



Recovering hearts. Saving lives:

22 Cherry Hill  
 Danvers, MA 01923  
 Tel: 800-422-8666 Ext 2215  
 Fax: 978-762-4870  
[customerservice@abiomed.com](mailto:customerservice@abiomed.com)

<b>Account Name</b>	<b>Quotation</b>	
COUNTY OF SAN BERNARDINO ON BEHALF OF ARROWHEAD REGIONAL MEDICAL CENTER 400 N PEPPER AVE COLTON, CA 92324	<b>Document Number:</b>	Q-08603
	<b>Document Date:</b>	05/15/2020
	<b>Expires On:</b>	10/31/2020

**ALL PRODUCT IS NON-RETURNABLE**

<b>Terms of Payment:</b>	Net 45
<b>Terms of Delivery:</b>	FOB Destination: Prepay & Add

Subject to Abiomed Standard Terms and Conditions of Sale

Qty	Part #	Product Name	List Unit Price	Total List Price	Net Unit Price	Discount	Net Price
3	0048-0003	Impella CP Pump Set, US	\$27,000.00	\$81,000.00	\$25,000.00	\$6,000.00	\$75,000.00
2	0042-0040-US	Automated Impella Connect	\$65,000.00	\$130,000.00	\$0.00	\$130,000.00	\$0.00
2	0042-0020	Assembly, Cart, Impella Controller	\$2,500.00	\$5,000.00	\$0.00	\$5,000.00	\$0.00
2	0043-0003	Purge Cassette 5 Pack	\$1,000.00	\$2,000.00	\$0.00	\$2,000.00	\$0.00
						<b>SubTotal:</b>	\$75,000.00
						<b>Total:</b> Plus Tax where applicable	\$75,000.00

**SHIPPING CHARGE WILL APPLY. CHARGE WILL BE BASED ON SHIPPING METHOD REQUESTED.**

**IMMEDIATE OWNERSHIP TRANSFER OF AIC CONTROLLER UPON SHIPMENT.**

Where controllers are provided at no charge standard warranties do not apply. ABIOMED agrees to provide a 90 day limited warranty period. Following the 90 day period, all maintenance required will be the responsibility of ARROWHEAD REGIONAL MEDICAL CTR. Warranty commences upon shipment of controllers.

**DELIVERY** - Please allow 60 - 90 days for shipment of product upon order. Any delay in shipment upon order will be communicated to ARROWHEAD REGIONAL MEDICAL CTR. Abiomed will confirm with ARROWHEAD REGIONAL MEDICAL CTR before shipment of any orders on back order.

**Optional Service Contract available for purchase. Details provided under separate cover.**

Buyer and Abiomed agree to comply with all applicable safe harbor regulations and other legal requirements pertaining to fees, discounts and incentives granted which are reimbursable in whole or in part by a federal healthcare program.

**Offered by:** Christopher Leshner

**ABIOMED**

**CUSTOMER County of San Bernardino**

**Signature:** 

**Signature:** \_\_\_\_\_

**Print Name:** Brett Prince

**Print Name:** \_\_\_\_\_

**Email:** bprince@abiomed.com

**Email:** \_\_\_\_\_

**Title:** Director, Global Marketing & Sales Ops

**Title:** \_\_\_\_\_

**Date:** 9/17/2020

**Date:** \_\_\_\_\_

**THANK YOU FOR YOUR BUSINESS**

**ABIOMED, INC.****STANDARD TERMS AND CONDITIONS**

These Terms and Conditions attached to the quote ("Terms and Conditions") by and between ABIOMED, Inc. ("ABIOMED") and "Customer" (as defined in the attached quote) (each a "Party" and collectively, the "Parties") govern the purchase of products ("Product" or "Products") and/or the provision of services ("Services") from ABIOMED, and take precedence over Customer's supplemental or conflicting terms and conditions to which notice of objection is hereby given. Customer's acceptance of the Products and/or Services from ABIOMED will be deemed to constitute acceptance of these Terms and Conditions.

1. **PRICES.** All prices quoted for Products are subject to change, without notice, at any time prior to ABIOMED's acceptance of Customer's purchase order. If there is a delay in completion of shipment of said order, due to any change request by Customer or as a result of any delay on Customer's part in furnishing information required for completion of the order, the price agreed upon at the time of acceptance of the order is subject to change. All prices quoted are exclusive of upgrade charges for improvements, enhancements or new features to the Product. Prices are FOB Destination. Prices are exclusive of freight charges and any applicable taxes, including federal, state and local taxes, which will be paid directly by Customer. In the event ABIOMED pays or is required to collect or pay upon the sale of Products quoted any sales or other tax or duty, ABIOMED will add such amount (excluding ABIOMED's income or franchise tax) to the quoted price. If such amount is not included in the invoice for the Products, it may be invoiced separately later. Notwithstanding anything to the contrary, if Customer provides an IRS Form W-9 to ABIOMED documenting Customer's current and valid tax-exempt status, no taxes will apply for the period that status is maintained. In the event a Customer's tax exemption is rejected by the applicable jurisdiction or Customer is otherwise subject to taxation by the applicable jurisdiction, then Customer will promptly notify ABIOMED and Customer will directly pay such taxes.
2. **TERMS OF PAYMENT.** Unless otherwise agreed in writing by ABIOMED, terms of payment are: (i) full payment due forty-five (45) days from date of invoice; and (ii) usage and lease fees, if any, net 45 days from calendar month end.
3. **CREDIT.** All sales are subject to the approval of ABIOMED's Finance Department.
4. **DELIVERY.** If an estimate of time of shipment or delivery has been made in a proposal, it is to be understood that it is approximate only and will begin to run on the date of ABIOMED's acceptance of Customer's purchase order and receipt of all specifications; except that in the case of special items considered non-standard by ABIOMED, it will begin to run on the date which ABIOMED receives complete information necessary to design and manufacture.
5. **SERVICES.** Customer may order Services from or through ABIOMED from time to time pursuant to a separately negotiated and agreed service quote ("Service Quote"). The Service Quote will incorporate these Terms and Conditions, including all paragraphs of the Supplemental AIC Maintenance Service Terms contained herein.
6. **PRODUCT WARRANTIES; LIMITATION OF LIABILITY.** All Products sold are warranted to be free from defects in material and workmanship. ABIOMED warrants that, under normal use and service, all: (i) purchased capital equipment will remain free from defects for a period of one (1) year; and (ii) all free-of-charge capital equipment will remain free from defects for a period of ninety (90) days or such period as may be set forth in the applicable quotation. Such warranty periods may be amended and superseded as specified in a Service Quote. ABIOMED warrants that disposable Products will remain defect free up to the time of their expiration. All periods of warranty hereunder commence upon delivery of Product to Customer. When Products are in exchange for a multi-year Service Quote, the terms of such Service Quote will govern the warranty period. Unless specifically agreed otherwise, all maintenance will be the responsibility of Customer. **THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN OR IN THE SERVICE QUOTE, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SAID WARRANTIES WILL NOT BE ENLARGED OR OTHERWISE AFFECTED BY ABIOMED'S RENDERING OF TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THE PRODUCTS. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL LOSSES, DAMAGES, OR EXPENSES, DIRECTLY OR INDIRECTLY ARISING FROM THE SALE, HANDLING OR USE OF THE PRODUCTS, FROM ANY OTHER CAUSE RELATING THERETO, REGARDLESS OF WHETHER THE PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, AND EXCEPT FOR THIRD-PARTY INDEMNIFICATION CLAIMS FOR PERSONAL INJURY (INCLUDING DEATH) AND PROPERTY DAMAGE, ABIOMED'S LIABILITY FOR NON-CONFORMING PRODUCTS IS EXPRESSLY LIMITED TO REPAIR OR REPLACEMENT (IN THE FORM ORIGINALLY SHIPPED), OR AT ABIOMED'S ELECTION, TO THE REPAYMENT OR CREDITING OF CUSTOMER WITH, AN AMOUNT EQUAL TO THE PURCHASE PRICE OF SUCH PRODUCTS, WHETHER SUCH CLAIMS ARE FOR BREACH OF WARRANTY OR NEGLIGENCE. ANY REPLACED COMPONENTS OR PRODUCTS WILL BECOME PROPERTY OF ABIOMED. THIS WARRANTY WILL NOT APPLY TO ANY PRODUCTS THAT HAVE BEEN: (A) REPAIRED OR ALTERED OTHER THAN BY ABIOMED OR ITS AUTHORIZED SERVICE PERSONNEL; (B) SUBJECT TO PHYSICAL OR ELECTRICAL ABUSE OR MISUSE; OR (C) OPERATED IN ANY MANNER INCONSISTENT WITH THE APPLICABLE ABIOMED INSTRUCTIONS FOR USE. IF ABIOMED REASONABLY DETERMINES THAT A REPAIR OR REPLACEMENT CLAIM WAS NOT CAUSED BY ABIOMED OR ITS AUTHORIZED SERVICE PERSONNEL, CUSTOMER WILL PAY ABIOMED FOR ALL RELATED COSTS INCURRED BY ABIOMED. THIS WARRANTY IS NOT TRANSFERABLE WITHOUT THE EXPRESS WRITTEN CONSENT OF ABIOMED. EXTENDED PRODUCT WARRANTY MAY, AT ABIOMED'S OPTION, BE OFFERED FOR AN ADDITIONAL CHARGE, IN WHICH EVENT SEPARATE OR ADDITIONAL TERMS AND CONDITIONS MAY APPLY. THE LIMITATIONS OF LIABILITY HEREIN ONLY APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.**
7. **WARRANTY CLAIM PROCEDURES.** In no event will ABIOMED be liable for any claims unless written notice of the claim is received by ABIOMED within the following timeframes: for shortages in weight and count, fifteen (15) days after delivery; and for all other claims, thirty (30) days after discovery of defect. Customer will afford ABIOMED prompt and reasonable opportunity to inspect all Products for which a claim is made. If ABIOMED and Customer are unable to reach settlement of any claim relating to the Products, Customer may institute legal action against ABIOMED within four (4) years after such claim arises and thereafter all such claims will be barred notwithstanding any statutory period of limitation.
8. **RISK OF LOSS.** Unless otherwise mutually agreed by the parties, delivery will occur and risk of loss will pass to Customer upon delivery of the Products to Customer, and any claim for loss or damage in transit will be against the ABIOMED. Notwithstanding anything to the contrary in any purchase order, transportation will be at Customer's sole expense and freight will be prepaid and additional.

9. **GOVERNMENTAL AUTHORIZATIONS; EXPORT CONTROL LAWS.** Customer will be responsible for the timely obtaining of and payment for any required authorization, such as an Export License, Import License, Exchange Permit or any other governmental authorization, even though any such authorization may be applied for by ABIOMED. Customer and ABIOMED will cooperate in securing any required authorizations. ABIOMED will not be liable if any authorization is delayed, denied, revoked, restricted or not renewed, and Customer will not be relieved of its obligations to pay for purchased Products. All sales hereunder will at all times be subject to the export control laws and regulations of the U.S. Government and any amendments thereof. Customer agrees that it will not make any disposition, by way of trans-shipment, re-export, diversion or otherwise, except as said laws and regulations may expressly permit, or U.S. origin goods purchased from ABIOMED, other than to the ultimate country of destination specified on Customer's order and/or declared as the country of ultimate destination on ABIOMED's invoices

10. **SOFTWARE.** It is recognized that in the course of this transaction between Customer and ABIOMED, computer software may be delivered to Customer on a licensed basis in printed form, or in any of several possible machine-readable forms, including but not limited to magnetic tape or disk, paper tape, or a read-only memory (ROM) device. Such computer software is and will remain the sole property of ABIOMED. ABIOMED grants to Customer a limited, non-transferable, non-exclusive, royalty-free license to use the software in the operation of the Products purchased. Such software is valuable to ABIOMED and will be treated as proprietary information in accordance with the confidentiality provisions of paragraph 14 hereof. Except as expressly provided above, Customer will have no right to sell, assign, transfer, copy or sublicense the software

11. **U.S. GOVERNMENT CONTRACT CONDITIONS.** If Customer's purchase order contains a U.S. government contract number and covers Products to be used in the performance of said contract, those clauses of applicable U.S. government procurement regulations mandatorily required by federal statute to be included in U.S. subcontracts will be incorporated herein by this reference.

12. **INSPECTION OF RECORDS:** In accordance with Section 1861 (v) of the Social Security Act (42 U.S.C. Sec. 1395), as amended, ABIOMED agrees that in connection with any sale during a twelve (12) month period of \$10,000 or more to a Medicare provider that ABIOMED will make its books, documents and records available for verification of cost by the Comptroller General for a period of four (4) years following the completion of such sale.

13. **CONDITIONS OF PRODUCT SALES.** All Products are non-returnable. Any provision contained in Customer's order which is inconsistent with or in addition to these Terms and Conditions will not be binding upon ABIOMED unless ABIOMED expressly agrees in writing to such provision. Any quotation issued by ABIOMED is subject to these Terms and Conditions. No quotation will be valid unless in writing, and any quotation will expire thirty (30) days after issuance, unless otherwise specified on the quotation in writing by ABIOMED.

14. **INDEMNIFICATION FOR INFRINGEMENT.** ABIOMED will indemnify, defend, and hold harmless Customer and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any Product. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against Customer, or Customer receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, Customer will use reasonable efforts to notify ABIOMED promptly of such lawsuit, claim or election. However, Customer's failure to provide or delay in providing such notice will relieve ABIOMED of its obligations only if and to the extent that such delay or failure materially prejudices ABIOMED's ability to defend such lawsuit or claim. Customer will give ABIOMED sole control of the defense and settlement of such claim; provided that ABIOMED may not settle the claim or suit absent the written consent of Customer unless such settlement (a) includes a release of all claims pending against Customer, (b) contains no admission of liability or wrongdoing by Customer, and (c) imposes no obligations upon Customer other than an obligation to stop using the goods or services that are the subject of the claim. In the event that ABIOMED fails to or elects not to defend Customer against any claim for which Customer is entitled to indemnity by ABIOMED, then ABIOMED shall reimburse Customer for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from Customer.

If, in ABIOMED's opinion, any Product becomes, or is likely to become, the subject of a claim of infringement of Intellectual Property Rights, ABIOMED may, at its option: (i) procure for Customer the right to continue using the Product; (ii) replace or modify the Product to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of ABIOMED, Customer shall cease use of the Product upon written notice from ABIOMED, and ABIOMED shall provide Customer with a pro-rata refund of the unearned fees paid by Customer to ABIOMED for such Product.

15. **INSURANCE.** ABIOMED will maintain the following insurance coverage at the following minimum limits:

Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons.

Commercial/General Liability Insurance – General Liability Insurance covering all operations performed by or on behalf of ABIOMED providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include: Products and completed operations, property damage (including completed operations), Personal injury, Contractual liability, and a \$2,000,000 general aggregate limit.

All policies shall contain list Customer as certificate holder with respect to liabilities arising out of the performance of services hereunder. ABIOMED shall furnish Certificates of Insurance to the Customer at Customer's reasonable written request.

16. **CONFIDENTIAL INFORMATION.** All drawings, diagrams, specifications, software, devices and other confidential information furnished by ABIOMED relating to the use and service of Products are proprietary to ABIOMED. Such information has been developed at great expense and contains trade secrets of ABIOMED. Unless otherwise required to be disclosed by law, Customer may not reproduce or distribute such information except to Customer's employees and representatives who may use such information as part of their duties hereunder. All such information relating to the Products (except information that is or becomes part of the public domain or is disclosed pursuant to a judicial government action) will be received in confidence and Customer will exercise reasonable care to hold such information in confidence. ABIOMED understands that Customer is a public entity subject to, among other laws, decisions, rules and statutes, the Ralph M. Brown Act, the California Public Records Act, and the Sunshine Ordinance in its County Code and ABIOMED consents to disclosure of information and writings, including but not limited to these Terms and Conditions and any related Quote, to the extent required by applicable law; provided, however, nothing in these Terms and Conditions shall be construed as a waiver of any defenses or objections to, or notices of such disclosure accorded ABIOMED under applicable law. Prior to disclosing any written information that it deems to be trade secrets or contains trade secrets, ABIOMED shall to the extent practicable affix a watermark indicating that such information or document is "CONFIDENTIAL". Failure to mark the confidential information shall not be deemed to be a waiver, provided that the confidential information either by the nature of the information or in the form and manner transmitted is readily recognizable by a reasonable person to be confidential or proprietary.

17. **COMPLIANCE WITH LAWS:** ABIOMED warrants that it has complied with the Fair Labor Standards Act, as amended, the Social Security and Workers' Compensation Laws and all other applicable laws, codes, regulations, rules or orders. In particular, ABIOMED warrants that it is an equal opportunity employer.

18. **EXCLUDED PROVIDER.** ABIOMED hereby represents and warrants that it is not and at no time has been convicted of any criminal offense related to health care nor has been debarred, excluded, or otherwise ineligible for participation in any federal or state government health care program, including Medicare and Medicaid. Further, ABIOMED represents and warrants that no proceedings or investigations are currently pending or to ABIOMED's knowledge threatened by any federal or state agency seeking to exclude ABIOMED from such programs or to sanction ABIOMED for any violation of any rule or regulation of such programs.

19. **WAIVER.** The failure of either party at any time to require performance by the other party of any of its applicable obligations hereunder will in no way affect the full right to require such performance at any time thereafter. The waiver by either party thereto of any remedy with respect to a breach of any provision hereunder will not be taken as a waiver of a remedy with respect to any succeeding breach of such provision or any breach of other provisions.
20. **SEVERABILITY.** The parties agree that each provision contained herein will be treated as a separate and independent clause, and the unenforceability of any one clause will in no way impair the enforceability of any other clause. Moreover, if one or more of the provisions contained in these Terms and Conditions will for any reason be held to be overly broad as to scope, activity or subject so as to be unenforceable, such provision or provisions will be construed by the appropriate judicial body by limiting and reducing it or them, so as to be enforceable to the extent compatible with the applicable law.
21. **GOVERNING LAW.** These Terms and Conditions, any purchase orders, and the sale of Products and provision of Services hereunder will be governed and construed in accordance with the laws of the State of Delaware, without regard to conflicts of laws rules. ABIOMED and Customer specifically agree that any legal action brought relating to the sale of Products or provisions of Services hereunder will be brought and tried in the State of Delaware. All objections to venue are hereby waived by the parties.
22. **NOTICE.** All "notices" will be in writing, addressed to the appropriate party at the respective address set forth on the face of the respective agreement or any then-current address of which it has received notice, and delivered in person or by overnight mail or courier, or other means providing proof of delivery.
23. **ENTIRE AGREEMENT.** THESE TERMS AND CONDITIONS, INCLUDING THE SUPPLEMENTAL AIC MAINTENANCE SERVICE TERMS CONTAINED HEREIN, CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, AND SUPERSEDE ANY AND ALL ORAL STATEMENTS, WARRANTIES AND REPRESENTATIONS OF ANY NATURE. THESE TERMS AND CONDITIONS WILL PREVAIL IN THE EVENT OF A CONFLICT, DISCREPANCY, OR INCONSISTENCY BETWEEN THESE TERMS AND CONDITIONS AND ANY OTHER LEGAL TERMS, INCLUDING BUT NOT LIMITED TO PURCHASE ORDER OR INVOICE TERMS. ABIOMED EXPRESSLY REJECTS ANY ADDITIONAL OR INCONSISTENT LEGAL TERMS INCLUDED IN ANY PURCHASE ORDER OR INVOICE TERMS AND ABIOMED'S COMMENCEMENT OF SHIPMENT OF PRODUCTS OR PROVISION OF SERVICES WILL NOT BE DEEMED AN EFFECTIVE MODE OF ACCEPTANCE OF MODIFICATION OF THESE TERMS AND CONDITIONS.
24. **FORCE MAJEURE.** ABIOMED will be excused for performance and will not be liable for any delay or non-performance, including, but not limited to, delays to estimated shipping dates, which are caused by the occurrence of contingencies beyond its reasonable control including, without limitation, civil insurrection, war, sabotage, riot, judicial action, acts of government that interfere with performance, civil disobedience, failure or delay in public transportation, fire, strikes, labor disputes or stoppages, acts of God, flood, storm, unavailability of spare parts, shortages of fuel, energy or materials, the failure of suppliers or subcontractors to satisfactorily meet scheduled deliveries. None of these factors or causes will give rise to any liability on ABIOMED's part whatsoever, including for loss of use for any indirect or consequential damages.
25. **MODIFICATION.** These Terms and Conditions may not be modified except by written amendment executed by authorized representatives of both parties thereto
26. **ELECTRONIC TRANSFER OF FUNDS/ELECTRONIC DATA INTERCHANGE.** If Electronic Data Interchange ("EDI") capable, then Customer will process purchase orders through EDI including transaction sets: (i) 810 (invoice); (ii) 850 (purchase order); and (iii) 855 (purchase order acknowledgement)
27. **CREDENTIALING.** ABIOMED encourages Customers to adopt the ANSI/NEMA SC1-2019 American National Standard for Supplier Credentialing in Healthcare by the National Electrical Manufacturer Association's certified national standards and best practices to standardize the process of credentialing representatives, increasing accuracy and efficiency, eliminating waste, driving costs lower, ensuring access and mitigating risks to privacy information. The ANSI/NEMA standards are available at: [https://www.techstreet.com/nema/standards/ansi-nema-sc-1-2019?product\\_id=2039111](https://www.techstreet.com/nema/standards/ansi-nema-sc-1-2019?product_id=2039111).
28. **COUNTERPARTS.** The attached quote, including these Terms and Conditions, may be executed in one or more counterparts and each counterpart will be deemed an original. The parties shall be entitled to sign and transmit an electronic signature of the attached quote (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party who the signatory represents. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed quote upon request
29. **AUTHORITY.** Each person signing the attached quote, including these Terms and Conditions, represents and warrants to the other party that he or she has full power and authority, in the capacity indicated in the attached quote, to execute and deliver such quote and to bind the party on the behalf of which he or she is signing.

SUPPLEMENTAL  
AIC MAINTENANCE SERVICE TERMS

- A. **SUPPORT SERVICES.** All Services purchased by Customer will be subject to the terms of an executed Service Quote. ABIOMED's sole responsibility under such Service Quote is to repair or replace defective components of the Products that were subjected to normal wear and tear, and to provide preventative services as outlined within the Products' current applicable maintenance procedures. ABIOMED may use replacement parts and subassemblies to perform the Services, which may be new or repaired by ABIOMED or ABIOMED's original equipment manufacturer. SERVICE QUOTE COVERAGE WILL NOT APPLY TO ANY PRODUCTS THAT HAVE BEEN: (A) REPAIRED OR ALTERED OTHER THAN BY ABIOMED OR ITS AUTHORIZED SERVICE PERSONNEL; (B) SUBJECTED TO PHYSICAL OR ELECTRICAL ABUSE OR MISUSE; (C) OPERATED IN ANY MANNER INCONSISTENT WITH THE APPLICABLE ABIOMED INSTRUCTIONS FOR USE; OR (D) REMOVED FROM THE LOCATION SPECIFIED ON THE FACE HEREOF. IF ABIOMED DETERMINES THAT A REPAIR OR REPLACEMENT CLAIM WAS NOT CAUSED BY ABIOMED OR ITS AUTHORIZED SERVICE PERSONNEL, CUSTOMER WILL PAY ABIOMED FOR ALL RELATED COSTS INCURRED BY ABIOMED. THE SERVICE QUOTE IS NOT TRANSFERABLE WITHOUT THE EXPRESS WRITTEN CONSENT OF ABIOMED. Services required in connection with relocation of Products are not covered under a Service Quote.
- B. **REQUESTS FOR SERVICE.** All requests for Service will be made by telephone to ABIOMED at 978-646-1700 or 800-422-8666 ext. 2. ABIOMED will provide Services, both corrective and preventative, through its depot based mail-in program. ABIOMED will make a best effort to complete all Service requests within 48 hours of receipt of Products into ABIOMED's National Service Center. Packaging materials and round trip shipping will be provided to the Customer by ABIOMED free of charge. Using the materials and prepaid return shipping labels provided, Customer will be solely responsible for the packaging, return and receipt of Products. Any claim for loss or damage in transit will be against the carrier only. On-site Services are not covered under a Service Quote.
- C. **MODIFICATIONS TO PRODUCTS SERVICED.** ABIOMED is not obligated to modify or provide enhancements to existing Products as a result of any new Product developments, but ABIOMED may, in its sole discretion, make such additions or modifications to the Products to facilitate its performance of Services pursuant to a Service Quote.
- D. **SERVICE WARRANTY.** The Services will be performed: (i) in a diligent, professional and workmanlike manner in accordance with applicable industry standards; (ii) in accordance with these Terms and Conditions and the applicable purchase order; and (iii) by experienced and qualified personnel. As Customer's sole and exclusive remedy for any breach of the foregoing warranty, ABIOMED will promptly re-perform any Services that fail to meet this limited warranty.
- E. **CUSTOMER'S RESPONSIBILITIES.** Customer is solely responsible for the supervision and management of the use of Products, including without limitation providing all control and review techniques and other measures for detecting promptly, and minimizing the effects of, any errors, failures, or interruptions that may occur during use.
- F. **PROVISION OF LOANER SYSTEMS.** Pursuant to an executed Service Quote, and subject to availability, ABIOMED will provide a loaner system, if requested by the Customer, in cases where: (i) Products to be serviced are not available for clinical use as a result of a service-related issue; (ii) Product is removed from site for scheduled preventative maintenance; or (iii) Customer requests loaner for the purpose of backing up patients placed on support (non-service related issue). In the case of patient back up, ABIOMED will, subject to availability, provide a loaner system upon request once per year for up to a 5-day duration rental-free for each system covered under the Service Quote. Loaner systems are subject to availability and cannot be guaranteed. ABIOMED reserves the right to move the Products to be serviced to an outside location for service. Loaner systems provided to the Customer must be returned to ABIOMED within two (2) days of receiving Customer's own serviced Product back for clinical use or be subject to ABIOMED's prevailing rental rates.
- G. **PAYMENT PROVISIONS.** For the first year, or portion thereof, of the Period of Coverage (as defined in the Service Quote), the annual charge specified on the face of the Service Quote will be paid by Customer in full prior to the first day of the Period of Coverage. For all subsequent years, or portion thereof, said annual charge will be paid by Customer in full prior to the anniversary date of the first day of the Period of Coverage. Should full payment of said annual charge not be received by ABIOMED within forty-five (45) days after the required date, ABIOMED will have the right to terminate the Service Quote upon thirty (30) days written notice to Customer if the amount remains unpaid during the 30 day notice period. All other charges incurred by Customer hereunder will be invoiced by ABIOMED and Customer will pay all such invoices in full no later than forty-five (45) days after the date of the invoice.
- H. **LICENSES, PERMITS AND/OR CERTIFICATIONS.** ABIOMED shall ensure that it has all necessary licenses, permits, and/or certifications required by Federal, State, County, and municipal laws, ordinances, rules and regulations. ABIOMED shall maintain these licenses, permits, and/or certifications in effect for the duration of any Service Agreement between Customer and ABIOMED.
- I. **PRICES EXCLUSIVE OF TAXES.** The prices specified in a Service Quote are exclusive of all applicable foreign, federal, state and local taxes and duties, except for federal and state income taxes, and Customer will immediately reimburse ABIOMED for any amounts paid as a result of such taxes and duties. Notwithstanding anything to the contrary, if Customer provides an IRS Form W-9 to ABIOMED documenting Customer's current and valid tax-exempt status, no taxes will apply for the period that status is maintained.
- J. **INDEMNIFICATION.** ABIOMED and Customer will indemnify, defend and hold harmless the other party and its authorized officers, employees, agents, and volunteers from any and all third-party claims, actions, or demands for all damages and/or liability to the extent arising out of the negligent acts, errors or omissions of the indemnifying party and any of its employees, subcontractors, and agents and for any costs or expenses incurred by the indemnified party on account of any indemnification claim except where such indemnification is prohibited by law or to the extent arising out of the negligence of the indemnified party. If a credible claim, action or demand is made or threatened, including without limitation the filing of a lawsuit against the indemnified party, or the indemnified party receives a claim, action or demand, the indemnified party will use reasonable efforts to notify the indemnifying party promptly of such claim, action or demand. However, the indemnified party's failure to provide or delay in providing such notice will relieve the indemnifying party of its obligations only if and to the extent that such delay or failure materially prejudices the indemnifying party's ability to defend such claim, action or demand. The indemnified party will give the indemnifying party sole control of the defense and settlement of such claim; provided that the indemnifying party may not settle the claim or suit absent the written consent of the indemnified party unless such settlement (a) includes a release of all claims pending against the indemnified party, (b) contains no admission of liability or wrongdoing by the indemnified party, and (c) imposes no obligations upon the indemnifying party. In the event that the indemnifying party fails to or elects not to defend the indemnified party against any claim for which the indemnified party is entitled to indemnity by the indemnifying party, then the indemnifying party shall reimburse the indemnified party for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from the indemnified party.
- K. **ASSIGNMENT.** Except by operation of law, or acquisition or merger, or to a parent, affiliate or subsidiary, a Service Quote may not be assigned by any party without the prior written consent of the other party.
- L. **ABIOMED'S RIGHT OF INSPECTION.** ABIOMED reserves the right to inspect Products that are serviced prior to placement under a Service Quote, at cost to the Customer, should a period of thirty (30) days or more lapse from the previous Service Quote expiration or the original new Products warranty expiration.

M. TERMINATION. A Service Quote may be canceled by either party upon one-hundred eighty (180) days written notice for any reason. Either party may terminate a Service Quote without penalty upon written notice to the other, if the other party has breached a material provision thereof and has failed to cure such breach within thirty (30) days. ABIOMED will not be obligated to perform Services during any period in which a Customer payment is past due.