposited to secure Borrowers' and their Subsidiaries' obligations in connection with worker's compensation or other unemployment insurance,
- (i) Liens on amounts deposited to secure Borrowers' and their Subsidiaries' obligations in connection with the making or entering into of bids, tenders, or leases in the ordinary course of business and not in connection with the borrowing of money,
- (j) Liens on amounts deposited to secure Borrowers' and their Subsidiaries' reimbursement obligations with respect to surety or appeal bonds obtained in the ordinary course of business,
- (k) with respect to any Real Property, easements, rights of way, and zoning restrictions that do not materially interfere with or impair the use or operation thereof,
- (l) licenses of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,
- (m) Liens that are replacements of Permitted Liens to the extent that the original Indebtedness is the subject of permitted Refinancing Indebtedness and so long as the replacement Liens only encumber those assets that secured the original Indebtedness,
- (n) rights of setoff or bankers' liens upon deposits of funds in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such Deposit Accounts in the ordinary course of business,
- (o) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness,

SCHEDULE 1.1

(p) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods,

(q) Liens solely on any cash earnest money deposits made by Parent, any Borrower or any of their Subsidiaries in connection with any letter of intent or purchase agreement with respect to a Permitted Acquisition,

(r) Liens assumed by Parent or any Borrower in connection with a Permitted Acquisition that secure Acquired Indebtedness, and

(s) other Liens which do not secure Indebtedness for borrowed money or letters of credit and as to which the aggregate amount of the obligations secured thereby does not exceed \$250,000.

“Permitted Protest” means the right of Parent, any Borrower or any of their Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment, provided that (a) a reserve with respect to such obligation is established on Parent’s, such Borrower’s or such Subsidiary’s books and records in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by Parent, such Borrower or such Subsidiary, as applicable, in good faith (or is otherwise conducted in a commercially reasonable manner), and (c) Agent is reasonably satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Agent’s Liens.

“Permitted Purchase Money Indebtedness” means, as of any date of determination, Indebtedness (other than the Obligations, but including Capitalized Lease Obligations), incurred after the Closing Date and at the time of, or within 20 days after, the acquisition of any fixed assets for the purpose of financing all or any part of the acquisition cost thereof, in an aggregate principal amount outstanding at any one time not in excess of \$1,500,000.

“Person” means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

“Platform” has the meaning specified therefor in Section 17.9(c) of the Agreement.

“Primary Syndication” has the meaning ascribed thereto in the Fee Letter.

“Projections” means Parent’s and Borrowers’ forecasted (a) balance sheets, (b) profit and loss statements, and (c) cash flow statements, all prepared on a basis consistent with Parent’s and

Borrowers' historical financial statements, together with appropriate supporting details and a statement of underlying assumptions.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

“Pro Rata Share” means, as of any date of determination:

(a) with respect to a Lender's obligation to make all or a portion of the Revolving Loans, with respect to such Lender's right to receive payments of interest, fees, and principal with respect to the Revolving Loans, and with respect to all other computations and other matters related to the Revolver Commitments or the Revolving Loans, the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender by (ii) the aggregate Revolving Loan Exposure of all Lenders,

(b) with respect to a Lender's obligation to participate in the Letters of Credit, with respect to such Lender's obligation to reimburse Issuing Bank, and with respect to such Lender's right to receive payments of Letter of Credit Fees, and with respect to all other computations and other matters related to the Letters of Credit, the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender by (ii) the aggregate Revolving Loan Exposure of all Lenders; provided, that if all of the Revolving Loans have been repaid in full and all Revolver Commitments have been terminated, but Letters of Credit remain outstanding, Pro Rata Share under this clause shall be determined as if the Revolver Commitments had not been terminated and based upon the Revolver Commitments as they existed immediately prior to their termination, and

(c) [intentionally omitted]

(d) with respect to all other matters and for all other matters as to a particular Lender (including the indemnification obligations arising under Section 15.7 of the Agreement), the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender by (ii) the aggregate Revolving Loan Exposure of all Lenders, in any such case as the applicable percentage may be adjusted by assignments permitted pursuant to Section 13.1; provided, that if all of the Loans have been repaid in full, all Letters of Credit have been made the subject of Letter of Credit Collateralization, and all Commitments have been terminated, Pro Rata Share under this clause shall be determined as if the Revolving Loan Exposures had not been repaid, collateralized, or terminated and shall be based upon the Revolving Loan Exposures as they existed immediately prior to their repayment, collateralization, or termination.

“Protective Advances” has the meaning specified therefor in Section 2.3(d)(i) of the Agreement.

SCHEDULE 1.1

Page 44

“Public Health Laws” means all Requirement of Law relating to the procurement, development, clinical and non-clinical evaluation or investigation, product approval or clearance, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling, quality, reimbursement, sale, labeling, advertising, promotion, or postmarket requirements of any drug, medical device, food, dietary supplement, or other product (including, without limitation, any ingredient or component of, or accessory to, the foregoing products) subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. et seq.) and similar state or foreign laws, controlled substances laws, pharmacy laws, or consumer product safety laws.

“Public Lender” has the meaning specified therefor in Section 17.9(c) of the Agreement.

“Purchase Price” means, with respect to any Acquisition, an amount equal to the aggregate consideration, whether cash, property or securities (including the fair market value of any Equity Interests of Parent or any Borrower issued in connection with such Acquisition and including the maximum amount of Earn-Outs), paid or delivered by Parent or such Borrower in connection with such Acquisition (whether paid at the closing thereof or payable thereafter and whether fixed or contingent), but excluding therefrom (a) any cash of the seller and its Affiliates used to fund any portion of such consideration and (b) any cash or Cash Equivalents acquired in connection with such Acquisition.

“Qualified Cash” means, as of any date of determination, the amount of unrestricted (other than customary account agreements) cash and Cash Equivalents of Parent, Borrowers and their Subsidiaries that is in Deposit Accounts or in Securities Accounts, or any combination thereof, and which such Deposit Account or Securities Account is the subject of a Control Agreement and is maintained by a branch office of the bank or securities intermediary located within the United States.

“Qualified Equity Interest” means and refers to any Equity Interests issued by Parent (and not by one or more of its Subsidiaries) that is not a Disqualified Equity Interest.

“Real Property” means any estates or interests in real property now owned or hereafter acquired by Parent or any Borrower or one of their respective Subsidiaries and the improvements thereto.

“Real Property Collateral” means (a) the Real Property identified on Schedule R-1 to the Agreement and (b) any Real Property hereafter acquired by Parent or one of its Subsidiaries.

“Receivable Reserves” means, as of any date of determination, those reserves that Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.1(c), to establish and maintain (including reserves for rebates, discounts, warranty claims, and returns) with respect to the Eligible Accounts or the Maximum Revolver Amount.

SCHEDULE 1.1

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Reference Period” has the meaning set forth in the definition of EBITDA.

“Refinancing Indebtedness” means refinancings, renewals, or extensions of Indebtedness so long as:

(a) such refinancings, renewals, or extensions do not result in an increase in the principal amount of the Indebtedness so refinanced, renewed, or extended, other than by the amount of premiums paid thereon and the fees and expenses incurred in connection therewith and by the amount of unfunded commitments with respect thereto,

(b) such refinancings, renewals, or extensions do not result in a shortening of the average weighted maturity (measured as of the refinancing, renewal, or extension) of the Indebtedness so refinanced, renewed, or extended, nor are they on terms or conditions that, taken as a whole, are or could reasonably be expected to be materially adverse to the interests of the Lenders,

(c) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension must include subordination terms and conditions that are at least as favorable to the Lender Group as those that were applicable to the refinanced, renewed, or extended Indebtedness, and

(d) the Indebtedness that is refinanced, renewed, or extended is not recourse to any Person that is liable on account of the Obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended.

“Register” has the meaning set forth in Section 13.1(h) of the Agreement.

“Registered Loan” has the meaning set forth in Section 13.1(h) of the Agreement.

“Registrations” means all Permits and exemptions issued or allowed by a Regulatory Authority (including, without limitation, new drug applications, abbreviated new drug applications, biologics license applications, investigational new drug applications, over-the-counter drug monograph, device pre-market approval applications, device pre-market notifications, investigational device exemptions, product recertifications, manufacturing approvals, registrations and authorizations, CE Marks, pricing and reimbursement approvals, labeling approvals or their foreign equivalent, controlled substance registrations, and wholesale distributor permits) held by, or applied by contract to, any Loan Party or any of its Subsidiaries, that are required for the research, development, manufacture, distribution, marketing, storage, transportation, use and sale of any Property or products of any such Loan Party or any such Subsidiary.

SCHEDULE 1.1

Page 46

“Regulatory Action” means an administrative or regulatory action, proceeding, investigation or non-routine inspection, FDA Form 483 inspectional observation or other formal notice of serious deficiencies, warning letter, untitled letter, notice of violation letter, recall, alert, seizure, Section 305 notice or other similar communication, or consent decree issued by a Regulatory Authority.

“Regulatory Authority” means the FDA or any comparable Governmental Authority that is concerned with the safety, efficacy, reliability, manufacture, sale, advertising, promotion, reimbursement, import, export or marketing of medical products or drugs.

“Regulatory Matters” means, collectively, activities, Property and products that are subject to Public Health Laws.

“Related Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

“Remedial Action” means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

“Replacement Lender” has the meaning specified therefor in Section 2.13(b) of the Agreement.

“Report” has the meaning specified therefor in Section 15.16 of the Agreement.

“Required Lenders” means, at any time, Lenders having or holding more than 50% of the aggregate Revolving Loan Exposure of all Lenders; provided, that (i) the Revolving Loan Exposure of any Defaulting Lender shall be disregarded in the determination of the Required Lenders and (ii) at any time there are 2 or more Lenders, “Required Lenders” must include at least 2 Lenders (who are not Affiliates of one another).

“Requirement of Law” means, with respect to any Person, any law (statutory or common), ordinance, treaty, rule, regulation, order, policy, judgment, writ, injunction, decree, or other legal requirement or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject, including all Health Care Laws.

SCHEDULE 1.1

Page 47

“Reserves” means, as of any date of determination, those reserves (other than Receivable Reserves, Bank Product Reserves, and Inventory Reserves) that Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.1(c), to establish and maintain (including reserves with respect to (a) sums that Parent, any Borrower or any of their Subsidiaries are required to pay under any Section of the Agreement or any other Loan Document (such as taxes, assessments, settlements, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay, and (b) amounts owing by Parent, any Borrower or any of their Subsidiaries to any Person to the extent secured by a Lien on, or trust over, any of the Collateral (other than a Permitted Lien), which Lien or trust, in the Permitted Discretion of Agent likely would have a priority superior to the Agent’s Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for ad valorem, excise, sales, or other taxes where given priority under applicable law) in and to such item of the Collateral) with respect to the Borrowing Base or the Maximum Revolver Amount.

“Restricted Payment” means to (a) declare or pay any cash dividend or make any other cash payment or distribution, directly or indirectly, on account of Equity Interests issued by any Person or to the direct or indirect holders of Equity Interests issued by such Person in their capacity as such, or (b) purchase, redeem, make any sinking fund or similar payment, or otherwise acquire or retire for value any Equity Interests issued by any Person (other than purchase by Parent of unvested Equity Interests), (c) make any payment to retire, or to obtain the surrender of, any outstanding warrants, options, or other rights to acquire Equity Interests of any Person now or hereafter outstanding, (d) make, or cause or suffer to permit any Person to make, any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness and (e) declare or pay any dividend or make any other payment or distribution, directly or indirectly (whether in cash, securities or other property), to IsoTis International other than a Permitted Intercompany Advances pursuant to subsection (c) of the definition thereof.

“Revolver Commitment” means, with respect to each Revolving Lender, its Revolver Commitment, and, with respect to all Revolving Lenders, their Revolver Commitments, in each case as such Dollar amounts are set forth beside such Revolving Lender’s name under the applicable heading on Schedule C-1 to the Agreement or in the Assignment and Acceptance pursuant to which such Revolving Lender became a Revolving Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

“Revolver Usage” means, as of any date of determination, the sum of (a) the amount of outstanding Revolving Loans (inclusive of Swing Loans and Protective Advances), *plus* (b) the amount of the Letter of Credit Usage.

SCHEDULE 1.1

“Revolving Lender” means a Lender that has a Revolving Loan Commitment or that has an outstanding Revolving Loan.

“Revolving Loan Exposure” means, with respect to any Revolving Lender, as of any date of determination (a) prior to the termination of the Revolver Commitments, the amount of such Lender’s Revolver Commitment, and (b) after the termination of the Revolver Commitments, the aggregate outstanding principal amount of the Revolving Loans of such Lender.

“Revolving Loans” has the meaning specified therefor in Section 2.1(a) of the Agreement.

“Sanctioned Entity” means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OF AC.

“Sanctioned Person” means a person named on the list of Specially Designated Nationals maintained by OFAC.

“S&P” has the meaning specified therefor in the definition of Cash Equivalents.

“SEC” means the United States Securities and Exchange Commission and any successor thereto.

“Securities Account” means a securities account (as that term is defined in the Code).

“Securities Act” means the Securities Act of 1933, as amended from time to time, and any successor statute.

“Settlement” has the meaning specified therefor in Section 2.3(e)(i) of the Agreement.

“Settlement Date” has the meaning specified therefor in Section 2.3(e)(i) of the Agreement.

“Solvent” means, with respect to any Person as of any date of determination, that (a) at fair valuations, the sum of such Person’s debts (including contingent liabilities) is less than all of such Person’s assets, (b) such Person is not engaged or about to engage in a business or transaction for which the remaining assets of such Person are unreasonably small in relation to the business or transaction or for which the property remaining with such Person is an unreasonably small capital, and (c) such Person has not incurred and does not intend to incur, or reasonably believe that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise), and (d) such Person is “solvent” or not “insolvent”, as applicable within the meaning given those terms and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time

shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

“Standard Letter of Credit Practice” means, for Issuing Bank, any domestic or foreign law or letter of credit practices applicable in the city in which Issuing Bank issued the applicable Letter of Credit or, for its branch or correspondent, such laws and practices applicable in the city in which it has advised, confirmed or negotiated such Letter of Credit, as the case may be, in each case, (a) which letter of credit practices are of banks that regularly issue letters of credit in the particular city, and (b) which laws or letter of credit practices are required or permitted under ISP or UCP, as chosen in the applicable Letter of Credit.

“Subordinated Indebtedness” means any unsecured Indebtedness of Parent, any Borrower or any of their Subsidiaries incurred from time to time that is subordinated in right of payment to the Obligations and (a) that is not subject to scheduled amortization, redemption, sinking fund or similar payment and does not have a final maturity, in each case, on or before the date that is six months after the Maturity Date, (b) that does not include any financial covenants or any covenant or agreement that is more restrictive or onerous on any Loan Party in any material respect than any comparable covenant in the Agreement and is otherwise on terms and conditions reasonably acceptable to Agent, (c) shall be limited to cross-payment default and cross-acceleration to designated “senior debt” (including the Obligations”), and (d) the terms and conditions of the subordination are reasonably acceptable to Agent.

“Subsidiary” of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the Equity Interests having ordinary voting power to elect a majority of the Board of Directors of such corporation, partnership, limited liability company, or other entity.

“Supermajority Lenders” means, at any time, Lenders having or holding more than 66 2/3% of the sum of the aggregate Revolving Loan Exposure of all Lenders; provided, that (i) the Revolving Loan Exposure of any Defaulting Lender shall be disregarded in the determination of the Required Lenders and (ii) at any time there are 2 or more Lenders, “Supermajority Lenders” must include at least 2 Lenders (who are not Affiliates of one another).

“Supply Agreements” mean the collective reference to (i) the Integra Supply Agreements and (ii) DBM and OS Supply Agreement (SeaSpine as Supplier) effective as of July 1, 2015 by and between SeaSpine Orthopedics and Integra LifeSciences Corporation, a Delaware corporation, as each of the same may be amended, restated, modified or otherwise supplemented from time to time.

SCHEDULE 1.1

“Swing Lender” means Wells Fargo or any other Lender that, at the request of Borrowers and with the consent of Agent agrees, in such Lender’s sole discretion, to become the Swing Lender under Section 2.3(b) of the Agreement.

“Swing Loan” has the meaning specified therefor in Section 2.3(b) of the Agreement.

“Swing Loan Exposure” means, as of any date of determination with respect to any Lender, such Lender’s Pro Rata Share of the Swing Loans on such date.

“Taxes” means any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein, and all interest, penalties or similar liabilities with respect thereto.

“Tax Lender” has the meaning specified therefor in Section 14.2(a) of the Agreement.

“Third Party Payor” means (i) a commercial medical insurance company, health maintenance organization, professional provider organization or other third party payor that reimburses for good or services, (ii) a nonprofit medical insurance company (such as the Blue Cross, Blue Shield entities), and (iii) a Government Account Debtor making payments under a Government Reimbursement Program.

“Third Party Payor Arrangement” shall mean a written agreement or arrangement with a Third Party Payor pursuant to which the Third Party Payor pays all or a portion of the charges of any Borrower or its Subsidiaries for selling goods or providing services.

“Threshold Amount” means \$5,000,000 of Total Liquidity consisting of Excess Availability of at least \$3,500,000.

“Total Liquidity” means, on any date of determination, a measure of (a) Excess Availability and (b) Qualified Cash.

“Trademark Security Agreement” has the meaning specified therefor in the Guaranty and Security Agreement.

“Transfer” means, with respect to any Property, to sell, convey, transfer, assign, license, rent, lease, sublease, mortgage, transfer or otherwise dispose of any interest therein or to permit any Person to acquire any such interest.

“Transition Agreements” means the collective reference to (i) that certain Transition Services Agreement dated as of July 1, 2015 by and between Integra LifeSciences Holdings Corporation, a Delaware corporation, and Parent, (ii) that certain Separation and Distribution Agreement dated as of June 30, 2015 by and between Integra LifeSciences Holdings Corporation,

a Delaware corporation, and Parent, (iii) that certain Tax Matters Agreement dated as of July 1, 2015 by and between Integra LifeSciences Holdings Corporation, a Delaware corporation, and Parent, (iv) that certain Employee Matters Agreement dated as of July 1, 2015 by and between Integra LifeSciences Holdings Corporation, a Delaware corporation, and Parent, and (v) the Supply Agreements, as each of the same may be amended, restated, modified or otherwise supplemented from time to time.

“TRICARE” means, collectively, the program of medical benefits covering former and active members of the uniformed services and certain of their dependents, financed and administered by the United States Department of Defense, Health and Human Services and Transportation, and all laws, rules, regulations, manuals, orders, guidelines or requirements (whether or not having the force of law) pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

“UCP” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any subsequent revision thereof adopted by the International Chamber of Commerce on the date such Letter of Credit is issued.

“United States” means the United States of America.

“Unused Line Fee” has the meaning specified therefor in Section 2.10(b) of the Agreement.

“Voidable Transfer” has the meaning specified therefor in Section 17.8 of the Agreement.

“Wells Fargo” means Wells Fargo Bank, National Association, a national banking association.

SCHEDULE 1.1

Page 52

Subsidiaries of SeaSpine Holdings Corporation

Name of Subsidiary	State or Country of Incorporation or Organization
IsoTis International SARL	Switzerland
IsoTis OrthoBiologics, Inc.	Washington
IsoTis, Inc.	Delaware
SeaSpine, Inc.	Delaware
SeaSpine Sales LLC	Delaware
SeaSpine Orthopedics Corporation	Delaware
Theken Spine, LLC	Ohio

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-205334) of SeaSpine Holdings Corporation of our report dated March 16, 2016 relating to the financial statements and the financial statement schedule, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP
San Diego, California
March 16, 2016

Certification of Principal Executive Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Keith C. Valentine, certify that:

1. I have reviewed this annual report on Form 10-K of SeaSpine Holdings Corporation;

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;

2.

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;

3.

The registrant's other certifying officer 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)) for the registrant and we have:

4.

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;

(a)

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

(b)

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

(c)

The registrant's other certifying officer 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):

5.

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

(a)

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.

(b)

Date: March 16, 2016

/s/ Keith C. Valentine

Keith C. Valentine

Chief Executive Officer

**Certification of Principal Financial Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, John J. Bostjancic, certify that:

1. I have reviewed this annual report on Form 10-K of SeaSpine Holdings Corporation;

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;

- 2.

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;

- 3.

The registrant's other certifying officer 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)) for the registrant and we have:

- 4.

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;

- (a)

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

- (b)

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

- (c)

The registrant's other certifying officer 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):

- 5.

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

- (a)

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.

- (b)

Date: March 16, 2016

/s/ John J. Bostjancic

John J. Bostjancic

Chief Financial Officer

Certification of Principal Executive Officer
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

I, Keith C. Valentine, President and Chief Executive Officer of SeaSpine Holdings Corporation (the “Company”), hereby certify that, to my knowledge:

1. The Annual Report on Form 10-K of the Company for the year ended December 31, 2015 (the “Report”) fully complies with the requirement of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 16, 2016

/s/ Keith C. Valentine

Keith C. Valentine

Chief Executive Officer

Certification of Principal Financial Officer
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

I, John J. Bostjancic, Corporate Vice President and Chief Financial Officer of SeaSpine Holdings Corporation (the “Company”), hereby certify that, to my knowledge:

1. The Annual Report on Form 10-K of the Company for the year ended December 31, 2015 (the “Report”) fully complies with the requirement of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 16, 2016

/s/ John J. Bostjancic

John J. Bostjancic

Chief Financial Officer

