EXECUTION
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SUPPLY AGREEMENT

This Supply Agreement (this "**Agreement**") made as of April 19, 2019 (the "**Effective Date**") by and between Abiomed, Inc., a Delaware corporation having its principal place of business at 22 Cherry Hill Road, Danvers, MA 01923 ("**ABIOMED**"), and Opsens Inc., a Quebec corporation having its principal place of business at 750, du Parc-Technologique Boulevard, Quebec, Quebec, G1P 4S3, CANADA ("**Opsens**"). Capitalized terms used but not defined in the Preamble to this Agreement shall have the meanings defined in Section 1.

BACKGROUND

A. ABIOMED and Opsens are parties to a Supply Agreement dated as of January 25, 2010 (the "**Original Supply Agreement**"), as amended by the Amended and Restated Supply Agreement dated April 14, 2014 and further amended September 28, 2018 (the "**Restated Supply Agreement**"), which expired immediately prior to the Effective Date. The parties are also parties to a Co-Development Agreement dated as of January 25, 2010 (the "**Original Co-Development Agreement**") as amended by the Amended and Restated Co-Development Agreement dated April 14, 2014 and further amended September 28, 2018 (the "**Restated Co-Development Agreement**"). The Restated Co-Development Agreement remains in effect as of the Effective Date of this Agreement and provides for, among other things, a license to ABIOMED of Product technology sufficient to integrate the Products into certain medical devices commercialized by ABIOMED in the Field within the Territory and in the [redacted].

Description of field and territory

B. ABIOMED and Opsens wish to enter into this Agreement to set forth the terms under which Opsens will continue to supply Products to ABIOMED.

In view of the foregoing and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.**

1.1 **Certain Definitions.** As used in this Agreement, the following terms shall have the following meanings:

(i) "**Affiliate**" shall mean, as to any person, each person that is directly or indirectly controlling, controlled by or under common control with such person. For the purpose of this definition, "control" "controlling" "controlled" or the like shall mean the direct or indirect ownership of more than fifty percent (50%) of the outstanding shares or other voting rights of the subject person to elect directors.

(ii) "**CMDCAS**" shall mean the Canadian Medical Device Conformity Assessment Scheme.

(iii) The term "**complaint**" shall mean any written or electronic communication that alleges deficiencies related to the identity, quality, durability, reliability, safety, effectiveness or performance of a product or device after it is released for distribution in the marketplace.

(iv) **"Confidential Information"** shall mean all information and any tangible embodiments thereof provided by or on behalf of a Party to the other Party either in connection with the discussions and negotiations pertaining to this Agreement or in the course of performing this Agreement, including: Technology; research plans; designs and drawings; scientific, manufacturing, marketing and business plans; and financial and personnel matters relating to the disclosing Party or to its present or future devices, products, sales, suppliers, customers, employees, agents, investors or business but excluding the actual terms included in this Agreement. For the avoidance of doubt, Confidential Information of each Party shall include each Party's Background Technology and Collaboration Technology.

(v) **"ABIOMED Affiliate"** shall mean an Affiliate of ABIOMED.

Names of designated competitors

(vi) **"ABIOMED Competitor"** shall mean each of the following companies and all Affiliates thereof[redacted]

(vii) **"Device Regulation"** shall mean any national, state, local or foreign statute, regulation, published judicial or administrative interpretation, published guideline, published recommendation or standard international guidance of any Governmental Authority to the extent applicable to the manufacture, use or sale of the Product including, without limitation, to the extent applicable, CMDCAS, the European Medical Device Directive, FDA Act, ISO 13485:2003 and QSR/GMP.

(viii) **"European Medical Device Directive"** shall mean the European Medical Device Directive 93/42/EEC.

(ix) **"FDA"** shall mean the United States Food and Drug Administration.

(x) **"FDA Act"** shall mean the United States Food, Drug and Cosmetic Act of 1938, as amended, and all regulations promulgated thereunder.

Description of field

(xi) **"Field"** shall mean the field of use[redacted]d. Notwithstanding the foregoing, the Field shall in no event include the field of use of[redacted]

Scope and duration

(xii) **"Forecast"** is[redacted]

Description of field

(xiii) [redacted] shall mean the[redacted]e, as those rights may be amended or supplemented from time to time, except as to the applicable

Description of field

territory, their exclusive or non-exclusive nature or patent enforcement. Notwithstanding the foregoin[redacted].

Description of territory

(xiv) [redacted]" shall mean for [redacted], all jurisdiction worldwide, with such limitations described in t[redacted]d.

(xv) **"ISO 13485:2003"** shall mean the ISO Standard that describes the requirements for a quality management system where an organization needs to demonstrate its ability to provide medical devices and related services that consistently meet customer requirements and regulatory requirements.

(xvi) **"Parties"** shall mean each of Opsens and ABIOMED, each of which is sometimes referred to as a "Party." As used in this Agreement, references to "third parties" do not include either Party or their respective Affiliates.

(xvii) The term **"person"** shall mean an individual, corporation, partnership, limited partnership, limited liability company, unincorporated association, trust, joint venture, union or other organization or entity, including a Governmental Authority.

(xviii) **"Product Documentation"** shall mean (i) the requirements and specifications for the Products set forth in the applicable Statement of Work, as such specifications may be amended by agreement of the Parties from time to time, including the shelf life required for the Products; (ii) any documentation relating to the Products, its manufacturing or use, submitted by the Parties to any Governmental Authority in connection with any Regulatory Application; and (iii) the labeling for the Products.

Description of products

(xix) **"Products"** shall mea[redacted]ure [redacted] that has been developed as part of the Collaboration for use in the Field within the Territory, as described on the Statement of Work executed by the Parties in connection with the Restated Co-Development Agreement.

(xx) **"Purchase Orders"** shall mean orders transmitted by ABIOMED (in written or electronic form), conforming to the requirements of this Agreement, and authorizing and directing Opsens to manufacture and deliver specified Products on specified delivery dates.

(xxi) **"QSR/GMP"** shall mean Quality Systems Regulations and Good Manufacturing Practices for medical devices, as promulgated or otherwise established by any Governmental Authority with authority over the Products, including those set forth in the FDA's Quality System Regulations in 21 C.F.R. Part 820 and the European Council Directive concerning Medical Devices, 93/42/EEC, as in effect from time to time.

Description of territory

(xxiv) **"Territory"** shall mean worldwid[redacted]n [redacted]).

1.2 **Additional Definitions.** Certain capitalized terms used but not defined in this Agreement shall have the meanings given to such terms in the Restated Co-Development Agreement.

2. **Manufacture, Sale and Purchase of Products.**

2.1 **Supply and Purchase of Products.** Opsens shall manufacture, in accordance with the applicable Product Documentation (as updated from time to time as required by this Agreement), and shall sell to ABIOMED such Products as ABIOMED may order from time to time by delivery to Opsens of Purchase Orders in accordance with the terms of this Agreement.

2.2 **Manufacturing Standards and Procedures.** Opsens shall adopt and maintain quality assurance procedures to ensure that all Products manufactured under this Agreement conform to ISO 13485:2003 and the applicable Product Documentation (collectively the "**QA Procedures**"). At the request of ABIOMED, Opsens shall promptly submit to ABIOMED in writing a description of its QA Procedures and shall adopt and incorporate in the Product Documentation such additional quality control procedures (which shall be included in the definition of QA Procedures) as ABIOMED or any ABIOMED Affiliate may reasonably request.

2.3 **Inspection Right.** At any time during the Term, on not less than fourteen (14) days' notice to Opsens, ABIOMED and its Affiliates may conduct an inspection and audit of Opsens's and its Affiliates' (and its contract manufacturer's, as the case may be) manufacturing facilities and operations to the extent used in the manufacturing receiving, sampling, analyzing, storing, handling, packaging, and shipping of the Products for ABIOMED, including the receipt, storage and issuance of raw materials, labeling and packaging components and ingredients thereof (including all documentation relating thereto) for the purpose of quality control and to assure compliance with the terms and conditions of this Agreement. ABIOMED may conduct such audit using its own personnel, the personnel of an ABIOMED Affiliate, or a third party auditor or inspector. For each inspection or audit request, Opsens and ABIOMED shall agree on the time, scope and manner of the inspection or audit and Opsens shall have the right to have an employee or agent present at all time during such inspection or audit, including during the preparation for or conduct of any inspection to be made or audit procedures to be performed. Any inspection conducted pursuant to this paragraph shall be conducted during regular business hours and in a manner that minimizes disruption to Opsens's operations. Opsens shall provide ABIOMED with reasonable access to any relevant personnel during such inspection, and shall provide ABIOMED with a written response to any written audit observations provided by ABIOMED within thirty (30) days after Opsens's receipt thereof. If required in connection with any Regulatory Approval for the Product or any ABIOMED Product, such inspection may also include personnel of any Governmental Authority. Notwithstanding the foregoing, Opsens agrees to provide access to its facilities at any time to FDA representatives or representatives from any other Governmental Authorities (including notified bodies) having appropriate jurisdiction for inspection or other purposes, on any notice period required by the. FDA or any other Governmental Authority. In addition, if the facilities used by Opsens to manufacture the Product are the subject of an audit or inspection by the FDA or similar Governmental Authority, Opsens shall notify ABIOMED and if possible under the circumstances ABIOMED and its Affiliates and representatives shall have the right to be present during such audit or inspection.

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2.4 **Continuous Improvement.** Subject to the provisions of the Co-Development Agreement, Opsens will use commercially reasonable efforts to develop a continuous improvement strategy for the development of Products and processes for Product quality, cost, delivery, inventory reduction and service that is intended to grow sales and reduce costs to benefit both Parties. Quality requirements will be met based on current specifications on print, quality plan and ISO 9001 and ISO 13485 codes of practice. Resulting cost savings, if any, will be shared with ABIOMED as provided for in Exhibit A.

2.5 **Manufacturing Records.** Opsens shall keep complete, accurate and detailed original records pertaining to the manufacture of the Products hereunder, including quality control of each lot. Records shall be maintained for the longer of (i) any period required under applicable law; and (ii) a period of two (2) years after expiry of the expiration dating of such lot, except for Products manufactured for Japan, for which Opsens shall maintain such records for fifteen (15) years. Opsens shall make available to ABIOMED such records without unreasonable delay to the extent reasonably requested and required by ABIOMED to comply with its regulatory and other legal and reasonable business requirements. Without limiting the foregoing, Opsens agrees to implement and maintain sufficient record keeping controls to ensure traceability along the distribution chain, including with respect to its suppliers, such that applicable parts and products can be identified in the event of a Product defect.

2.6 **Alteration in Product or Product Documentation.**

(i) **General.** Opsens shall not make any change or alteration in the Product Documentation or the design or manufacture of any Product (or any part or component thereof), including any manufacturing processes used by Opsens or its suppliers to make the Product, or the relocation of production sites used to make the Products (collectively, a "**Change**") without ABIOMED's prior written consent.

(ii) **Changes Requested by ABIOMED.** If ABIOMED reasonably requests a Change in a Product during the Term (other than a Change that is required to correct a Product defect, which is covered by Section 2.7), Opsens shall use commercially reasonable efforts to accommodate such Change as promptly as practicable. If any Change would require development work (including design, engineering or any other work) from Opsens, the Parties shall agree on each Party's contribution to the costs of such development work. If any Change would result in an increase in Opsens's costs of manufacturing the Products, Opsens shall be entitled to a reasonable increase in the price of the Products, in an amount to be agreed by the parties. Opsens will inform ABIOMED in advance of the amount of the increase in its manufacturing costs. If ABIOMED and Opsens agree in writing upon each Party's contribution to the development costs and the modified price of the Products as a result of such Change, Opsens shall make such Change and the price of the Products shall be adjusted accordingly. Notwithstanding the foregoing, Opsens shall no longer have any obligations under this section 2.6(ii) in the event Opsens terminates ABIOMED's right to future Improvements in accordance with the provisions of the Restated Co-Development Agreement, including as per its sections 2.9(b) or 2.9(c).

2.7 **Change Required to be Made to Correct Defects.** If a Change is required in order to correct any failure of the Product to comply with the standards set forth in this Agreement

(a "**Product Defect**") (whether such defect is discovered by ABIOMED, Opsens or a third party), then subject to compliance with Section 2.6(i), Opsens shall make such Change and shall bear any design, engineering, materials or manufacturing costs incurred in making such Change.

Description of field and territory

2.8 **Exclusivity** [redacted]

3. **Production Capacity.**

3.1 **Production Capacity.** During the Term, Opsens shall use commercially reasonable efforts to maintain production capacity for manufacture of the Products, including the employment of fully trained and qualified personnel, at a level necessary to produce the amount of Products that ABIOMED forecast [redacted] If at any time Opsens reasonably believes that it may not have sufficient capacity or inventory to fulfill such orders (a "**Capacity Shortage**"), whether due to insufficient manufacturing capacity or otherwise, Opsens shall promptly notify ABIOMED. If Opsens has a plan of action with respect to such Capacity Shortage when it delivers such notice, Opsens shall provide ABIOMED with a written outline of such plan and its reasonably supported conclusions relating thereto. Opsens shall take prompt action with respect to such plan. If Opsens has not developed a plan of action at the time of its notice to ABIOMED of the Capacity Shortage, Opsens shall promptly convene a meeting between ABIOMED and Opsens to develop in mutual consultation a commercially reasonable course of action with respect to the Capacity Shortage. ABIOMED's participation in any meeting, or agreement to any such action plan, shall not be deemed to waive any rights of ABIOMED pursuant to the Restated Co-Development Agreement.

Duration

Business continuity obligations

3.2 **Business Continuity** [redacted]

4. **Orders and Delivery.**

4.1 **Terms and Conditions.** All orders for Products shall be subject to the terms and conditions set forth in this Agreement. The terms and conditions of this Agreement shall govern all sales of Products by Opsens to ABIOMED hereunder, and any different, conflicting or additional terms (other than terms as to quantities, required delivery dates and shipping

instructions) in a Purchase Order, order confirmation, invoice or other writing or communication shall be of no force or effect unless they shall both (i) constitute a waiver, modification or amendment of this Agreement, duly made in accordance with Section 13.1 of this Agreement, and (ii) be contained in a written instrument specifically providing that it is intended to be an amendment to this Agreement and describing this Agreement with particularity.

Duration and commercial terms

4.2 **Forecasts and Production Flexibility**

[redacted]

Commercial terms

# Days prior to Shipment	Allowable Increase from Accepted Purchase Orders	Maximum time for ABIOMED to push out deliveries
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

Commercial terms

4.3 **Purchase Orders.** ABIOMED shall deliver to Opsens firm and binding Purchase Orders fo[redacted]nd ABIOMED's right to modify the Purchase Order and shall be limited so that, ABIOMED shall not modify the amounts for t[redacted], except as provided for in section 4.2.

Commercial terms

4.4 **Purchase Commitment.**

(i) ABIOMED commits to purchase[redacted]

Commercial terms

(ii) Notwithstanding section 4.4(i), the quantity of Products delivered by Opsens to ABIOMED fo[redacted]

Commercial terms

[redacted]

(iii) [redacted]

Description of contractual procedure

4.5 **Contents of Purchase Orders.** Purchase Orders under this Agreement will be made on ABIOMED's standard Purchase Order form. The Parties agree that ABIOMED may purchase Produ[redacted] the terms of which shall have previously been agreed upon by the Parties. Details with respect to operation[redacted]

Commercial terms

4.6 **Shipping, Packaging and Delivery.**

(i) All Products shall be shipped to any ABIOMED site by Opsens by a carrier designated by ABIOMED[redacted]

(ii) Packaging shall at all times be able to pass the International Safe Transit Association Project 1 G test protocol specified by ABIOMED for the particular Products. Each shipment shall be accompanied by a certificate of compliance stating that appropriate inspection and testing has confirmed compliance with all Product Documentation.

(iii) Opsens shall mark each Product with such labeling as shall be reasonably required by ABIOMED. Color and style of packaging and labeling may be designated by ABIOMED. Opsens shall also include on each package such identifying bar-coding as ABIOMED shall specify.

(iv) Opsens shall include a packing list with each shipment of Products which shall provide the following information: (i) ABIOMED purchase order number; (ii) quantity; (iii) Opsens lot number; (iv) ABIOMED material number and revision level; and (v) all requested certificates of compliance.

4.7 **Price and Payment.**

Time frame

(i) Opsens shall invoice ABIOMED for Products at the price per Unit of Product set forth in Exhibit A, and ABIOMED shall remit payment within [redacted] days of the receipt by ABIOMED of the related invoice.

(ii) All amounts due and payable to Opsens hereunder shall be exclusive of applicable sales and similar taxes, and any applicable import or export duties. As between the parties, ABIOMED shall be responsible for the payment of all such taxes and duties (excluding taxes based upon Opsens's income), or if applicable shall provide Opsens with appropriate certification of exemption. Notwithstanding the foregoing, if ABIOMED is required by law to withhold any tax to the tax or revenue authorities in any country regarding any payments or royalties, such amount shall be deducted from the amounts to be paid by ABIOMED, and ABIOMED shall notify Opsens and promptly furnish Opsens with copies of any tax certificate or other documentation evidencing such withholding.

5. **Warranties and Other Matters.** The provisions of this Section 5 shall apply to Products manufactured under this Agreement.

5.1 **Warranties.**

(i) **Warranty Statement.** Opsens warrants that all Products shall (i) be manufactured in accordance with, and conform to, the applicable Product Documentation and ISO 13485:2003, (ii) be delivered free and clear of any liens or encumbrances, and (iii) be merchantable, fit for their purpose, and free of defects in materials and workmanship under normal use and service.

Time frame

(ii) **Inspection; Right to Reject.** ABIOMED shall have the right, but not the obligation, to inspect any Products. ABIOMED shall give Opsens notice of Products that are non-conforming or defective at the time of delivery withi[redacted]) days after delivery. ABIOMED shall have the right to reject any Products that are non-conforming or defective and of which ABIOMED gives notice to Opsens within such) day period. If no notice is given, ABIOMED will be considered to have accepted the Products. ABIOMED's acceptance of Products shall be without prejudice to any rights or remedies ABIOMED may have under Section 5.1 or otherwise under this Agreement.

Contractual warranties

(iii) **Non-Conforming and Defective Products.** [redacted]

Contractual warranties

[redacted]

(iv) **THE EXPRESS WARRANTIES CONTAINED IN THIS SECTION 5.1 ARE IN LIEU OF ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED.**

Contractual warranties

5.2 **Disposal of Non-Conforming or Defective Products.** [redacted] Any non-conforming, defective or recalled Product that is returned to Opsens shall be disposed of by Opsens at its expense.

5.3 **Recalls.**

(i) **General.** ABIOMED shall have the exclusive right (subject to applicable law) to initiate voluntary Product recalls, and shall manage and be responsible for all Product recalls. Except as otherwise provided in Section 5.3(ii), ABIOMED shall bear all expenses incurred by it in connection with Product recalls. Each of the Parties hereto agrees to notify the other in writing in the event either sees a need for a Product recall. Notwithstanding anything to the contrary in this Agreement, in the event that ABIOMED does not proceed to a Product recall where Opsens had advised ABIOMED of any potential Product defect sufficient to warrant such recall, ABIOMED shall be liable for all costs and damages associated with such defect.

(ii) **Opsens Recall.** In the event of any recall of any Product (whether voluntary, required by the FDA or any other Governmental Authority in any jurisdiction in which ABIOMED, any Affiliate of ABIOMED or any distributor of either has sold any

Products, or resulting from any device notification or safety alert) due to design defect, workmanship or failure to manufacture in conformance with applicable Product Documentation, or ISO 13485:2003 (collectively, "**Opsens Recall**"), Opsens shall bear all costs relating to the replacement, refurbishment, repair or modification of Products subject to the Opsens Recall (subject to ABIOMED's option to receive a credit or reimbursement, as provided in Section 5.1(iii), in lieu of replacement, refurbishment or repair of defective or non-conforming Products), as well as any freight, shipping and other costs associated with shipment of replacement Products to Opsens and back to ABIOMED. Without limiting the generality of Section 5.3 (i), Opsens shall not bear any additional costs, including those incurred by ABIOMED to recall the ABIOMED Products or to refund the purchase price paid by ABIOMED's customers for the ABIOMED Products. Opsens shall use its reasonable efforts to correct, as promptly as is practicable, problems or other issues which result in Opsens Recalls. Opsens shall be financially responsible for acts and omissions of its vendors and suppliers. If any recall results primarily from an act or omission of ABIOMED or its agents or employees, ABIOMED shall reimburse Opsens for all its costs and expenses incident to such recall. All Products that are subject to Opsens Recalls shall be considered to be non-conforming Products under this Agreement, and shall be subject to the provisions of Section 5.1(iii) and 5.2 in connection with any such non-conforming Products.

5.4 **Opsens to Provide Cooperation and Assistance.** Opsens agrees to cooperate with and, upon request, provide data, information and assistance to ABIOMED in connection with obtaining Regulatory Approvals for, and handling complaints, problems and inquiries with respect to, Products. ABIOMED will be responsible for the initial phases of contacts with and from customers and Governmental Authorities. However, Opsens will provide commercially reasonable resources to reasonably support ABIOMED's investigation of and response to all such complaints, problems and inquiries in accordance with ABIOMED's established procedures and the level of priority reasonably assigned by ABIOMED to each inquiry, problem or complaint investigation. ABIOMED shall provide the results of complaint, problem and inquiry investigations to the person appointed by Opsens to represent it in issues relating to Regulatory Approvals (the "**Authorized Representative**"). If Opsens should be notified of or otherwise becomes aware of any factor or issue that could adversely affect the quality, effectiveness, or safety of a Product, Opsens shall notify the ABIOMED Senior Director of QA immediately. With respect to applications for approval or concurrence from Governmental Authorities in any jurisdiction in which ABIOMED has notified Opsens that ABIOMED or any ABIOMED Affiliate intends to sell or distribute ABIOMED Products, Opsens agrees to provide such data and information about Products as any such Governmental Authority may reasonably require or request.

6. **Use of Trademarks.**

Infringement of trademarks

6.1 **Logo Identifications.** [redacted]

Infringement of trademarks

[redacted]

7. **Representations and Warranties.**

7.1 **General Representations and Warranties.**

(a) General. Each Party hereby represents and warrants to the other Party as of the Effective Date as follows:

(i) Such Party is a corporation duly organized, validly existing and in good standing under the laws of the state of its organization, and has full corporate power and authority and the legal right to own and operate its property and assets and to carry on its business as it is now being conducted and as it is contemplated to be conducted by this Agreement.

(ii) Such Party (1) has the power and authority and the legal right to enter into this Agreement and perform its obligations hereunder, and (2) has taken all necessary actions on its part required to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder. This Agreement has been duly executed and delivered on behalf of such Party and constitutes a legal, valid and binding obligation of such Party and is enforceable against it in accordance with its terms subject to the effects of bankruptcy, insolvency or other laws of general application affecting the enforcement of creditor rights and judicial principles affecting the availability of specific performance and general principles of equity, whether enforceability is considered a proceeding at law or equity.

(iii) Such Party is not aware of any pending or threatened litigation (and has not received any communication) that alleges that such Party's activities related to this Agreement have infringed, misused or misappropriated, or that by conducting the activities as contemplated herein such Party would infringe, misuse or misappropriate, any Intellectual Property Rights of any Third Party.

(iv) All necessary consents, approvals and authorizations of all regulatory and governmental authorities and other Persons required to be obtained by such Party in connection with the execution and delivery of this Agreement and the performance of its obligations hereunder have been obtained (other than with respect to Regulatory Approvals for the Products).

(v) The execution and delivery of this Agreement and the performance of such Party's obligations hereunder (1) do not conflict with or violate any requirement of applicable law or any provision of the certificate of incorporation, bylaws or any similar instrument of such Party, as applicable, in any material way, and (2) do not conflict with, violate or breach or constitute a default or require any consent under, any contractual obligation or court or administrative order by which such Party is bound, in any material way.

7.2 **Representations and Warranties of Opsens.** Opsens represents and warrants to ABIOMED that: (i) Opsens has (and does not have knowledge of any existing facts that could materially and adversely affect its capacity to have, in the future) sufficient manufacturing plant and personnel capacity for the Products as required to comply with its obligations as set forth in Section 3.1, promptly and when due; (ii) Opsens and Opsens's employees are not subject to any conflicting obligations with respect to discoveries, confidentiality or non-competition which could affect the manufacture or sale of Products to ABIOMED, (iii) the facility where the Products are manufactured is ISO 13485:2003 compliant, and Opsens will maintain such compliance in good standing during the Term; (iv) Opsens has received no notice from any Governmental Authority to the effect that it has not materially complied with or is not now in material compliance with material laws and regulations relating to the manufacture, use or sale of the Product; (v) Opsens will comply in all material respects with all applicable laws and regulations in connection with the manufacture and sale of the Products, and (vi) Opsens does not have knowledge of any claims, actions, suits or other proceedings, pending or, to Opsens knowledge, threatened, which would reasonably be expected adversely to affect the ability of Opsens to perform its obligations hereunder.

7.3 **Representations and Warranties of ABIOMED.** ABIOMED represents, warrants and covenants to Opsens that:

Contractual warranties

(i) As of the Effective Date, ABIOMED [redacted]

Contractual warranties

(ii) ABIOMED [redacted]

Contractuel warranties

(iii) ABIOMED [redacted]

Contractual warranties

(iv) ABIOMED (a) [redacted]

Contractual warranties [redacted]

Contractual warranties (v) [redacted]

8. **Product Documentation.**

8.1 **Documentation Updates; Enhancements.**

(i) **Representation Regarding Product Documentation.** Opsens hereby represents and warrants to ABIOMED that the Product Documentation: (i) is as of the Effective Date current and accurate in all material respects for ABIOMED's use of the Product as contemplated by the Restated Co-Development Agreement; and (ii) will be updated by Opsens during the Term, as required by Section 8.1(ii) below, so that it remains current and accurate in all material respects for ABIOMED's use of the Product as contemplated by the Restated Co-Development Agreement.

(ii) **Updates.** Opsens will update the Product Documentation from time to time to reflect all Changes to all Products, and all improvements, enhancements and modifications to the manufacturing processes that Opsens may develop, if such improvements, enhancements and modifications are approved by ABIOMED or an ABIOMED Affiliate designated by ABIOMED or made in accordance with the Restated Co-Development Agreement, such updates to be completed by Opsens as promptly as practicable after such improvements, enhancements or modifications are approved by ABIOMED. ABIOMED will reasonably assist Opsens with updates to Product Documentation to the extent relating to FDA and Device Regulation matters within ABIOMED's expertise.

(iii) Opsens will deliver a complete copy of the Product Documentation to ABIOMED, as ABIOMED may request from time to time.

9. **Term and Termination.**

Description of term

9.1 **Term.** This Agreement shall take effect on the Effective Date and shall continue for five (5) years unless earlier terminated pursuant to this Section 9 (the "**Initial Term**"). The [redacted]

9.2 **Methods of Termination.** This Agreement may be terminated by written instrument executed by both parties in the case of Section 9.2(i) below and by written notice by the terminating party in the case of Sections 9.2(ii) to (vi) below:

Description of contractual methods of termination

(i) by [redacted]

(ii) by Opsens [redacted]

(iii) by Opsens, [redacted]

(iv) by ABIOMED [redacted]

(v) by Opsens, if Opsens [redacted]

Effect of termination of this Agreement

9.3 **Effect of Termination.**

(a) In the event of termination of this Agreement, (i) each Party shall pay, within [redacted] after termination of this Agreement (subject to the provisions of Section 10), all [redacted] binding as at the time of termination pursuant to Section 4.3, (iii) the provisions of Sections 1, 2.5, 5, 7, 9.3, 10, 11, 12 and 13 and all other agreements or covenants contained in this Agreement that, by their terms, are to be performed after the termination or expiration of this Agreement, shall survive such termination of this Agreement and remain in full force and effect; and (iv) notwithstanding anything to the contrary contained in this Agreement, each Party shall remain liable (in an action at law or otherwise) for any liabilities or damages arising out of a material breach of any of its representations, warranties, covenants or agreements set forth in this Agreement.

(b) In the event OPSENS elects to terminate or not renew this Agreement pursuant to Sections 9.1 or 9.2(v) (except if such termination is triggered by the termination of the Restated Co-

Commercial terms

Development Agreement by Opsens as provided for in Section 8.4(b) of the Restated Co-Development Agreement due to ABIOMED's material breach), during the notice period [redacted].

10. **Dispute Resolution.**

10.1. Disputes. The Parties recognize that disputes as to certain matters may from time to time arise that relate to either Party's rights or obligations hereunder. It is the objective of the Parties to establish procedures to facilitate the resolution of disputes arising under this Agreement in an expedited manner by mutual cooperation. To accomplish this objective, the Parties agree to follow the following procedures if and when a dispute arises under this Agreement:

(a) If the Program Directors are unable to resolve such a dispute within fifteen (15) days of being requested by a Party to resolve the dispute, the matter shall be referred to (i) Louis Laflamme, if the reference is made by ABIOMED to Opsens, and (ii) Dirk Michels, if the reference is made by Opsens to ABIOMED, at any time after such dispute has arisen. In the event that such persons cannot resolve the dispute within [redacted] days of being requested by a Party to resolve a dispute, either Party may, by written notice to the other by the end of such [redacted] period, invoke the mediation provisions of Section 10.1(b).

Time frame

(b) Upon invocation as provided by Section 10.1(a), the Parties agree to try in good faith to resolve such dispute by mediation administered by the Center for Public Resources ("**CPR**") in accordance with the then current CPR Model Procedure for Mediation of Business Disputes, provided that specific provisions of this Section 10.1(b) shall override inconsistent provisions of such CPR Model Procedure. The mediator shall be selected from the CPR Panel of Neutrals and the location of the mediation shall be selected by mutual agreement of the Parties. If the Parties cannot agree upon the selection of the mediator or its location within [redacted] days of the initiation of the mediation, then CPR shall appoint the mediator and the mediator shall select the location. The Parties shall attempt to resolve such dispute through mediation until one of the following occurs: (i) the Parties reach a written settlement; (ii) the mediator notifies the Parties in writing that they have reached an impasse; (iii) the Parties agree in writing that they have reached an impasse; or (iv) the Parties have not reached a settlement within [redacted] days of the initiation of the mediation. All aspects of any such mediation, including any resolution or decision relating thereto, shall be confidential and all participants, including the mediator, shall be bound by judicially enforceable obligations of strict confidentiality except to the extent the Parties agree in writing to waive in whole or part such confidentiality.

Time frame

(c) If the Parties fail to resolve such dispute through mediation, then either Party may take such other action as such Party deems appropriate in its sole discretion, including pursuing litigation against the other Party.

10.2. Injunctive Relief. Notwithstanding the foregoing dispute resolution procedures, in the event of an actual or threatened breach hereunder, the aggrieved Party may seek restraining orders, specific performance or other injunctive relief without submitting to such dispute resolution procedure.

10.3. Tolling. The Parties agree that all applicable statutes of limitation and time-based defenses (such as estoppel and laches) shall be tolled while the procedures set forth in Section 10.1 are pending, and the Parties shall cooperate in taking any and all actions necessary to achieve such a result.

11. **Indemnification; Limitation of Liability.**

11.1 **Indemnification by Opsens.** Opsens hereby agrees to indemnify, defend and hold harmless ABIOMED, each of its Affiliates, and their respective directors, representatives, officers, employees, agents, attorneys, successors and permitted assignees (collectively, the "**ABIOMED Indemnified Parties**"), from and against, and in respect of, any and all Third Parties' claims, losses, damages, costs, expenses, obligations, liabilities, charges, actions, suits, proceedings, deficiencies, interest, penalties and fines (including costs of collection, attorney's fees and other costs of defense, costs of enforcing indemnification provisions, and expenses of investigation) (collectively, "**Damages**") imposed on, sustained, incurred or suffered by or asserted against any ABIOMED Indemnified Party, but only in respect of:

(i) any breach of or any inaccuracy in any of Opsens's representations or warranties contained in this Agreement; or

(ii) Opsens Indemnified Parties' failure to perform or otherwise fulfill any of its agreements, covenants, obligations or undertakings contained in this Agreement; or

(iii) any claim of any kind, including for death, bodily injury or tangible property damage, caused by any fault or defect in the Product due to the manufacture of the Product, other than a fault or a defect caused by the use or the handling, repackaging, reshipping, storage or other manipulation or modification of the Product by ABIOMED Indemnified Parties or subcontractors, and except to the extent the Products were improperly used or such damage was caused by ABIOMED Products or ABIOMED Adjunct Products, or the manner in which ABIOMED incorporated the Products into ABIOMED Products or ABIOMED Adjunct Products; or

(iv) any claim relating to any negligence or willful misconduct of Opsens Indemnified Parties in connection with this Agreement; or

(v) any claim that Opsens's manufacture of the Product infringes, misuses or misappropriates the Intellectual Property of any third party in the Territory and in the Field, except to the extent the infringement relates to the combination of such Product with an ABIOMED Product or an ABIOMED Adjunct Product.

11.2 **Indemnification by ABIOMED.** ABIOMED hereby agrees to indemnify, defend and hold harmless Opsens, each of its Affiliates, and their respective directors, representatives, officers, employees, agents, attorneys, successors and permitted assignees (collectively, the "**Opsens Indemnified Parties**"), from and against, and in respect of, any and all Third Parties' Damages imposed on, sustained, incurred or suffered by or asserted against any Opsens Indemnified Party, but only in respect of:

(i) any breach of or any inaccuracy in any of ABIOMED's representations or warranties contained in this Agreement; or

(ii) ABIOMED Indemnified Parties' failure to perform or otherwise fulfill any of its agreements, covenants, obligations or undertakings contained in this Agreement; or

(iii) any claim of any kind, including for death, bodily injury or tangible property damage, relating to the ABIOMED Products or the ABIOMED Adjunct Product into which the Products are incorporated (including the manner in which the Product is incorporated into the ABIOMED Products or into the ABIOMED Adjunct Products), any recalls of such ABIOMED Products or ABIOMED Adjunct Products or any adverse events relating to such ABIOMED Products or ABIOMED Adjunct Products, except to the extent caused by any faults or defects in the Products due to manufacture of the Product other than a fault or a defect caused by the use or the handling, repackaging, reshipping, storage or other manipulation or modification of the Products by ABIOMED or by any improper use of the Products;

(iv) any claim relating to ABIOMED Indemnified Parties' negligence or willful misconduct in connection with this Agreement.

(v) any claim that the combination of the Product and the ABIOMED Product or the ABIOMED Adjunct Product infringes, misuses or misappropriates the Intellectual Property of any third party.

11.3 **Indemnification Procedure.** Promptly after a Party entitled to indemnification under Sections 11.2 or 11.3 (an "**Indemnitee**") receives notice of any pending or threatened claim against it (an "**Action**"), such Indemnitee shall give written notice to the Party to whom the Indemnitee is entitled to look for indemnification pursuant to those Sections, as applicable (the "**Indemnifying Party**"), of the commencement thereof, provided that the failure so to notify the Indemnifying Party shall not relieve it of any liability that it may have to any Indemnitee hereunder, except to the extent the Indemnifying Party demonstrates that it is prejudiced thereby. In case any Action that is subject to indemnification under this Section 11 shall be brought against an Indemnitee and it shall give written notice to the Indemnifying Party of the commencement thereof, the Indemnifying Party shall be entitled to participate therein and, if it so desires, to assume the defense thereof with counsel reasonably satisfactory to such Indemnitee and, after notice from the Indemnifying Party to the Indemnitee of its election to assume the defense thereof, the Indemnifying Party shall not be liable to such Indemnitee under this Section 11 for any costs and expenses of other counsel or any other expenses, in each case subsequently incurred by such Indemnitee in connection with the defense thereof, other than reasonable out-of-pocket costs and expenses of investigation. Notwithstanding an Indemnifying Party's election to assume the defense of any such Action that is subject to indemnification under this Section 11, the Indemnitee shall have the right to employ separate counsel and to participate in the defense of such Action, and the Indemnifying Party shall bear the reasonable costs and expenses of such separate counsel if: (i) the use of counsel chosen by the Indemnifying Party to represent the Indemnitee would present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, any such Action include both the Indemnifying Party and the Indemnitee, and the Indemnitee

shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to those available to the Indemnifying Party (in which case the Indemnifying Party shall not have the right to assume the defense of such Action on the Indemnitee's behalf); (iii) the Indemnifying Party shall not have employed counsel reasonably satisfactory to the Indemnitee to represent the Indemnitee within a reasonable time after notice of the institution of such Action; or (iv) the Indemnifying Party shall authorize the Indemnitee to employ separate counsel at the Indemnifying Party's expense. If an Indemnifying Party assumes the defense of such Action, no compromise or settlement thereof may be effected by the Indemnifying Party without the Indemnitee's written consent, which consent shall not be unreasonably withheld, unless (1) there is no finding or admission of any violation of law or any violation of the rights of the other Party and no effect on any other claims that may be made against the Indemnitee and (2) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party.

11.4 Limitation of Liability. EXCEPT FOR INDEMNITY OBLIGATIONS ARISING WITH RESPECT TO ANY DAMAGES PAYABLE TO, INCURRED WITH RESPECT TO OR MADE BY ANY THIRD PARTY (OTHER THAN AN INDEMNIFIED PARTY): (I) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY LEGAL THEORY FOR ANY INDIRECT, AND AS APPLICABLE SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOSS PROFITS, REVENUE OR BUSINESS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY'S INDEMNIFIED PARTIES FOR CLAIMS RELATING TO THIS AGREEMENT SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE GREATER OF (A) $500,000; AND (B) THE TOTAL PAYMENTS BY ABIOMED TO OPSENS IN THE TWELVE (12) MONTHS PRECEDING ABIOMED'S INITIAL NOTICE TO OPSENS OF ANY CLAIM OR POTENTIAL CLAIM HEREUNDER(IN THE CASE OF ABIOMED, SUCH LIMITATION SHALL NOT APPLY TO ITS PAYMENT OBLIGATIONS UNDER THIS AGREEMENT FOR PRODUCTS SOLD OR SERVICES RENDERED BY OPSENS.

11.5 **Third Party Beneficiaries.** The ABIOMED Indemnified Parties and Opsens Indemnified Parties are intended to be third party beneficiaries of the rights granted under this Section 11 and to have the right to enforce such rights directly against the Indemnifying Party.

12. Confidentiality.

12.1 **Limited Disclosure and Use**. Each of ABIOMED and Opsens shall hold in confidence any Confidential Information (including trade secrets) disclosed by the other or otherwise obtained by such Party from the other Party as a result of this Agreement, and each of ABIOMED and Opsens shall protect the confidentiality thereof with the same degree of care that it exercises with respect to its own information of a like nature, but in no event less than reasonable care. Each of ABIOMED and Opsens shall have the right to provide Confidential Information to its Affiliates, subject to the confidentiality obligations imposed by this Section 12.1. Without the prior written consent of the disclosing Party, a receiving Party shall not use, disclose, or distribute any Confidential Information, in whole or in part, except as required to perform such Party's obligations under this Agreement or in exercise or furtherance of its rights under this Agreement.

Time frame

Access to the disclosing Party's Confidential Information shall be restricted to the receiving Party's employees, agents and consultants, who, in each case, need to have access to carry out a permitted use and are bound in writing to maintain the use and confidentiality restrictions of such Confidential Information. The obligations set forth in this Section 12.1 shall survive any termination or expiration of this Agreement in perpetuity (with respect to trade secrets and confidential financial information) and for a period of [redacted] (with respect to all other Confidential Information).

12.2 **Exceptions.** Each receiving Party may disclose Confidential Information to the extent such disclosure is reasonably necessary to protect intellectual property rights to which such Party has a right under this Agreement, to prosecute or defend litigation, to comply with applicable law or regulations, to obtain necessary or desirable regulatory approvals or concurrences, to respond to a valid order of a Governmental Authority, or to conduct preclinical or clinical trials, *provided that,* other than with respect to disclosure for protecting intellectual property rights in connection with a patent prosecution action in which such disclosure is required by applicable law, the receiving Party shall (i) use reasonable efforts to secure confidential treatment of such Confidential Information required to be disclosed, and (ii) unless precluded by applicable law from doing so, give advance written notice to the disclosing Party sufficiently in advance of the proposed disclosure so as to permit the disclosing Party to have the opportunity to object to such disclosure or otherwise protect its Confidential Information.

12.3 **Use of Name; Disclosure of Terms of the Agreement.** Except as required by applicable law or regulation, or as otherwise required or licensed pursuant to this Agreement, neither Party shall use the name of the other Party or any Affiliate of the other Party in any publicity, or advertising without the prior written approval of the other Party. Except as may be required by applicable law or regulation, neither Party shall disclose any terms or conditions of this Agreement without the prior written consent of the other, *provided that* (a) either Party may disclose such terms and conditions in order to comply with law or the rules of any stock exchange on which its securities are listed; and (b) either Party may disclose such terms and conditions to any third party with whom such Party has entered into or proposes to enter into a business relationship that would result in a permitted assignment in accordance with the terms and conditions of Section 13.7, *provided* any such third party is informed of the confidentiality and use restrictions in this Agreement with respect to such terms and conditions and agrees to abide by such restrictions. To the extent that a Party is required or permitted to disclose a copy of this Agreement to a third party, each Party agrees that it shall only provide a copy that has been redacted to the mutual satisfaction of the Parties (unless otherwise required by applicable law or regulation), and no Party shall have the right to disclose any information that has been redacted from any such document.

Time frame

12.4 **Termination.** Each receiving Party shall, upon termination of this Agreement, immediately discontinue use of the other's Confidential Information (except to the extent that such receiving Party retains a right or license to use such Confidential Information, or requires such Confidential Information in order to complete the transactions and purposes of this Agreement). Within [redacted]) days after termination of this Agreement, or upon receipt of written request by the disclosing Party, if earlier, all materials containing such Confidential Information shall be returned by the receiving Party or (with the disclosing Party's prior written consent) destroyed, *provided, however,* that each Party may retain copies of Confidential Information in

which such Party has a proprietary or licensed interest that survives termination, and the receiving Party shall be entitled to retain a file copy of the Confidential Information under the control of its General Counsel or its outside counsel for archival purposes and for monitoring its obligations under this Agreement, and in connection with any related obligations under law, Device Regulation or Regulatory Approvals.

12.5 **Permitted Disclosure to Related Persons**. Notwithstanding the preceding provisions of this Section 12, this Section 12 shall not prohibit disclosure of Confidential Information or the terms and conditions of this Agreement: (i) by ABIOMED to any ABIOMED Affiliate, and to the Board of Directors and to the respective auditors and business, financial and legal advisers of ABIOMED and any ABIOMED Affiliate who need to understand the business relationship between Opsens and ABIOMED, and (ii) by Opsens to any Opsens Affiliate and to the Opsens's Board of Directors, and to the auditors and business, financial and legal advisers of Opsens and any Opsens Affiliate who need to understand the business relationship between Opsens and ABIOMED.

13. **Miscellaneous.**

13.1 **Waivers and Amendments.** This Agreement may be amended, modified or supplemented only by a written instrument executed by the Parties hereto. No waiver of any provision of this Agreement, or consent to any departure from the terms of this Agreement, shall be effective unless the same shall be in writing and signed by the Party waiving or consenting thereto. No failure on the part of any Party to exercise, and no delay in exercising, any right or remedy under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any such right or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right or remedy. The waiver by any Party hereto of a breach of any provision of this Agreement shall not operate as a waiver of any subsequent breach. All rights and remedies under this Agreement are cumulative and are in addition to, and not exclusive of, any other rights and remedies provided by law.

13.2 **Severability.** Except as otherwise expressly provided herein, if any term, covenant or condition of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held to be invalid or unenforceable, then (i) the remainder of this Agreement, or the application of such term, covenant or condition to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; and (ii) the parties hereto covenant and agree to renegotiate any such term, covenant or application thereof in good faith in order to provide a reasonably acceptable alternative to the term, covenant or condition of this Agreement or the application thereof that is invalid or unenforceable, it being the intent of the parties that the basic purposes of this Agreement are to be effectuated.

Description of agreement

13.3 **Entire Agreement.** [redacted]

Agreement to which it refers in many instances. This Agreement shall be considered as being the "**Supply Agreement**" for the purposes of the Restated Co-Development Agreement in replacement of the Restated Supply Agreement.

13.4 **Relationship of the Parties.** This Agreement shall not constitute either Party as the agent or legal representative of the other Party for any purpose whatsoever, and neither Party shall hold itself out as an agent of the other Party. This Agreement creates no relationship of joint venturers, partners, associates, employment or principal and agent between the Parties, and both Parties are acting as independent contractors. Neither Opsens nor ABIOMED is granted in this Agreement any right or authority to, and shall not attempt to, assume or create any obligation or responsibility for or on behalf of the other. Neither Opsens nor ABIOMED shall have any authority to bind the other to any contract, whether of employment or otherwise, and Opsens and ABIOMED shall bear all of their respective expenses for their operations, including the compensation of their employees and the maintenance of their offices and service facilities. Opsens and ABIOMED shall each be solely responsible for their own employees and for their acts and the things done by them.

13.5 **No Rights Granted.** Except as provided in Section 6.1, nothing in this Agreement shall operate to confer on Opsens the right to use any trademark, service mark, trade name or logo identification now or hereafter used by ABIOMED, whether or not registered, without the written consent of ABIOMED.

13.6 **Time of Essence.** Time shall be of the essence of each Party's performance under this Agreement, including Opsens's delivery of Products on the dates specified in the Purchase Orders issued in accordance with this Agreement.

Description of contractual rights of assignment and delegation

13.7 **Assignment; Delegation.**

(i) ABIOMED may assign upon notice to Opsens this Agreement, including any right or obligation acquired by ABIOMED hereunder, in whole or in part. Notwithstanding the foregoing, [redacted] assignment shall however be subject to the provisions of section 2.9(b) of the Restated Co-Development Agreement (including Opsens' right to terminate this Agreement).

(ii) Opsens may not assign this Agreement, including any right or obligation acquired by Opsens hereunder, in whole or in part, except with the prior written consent of ABIOMED [redacted]

[redacted]
to in writing).

(iii) This Agreement shall be binding upon, and inure to the benefit of, the legal representatives, successors and permitted assigns of the Parties. Notwithstanding anything herein to the contrary, there shall be no Third Party beneficiaries, either express or implied, to this Agreement. Notwithstanding the foregoing, Section 11.5 is intended to benefit, and to be enforceable by, in addition to the Parties, the other ABIOMED Indemnitees and Opsens Indemnitees as if they were Parties hereto.

13.8 **Use of Subcontractors and Agents.** To the extent that either Party (the **"Delegating Party"**) should at any time use a subcontractor, supplier or non-employee agent to perform any services, undertake any tasks or otherwise fulfill any obligations under this Agreement, the Delegating Party agrees to ensure that all representations and warranties and all covenants that would be applicable to the Delegating Party under this Agreement, if the Delegating Party were to perform the service, undertake the task or fulfill the obligation itself, shall be binding on each such agent or subcontractor, and the Delegating Party shall guaranty the performance of each such agent or subcontractor. Opsens shall be entitled to use any subcontractor, supplier or non-employee agent, for the Products or for any component or raw materials of the Products, *provided, however*, that Opsens shall provide ABIOMED with prior written notice of each instance of any such subcontract, supply or agent relationship, and Opsens shall not use any subcontractor, supplier or non-employee agent that is an ABIOMED Competitor.

13.9 **Insurance Coverage.** Opsens will obtain, maintain, and provide evidence of, at its own cost and expense, the following kinds and amounts of insurance providing coverage for the operations of Opsens, and Opsens's Affiliates.

Commercial terms

(i) Commercial General Liability insurance, including contractual liability and products and completed operation liability, providing coverage resulting from bodily injury, property damage, personal injury, and advertising injury. This insurance shall be on an occurrence basis with a minimum limit of [redacted] per occurrence;

(ii) Worker's Compensation insurance, or its equivalent, with statutory limits; and

Commercial terms

(iii) Professional/Errors & Omissions Liability insurance with a minimum of US[redacted]er claim, covering all acts, errors, omissions, negligence, and including infringement of intellectual property in the performance of services for ABIOMED or on behalf of ABIOMED.

13.10 **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of The Commonwealth of Massachusetts (without giving effect to its conflicts of laws rules).

13.11 **Jurisdiction.** The parties hereby irrevocably consent to the exclusive jurisdiction and venue of any state or federal court sitting in the metropolitan area of Boston, Massachusetts, over any action or proceeding arising out of or relating to this Agreement or any agreement or

document delivered in connection herewith or therewith, and agree that all claims in respect of such action or proceeding may be heard and determined in such state or federal court. Each of the parties consents to the jurisdiction of such court or courts and agrees that the service upon it of a summons and complaint by ordinary mail shall be sufficient for such court or courts to exercise personal jurisdiction over the Parties. The parties waive any objection to any action or proceeding in any state or federal court sitting in the metropolitan area of Boston, Massachusetts, on the basis of forum non conveniens or otherwise.

13.12 **No Election of Remedies.** Except as otherwise provided in this Agreement, the rights and remedies accorded in this Agreement to Opsens and ABIOMED are cumulative and in addition to those provided by law, and may be exercised separately, concurrently or successively. **Costs and Expenses.** Except as expressly stated otherwise in this Agreement, each Party shall bear its own costs and expenses of performance of this Agreement.

13.14 **Counterparts and Facsimile Signatures.** This Agreement and the exhibits hereto may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. Facsimile execution and delivery of this Agreement and the exhibits hereto by any of the Parties shall be legal, valid and binding execution and delivery of such document for all purposes.

13.15 **Interpretation.** When reference is made in this Agreement to a Section, such reference shall be to a Section of this Agreement, unless otherwise indicated. References to Sections include subsections, which are part of the related Section *(e.g.,* a section numbered "Section 5.1(a)" would be part of "Section 5.1" and references to "Section 5.1" would also refer to material contained in the subsection described as "Section 5.1(a)"). The recitals hereto constitute an integral part of this Agreement. The headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. The language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Party. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." No summary of this Agreement prepared by any Party shall affect the meaning or interpretation of this Agreement.

13.16 **Force Majeure.** No Party shall be liable for failure to perform any of its obligations under this Agreement when such failure is due to fire, flood, strikes, labor troubles or other industrial disturbances, legal restriction, riot, insurrection, or any other cause beyond the reasonable ability of the Party affected thereby to foresee and avoid, and without such party's fault or negligence ("**Force Majeure**"), provided that any Party claiming the existence of Force Majeure shall give notice to the other parties not more than ten (10) days after the commencement of the event of Force Majeure, and shall use prompt and diligent efforts to mitigate the effects of Force Majeure. In the event that any event of Force Majeure prevents performance for sixty (60) days or more, the other party may terminate this Agreement on written notice to all parties.

13.17 **Parties Advised by Counsel.** This Agreement has been negotiated between unrelated Parties who are sophisticated and knowledgeable in the matters contained in this Agreement and who have acted in their own self-interest. In addition, each Party has been represented by legal counsel. This Agreement shall not be interpreted or construed against any Party to this Agreement because that Party or any attorney or representative for that Party drafted or Participated in the drafting of this Agreement.

13.18 **Waiver of Jury Trial.** Opsens and Abiomed each hereby irrevocably and unconditionally waive all rights to trial by jury in any legal action, proceeding or counterclaim with respect to any matter whatsoever arising out of or in connection with or related to this Agreement or the enforcement hereof.

13.19 **Notices.** All notices, requests, demands, claims and other communications under this Agreement shall be in writing. Any notice, request, demand, claim or other communication under this Agreement with respect to any alleged breach of this Agreement, or the alleged termination of this Agreement, shall be deemed duly delivered (i) four (4) business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or (ii) one (1) business day after it is sent for next business day delivery via a reputable nationwide overnight courier service, in each case addressed to the intended recipient as set forth below. Any other form of notice, request, demand or other communication between the Parties shall be deemed duly delivered one (1) business day after it is sent (x) for next business day delivery via a reputable nationwide overnight courier service, (y) via electronic facsimile transmission, with confirmation of delivery, or (z) via electronic mail communications, with electronic verification of delivery requested and followed by hard copy sent via first class or certified mail, in each case addressed to the intended recipient as set forth below:

(a) if to Opsens, to:

Opsens, Inc.
~~2014, Cyrille-Duquet Street, Suite 125~~ 750 boul. du Parc-Technologique
Quebec (Quebec), Canada
~~G1N 4N6~~ G1P 4S3
Attention: Louis Laflamme
Facsimile No.: (418) 781-0024
Email: louis.laflamme@opsens.com

with a required copy to:

Norton Rose Fulbright Canada, LLP
Complexe Jules-Dallaire/Tour Norton Rose Fulbright
2828, Laurier Boulevard, Suite 1500
Quebec (Quebec) Canada
G1V 0B9

Personal information

[redacted]

(b) if to ABIOMED, to:

PS

Abiomed, Inc.
22 Cherry Hill Drive
Danvers, MA 01923
Attention: Legal Department

Personal information [redacted]

with required copies to each of the following:

Commercial & personal information [redacted]

or at such other address for a Party as shall be specified by like notice.

* * * * *

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Supply Agreement to be executed in their names by their properly and duly authorized officers or representatives as of the date first above written.

OPSENS INC.

By: _____
Name: Louis Laflamme
Title: Chief Executive Officer

ABIOMED, INC.

By: _____
Name: Dirk Michels
Title: VP, Global Supply Chain

EXHIBIT A

PRICING SCHEDULE

Prices per Unit for Products (for the purpose of section 4.7)

a) For Sensors

Commercial terms

[redacted] Quantity (units)	Manufacturing assumptions [redacted]	[redacted]	Pricing (USD per unit)
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

Commercial terms

b) For Signal Conditioners

For Signal conditioners, the pricing i[redacted]

Cost [redacted] (for the purposes of section 2.4)

The price per unit for the sensors shall [redacted] as shown in the following tables which are inserted in this Exhibit A for reference purposes only:

Opsens Inc.
Example of calculatio[redacted]

Point 1 - [redacted]

Point 2 - The parties will determine th[redacted]

Point 3 - The parties will determi[redacted]

Point 4 - The parties will app[redacted]