

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, and the *Competition Tribunal Rules*, SOR/2008-141;

AND IN THE MATTER OF the proposed acquisition by Abbott Laboratories, through a wholly owned subsidiary thereof, of all of the issued and outstanding shares of Alere Inc.;

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to sections 92 and 105 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

- and -

ABBOTT LABORATORIES

OTTAWA, ONT.	COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE REGISTERED / ENREGISTRÉ FILED / PRODUIT Date: September 28, 2017 CT-2017-016 Andree Bernier for / pour REGISTRAR / ENREGISTRARE
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Applicant

Respondent

CONSENT AGREEMENT

RECITALS:

A. Abbott Laboratories, through a wholly-owned subsidiary thereof, proposes to acquire all of the issued and outstanding shares of Alere Inc. (the "Transaction").

B. The Commissioner has concluded that the Transaction is likely to result in a substantial lessening of competition in the supply in or into Canada of bedside blood gas and cardiac marker testing products for human health and point of care blood gas testing products for animal health, and that the implementation of this Agreement is necessary to ensure that any substantial lessening of competition will not result from the Transaction.

C. Abbott does not admit but will not for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions that (i) the Transaction is likely to result in a substantial lessening of

competition in the supply in or into Canada of bedside blood gas and cardiac marker testing products for human health and point of care blood gas testing products for animal health, and

(ii) the implementation of this Agreement is necessary to ensure that any substantial lessening of competition will not result from the Transaction.

**D.** Nothing in this Agreement affects any investigation, inquiry or proceeding other than under section 92 of the Act in respect of the Transaction.

**THEREFORE** Abbott and the Commissioner agree as follows:

## **I. DEFINITIONS**

[1] Whenever used in this Agreement, the following words and terms have the meanings set out below:

- (a) **“Abbott”** means Abbott Laboratories and its Affiliates and their directors, officers, employees, agents, representatives, successors and assigns;
- (b) **“Abbott’s Continuing Employees”** means those employees of Abbott who are not employed in connection with the Hold Separate Assets;
- (c) **“Act”** means the *Competition Act*, R.S.C. 1985, c. C-34;
- (d) **“Affiliate”** means, in respect of a Person, any other Person controlling, controlled by or under common control with such first Person, whether directly or indirectly, and **“control”** means directly or indirectly hold securities or other interests in a Person (i) to which are attached more than 50% of the votes that may be cast to elect directors or persons exercising similar functions or (ii) entitling the holder to receive more than 50% of the profits of the Person or more than 50% of its assets on dissolution;
- (e) **“Agreement”** means this Consent Agreement, including the schedules hereto, and references to a **“Part”**, **“Section”**, **“Paragraph”** or **“Schedule”** are, unless otherwise indicated, references to a part, section, paragraph or schedule of or to this Agreement;
- (f) **“Alere”** means Alere Inc. and its Affiliates and their directors, officers, employees, agents, representatives, successors and assigns;
- (g) **“Blood Gas Divested Business”** means the research, development, manufacture, commercialization, distribution, marketing, importation, advertisement, and sale of Blood Gas Products in or into Canada as conducted by Alere as of the Closing Date;
- (h) **“Blood Gas Divestiture”** means the sale, conveyance, transfer, assignment or other disposal of the Blood Gas Divestiture Assets to a

Purchaser pursuant to this Agreement and with the prior approval of the Commissioner, such that Abbott will have no direct or indirect interest in the Blood Gas Divestiture Assets;

- (i) **“Blood Gas Divestiture Agreement”** means the Siemens Divestiture Agreement, or any other binding and definitive agreement between Abbott and a Purchaser to effect the Blood Gas Divestiture pursuant to this Agreement and subject to the prior approval of the Commissioner;
- (j) **“Blood Gas Divestiture Assets”** means all of the right, title and interest in, to and under, or relating to, the tangible assets, Intangible Assets, property and undertaking owned or used by Alere or held by Alere for use in, or relating to, the Blood Gas Divested Business to the extent legally transferrable, including the following properties, assets and rights:
  - (i) all issued and outstanding shares of Epocal Inc., a wholly owned subsidiary of Alere, that operates the Blood Gas Divested Business with its registered office at 199 Bay Street, Suite 4000, Toronto, Ontario, Canada;
  - (ii) all real property interests located at 2060 Walkley Road, Ottawa, Ontario, Canada and 855 Brookfield Drive, Ottawa, Ontario, Canada and all tangible personal property and assets located therein used for the Blood Gas Divested Business;
  - (iii) all inventory in existence as of the Closing Date and used or intended for use in the Blood Gas Divested Business, including raw materials, packaging and labeling materials, replacement and spare parts, and finished and semi-finished products;
  - (iv) all Health Canada approvals relating to the Blood Gas Divested Business, including for those products designated with an asterisk (\*) on Schedule B to this Agreement;
  - (v) Canadian patent numbers 130757, 2449172, 2547701, 2449388, 2594370, 2594371, 2547698, 2449511 and 2576114; and
  - (vi) all business Records relating to the research, development, manufacturing, distribution, marketing or sale of Blood Gas Products; provided however, that where documents or other materials included in the business Records to be divested contain information: (a) that relates to both the Blood Gas Divested Business and to the business to be retained by Abbott and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Blood Gas Divested Business; or (b) for which Abbott has a legal obligation to retain the original copies, Abbott shall be required to provide only copies or relevant excerpts of the documents and materials containing this

information and Abbott may keep such records and provide copies with appropriate redactions to the Purchaser. In instances where such copies are provided to the Purchaser, Abbott shall provide the Purchaser with access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes;

provided, however, that “Blood Gas Divestiture Assets” shall exclude any tangible assets, Intangible Assets, property and undertaking excluded from the Blood Gas Divestiture Agreement as approved by the Commissioner; and

provided further, that, with the agreement of the Purchaser, Abbott may retain co-ownership of an undivided interest in the following (but only to the extent it is not exclusively related to the Blood Gas Products being acquired by the Purchaser): (A) marketing materials and sales know-how; (B) copyrights; (C) software; (D) Manufacturing Technology as applicable to the Blood Gas Products; and (E) books, Records, and files;

- (k) **“Blood Gas Products”** means all products researched, developed, in development, marketed, sold, owned, or controlled by Alere that are part of, used with, or intended to be used with, the Epoc® (Enterprise Point-of-care) blood analysis system product line, for human or animal health, including, without limitation, the products listed in Schedule B to this Agreement;
- (l) **“Business Day”** means a day on which the Competition Bureau’s Gatineau, Quebec office is open for business;
- (m) **“Cardiac Marker Divested Business”** means the research, development, manufacture, commercialization, distribution, marketing, importation, advertisement, and sale of Cardiac Marker Products in or into Canada as conducted by Alere as of the Closing Date;
- (n) **“Cardiac Marker Divestiture”** means: (i) the sale, conveyance, transfer, assignment or other disposal of the Cardiac Marker Divestiture Assets to a Purchaser pursuant to this Agreement and with the prior approval of the Commissioner, such that Abbott will have no direct or indirect interest in the Cardiac Marker Divestiture Assets; and (ii) the grant of the Cardiac Marker License to a Purchaser;
- (o) **“Cardiac Marker Divestiture Agreement”** means the Quidel Divestiture Agreement, or any other binding and definitive agreement between Abbott and a Purchaser to effect the Cardiac Marker Divestiture pursuant to this Agreement and subject to the prior approval of the Commissioner;
- (p) **“Cardiac Marker Divestiture Assets”** means all of the right, title and interest in, to and under, or relating to, the tangible assets, Intangible

Assets, property and undertaking owned or used by Alere or held by Alere for use in, or relating to, the Cardiac Marker Divested Business to the extent legally transferrable, including the following properties, assets and rights:

- (i) all real property interests at the San Diego Facility and all tangible personal property and assets located therein used for the Cardiac Marker Divested Business;
- (ii) all inventory in existence as of the Closing Date used or intended for use in the Cardiac Marker Divested Business, including raw materials, packaging and labeling materials, replacement and spare parts, and finished and semi-finished products;
- (iii) all Health Canada approvals relating to the Cardiac Marker Divested Business, including for those products designated with an asterisk (\*) on Schedule C to this Agreement;
- (iv) Canadian patent number CA2290582; and
- (v) all business Records relating to the research, development, manufacturing, distribution, marketing or sale of Cardiac Marker Products; provided however, that where documents or other materials included in the business Records to be divested contain information: (a) that relates to both the Cardiac Marker Divested Business and to the business to be retained by Abbott and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Cardiac Marker Divested Business; or (b) for which Abbott has a legal obligation to retain the original copies, Abbott shall be required to provide only copies or relevant excerpts of the documents and materials containing this information and Abbott may keep such records and provide copies with appropriate redactions to the Purchaser. In instances where such copies are provided to the Purchaser, Abbott shall provide the Purchaser with access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes;

provided, however, that "Cardiac Marker Divestiture Assets" shall exclude: (i) any tangible assets, Intangible Assets, property and undertaking excluded from the Cardiac Marker Divestiture Agreement as approved by the Commissioner; and (ii) the Cardiac Marker Licensed Assets; and

provided further, that, with the agreement of the Purchaser, Abbott may retain co-ownership of an undivided interest in the following (but only to the extent it is not exclusively related to the Cardiac Marker Products

being acquired by the Purchaser): (A) marketing materials and sales know-how; (B) copyrights; (C) software; (D) Manufacturing Technology as applicable to the Cardiac Marker Products; and (E) books, Records, and files;

(q) **“Cardiac Marker Licensed Assets”** means all patents relating to the Cardiac Marker Divested Business that prior to the Closing Date are the subject of a license with a Third Party;

(r) **“Cardiac Marker License”** means a perpetual, non-exclusive, fully paid-up, and royalty-free license with rights to sublicense to all Cardiac Marker Licensed Assets;

provided, however, that for any Cardiac Marker Licensed Assets that are the subject of a license from a Third Party, the scope of the rights granted to a Purchaser shall only be required to be equal to the scope of the rights granted to Alere;

(s) **“Cardiac Marker Products”** means all products researched, developed, in development, marketed, sold, owned, or controlled by Alere that are part of, used with, or intended to be used with, the Triage® diagnostic product line for the Triage Meter Pro system, including, without limitation, the products listed in Schedule C to this Agreement;

(t) **“Closing”** means the completion of the Transaction under the Transaction Agreement;

(u) **“Closing Date”** means the date on which Closing occurs;

(v) **“Commissioner”** means the Commissioner of Competition appointed under the Act and includes his authorized representatives;

(w) **“Competitive Products”** means all products researched, developed, in development, marketed, sold, owned, or controlled by Abbott that are part of, used with, or intended to be used with, the i-STAT product line, for human or animal health;

(x) **“Confidential Information”** means competitively sensitive, proprietary and all other information that is not in the public domain, and that is owned by or pertains to a Person or a Person’s business, and includes, but is not limited to, manufacturing, operations and financial information, customer lists, price lists, contracts, cost and revenue information, marketing methods, patents, technologies, processes, or other trade secrets;

(y) **“Designated Personnel”** means employees of Abbott approved by the Commissioner who shall have signed a confidentiality agreement in a form satisfactory to the Commissioner;

- (z) **“Direct Cost”** means a cost not to exceed the cost of labour, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service;
- (aa) **“Divested Business”** means the Blood Gas Divested Business and the Cardiac Marker Divested Business;
- (bb) **“Divestiture”** means the Blood Gas Divestiture and the Cardiac Marker Divestiture;
- (cc) **“Divestiture Agreement”** means the Blood Gas Divestiture Agreement and the Cardiac Marker Divestiture Agreement;
- (dd) **“Divestiture Assets”** means the Blood Gas Divestiture Assets and the Cardiac Marker Divestiture Assets;
- (ee) **“Divestiture Process Agreement”** means the agreement described in Section 5 of this Agreement;
- (ff) **“Divestiture Trustee”** means the Person appointed pursuant to Part III of this Agreement (or any substitute appointed thereto) and any employees, agents or other Persons acting for or on behalf of the Divestiture Trustee;
- (gg) **“Divestiture Trustee Sale”** means the Divestiture to be conducted by the Divestiture Trustee pursuant to Part III of this Agreement;
- (hh) **“Divestiture Trustee Sale Period”** means the 6 month period commencing 32 days after Closing;
- (ii) **“First Reference Date”** shall have the meaning set out in Paragraph 21(d) of this Agreement;
- (jj) **“Hold Separate Assets”** means the Divestiture Assets;
- (kk) **“Hold Separate Employee”** means those employees of Abbott who are employed in connection with the Hold Separate Assets, and **“Hold Separate Employee”** means any one of them;
- (ll) **“Hold Separate Manager”** means the Person appointed pursuant to Part V of this Agreement (or any substitute appointed thereto) to manage the operation of the Hold Separate Assets, and any employees, agents or other Persons acting for or on behalf of the Hold Separate Manager;
- (a) **“Hold Separate Period”** means the period that commences at the same time as the Divestiture Trustee Sale Period and ends upon the completion of the Divestiture;

(mm) **“Intangible Assets”** means intellectual property of any nature and kind used in connection with or relating to the Divestiture Assets or Divested Business, including:

- (i) patents, copyrights, trademarks and software;
- (ii) trade dress, industrial designs, distinguishing guises, trade secrets, know-how, techniques, data, inventions, practices, methods and other confidential or proprietary technical, business, research, development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof;
- (iii) rights to obtain and file for patents and registrations thereof; and
- (iv) rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing;

provided, however, that “Intangible Assets” does not include the corporate names or corporate trade dress of “Abbott”, “Alere”, or the related corporate logos thereof; or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by Abbott or Alere or the related corporate logos thereof; or general registered images or symbols by which Abbott or Alere can be identified or defined;

provided further, however, Alere shall permit the Purchasers to use the “Alere” trademark for a transitional period following Closing as provided for in the Divestiture Agreement;

- (nn) **“Management Agreement”** means the agreement described in Section 26 of this Agreement;
- (oo) **“Manufacturing Technology”** means all technology, trade secrets, know-how, designs, ideas, concepts and proprietary information (whether patented, patentable, or otherwise) used by Alere to manufacture the Blood Gas Products or the Cardiac Marker Products, as applicable;
- (pp) **“Monitor”** means the Person appointed pursuant to Part XI of this Agreement (or any substitute appointed thereto), and any employees, agents or other Persons acting for or on behalf of the Monitor, provided that if no Monitor is appointed, other than in Part XI of this Agreement, Monitor means the Commissioner;
- (qq) **“Monitor Agreement”** means the agreement described in Section 42 of this Agreement;



- (rr) **“Person”** means any individual, corporation or partnership, sole proprietorship, trust or other unincorporated organization capable of conducting business, and any Affiliates thereof;
- (ss) **“Purchaser”** means a Person that acquires the Blood Gas Divestiture Assets pursuant to this Agreement and a Blood Gas Divestiture Agreement and a Person that acquires the Cardiac Marker Divestiture Assets pursuant to this Agreement and a Cardiac Marker Divestiture Agreement;
- (tt) **“Quidel”** means Quidel Corporation and Quidel Cardiovascular Inc. (f/k/a QTB Acquisition Corp.) and their Affiliates and their respective directors, officers, employees, agents, representatives, successors and assigns;
- (uu) **“Quidel Divestiture Agreement”** means the Amended and Restated Triage Purchase Agreement by and between Alere, Abbott, Quidel Cardiovascular Inc. (f/k/a QTB Acquisition Corp.) and Quidel Corporation dated September 15, 2017;
- (vv) **“Records”** means records within the meaning of subsection 2(1) of the Act;
- (ww) **“San Diego Facility”** means the facility located at 9965, 9975, 9985 and 9995 Summers Ridge Road, San Diego, California, USA;
- (xx) **“Second Reference Date”** shall have the meaning set out in Paragraph 21(e) of this Agreement;
- (yy) **“Siemens”** means Siemens Diagnostics Holdings II B.V. and its Affiliates and their respective directors, officers, employees, agents, representatives, successors and assigns;
- (zz) **“Siemens Divestiture Agreement”** means the Purchase Agreement by and between Alere, Abbott and Siemens Diagnostics Holdings II B.V. dated July 21, 2017, as amended by the Amendment to the Purchase Agreement by and between Alere, Abbott and Siemens Diagnostics Holdings II B.V. dated September 15, 2017;
- (aaa) **“Third Party”** means any Person other than the Commissioner, Abbott, or a Purchaser;
- (bbb) **“Transaction”** means the transaction described in the first recital to this Agreement;
- (ccc) **“Transaction Agreement”** means the Agreement and Plan of Merger between Abbott and Alere dated January 30, 2016, as amended April 13, 2017;

- (ddd) **“Transition Services”** means the following transitional services: information technology services, finance and administration services, operational and commercial services, regulatory support, procurement services, knowledge transfer, facilities and research and development services, and human resources;
- (eee) **“Transition Services Agreement(s)”** means any agreement entered into between Abbott and a Purchaser (or the Divestiture Trustee and a Purchaser) for the provision of Transition Services; and
- (fff) **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2<sup>nd</sup> Supp.).

## **II. OBLIGATION TO COMPLETE DIVESTITURE**

- [2] Abbott shall use commercially reasonable efforts to complete the Blood Gas Divestiture to Siemens, pursuant to the Siemens Divestiture Agreement, within 32 days of Closing.
- [3] Abbott shall use commercially reasonable efforts to complete the Cardiac Marker Divestiture and grant the Cardiac Marker License to Quidel, pursuant to the Quidel Divestiture Agreement, within 32 days of Closing.

## **III. DIVESTITURE TRUSTEE SALE PROCESS**

- [4] In the event that Abbott fails to, within 32 days of Closing, (i) complete the Blood Gas Divestiture to Siemens, and (ii) complete the Cardiac Marker Divestiture and grant the Cardiac Marker License to Quidel, the Commissioner shall appoint a Divestiture Trustee to complete the Divestiture in accordance with this Agreement. Such appointment may be made at any time as the Commissioner determines.
- [5] Within 5 Business Days after the appointment of the Divestiture Trustee, Abbott shall submit to the Commissioner for approval the terms of a proposed Divestiture Process Agreement with the Divestiture Trustee and the Commissioner that confers on the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the Divestiture.
- [6] Within 5 Business Days after receipt of the proposed Divestiture Process Agreement referred to in Section 5, the Commissioner shall advise Abbott whether or not he approves the terms of the proposed Divestiture Process Agreement. If the Commissioner does not approve the terms of the proposed Divestiture Process Agreement, he shall prescribe alternative terms that Abbott shall incorporate into a final Divestiture Process Agreement with the Divestiture Trustee and the Commissioner.
- [7] Without limiting the Commissioner’s discretion to require additional terms, Abbott consents to the following terms and conditions regarding the Divestiture

Trustee's rights, powers and duties, and shall include such terms in the Divestiture Process Agreement:

- (a) The Divestiture Trustee shall complete the Divestiture as expeditiously as possible, and in any event prior to expiry of the Divestiture Trustee Sale Period.
- (b) The Divestiture Trustee shall use reasonable efforts to negotiate terms and conditions for the Divestiture that are as favourable to Abbott as are reasonably available at that time; however, the Divestiture shall not be subject to any minimum price. The Divestiture Trustee's opinion of what constitutes favourable terms and conditions and what constitutes reasonably available terms and conditions, is subject to review and approval by the Commissioner.
- (c) Subject to oversight and approval by the Commissioner, the Divestiture Trustee shall have full and exclusive authority during the Divestiture Trustee Sale Period:
  - (i) to complete the Divestiture in accordance with the provisions of this Part;
  - (ii) to solicit interest in a possible Divestiture by whatever process or procedure the Divestiture Trustee believes is suitable to allow a fair opportunity for one or more prospective good faith Purchasers to offer to acquire the Divestiture Assets, and for greater certainty, in determining whether to pursue negotiations with a prospective Purchaser, may have regard to the approval criteria in Section 22;
  - (iii) to enter into a Divestiture Agreement with a Purchaser that will be legally binding on Abbott;
  - (iv) to negotiate reasonable commercial covenants, representations, warranties and indemnities to be included in a Divestiture Agreement; and
  - (v) to employ, at the expense of Abbott, such consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants as the Divestiture Trustee believes are necessary to carry out the Divestiture Trustee's duties and responsibilities.
- (d) Where any Person makes a good faith inquiry respecting a possible purchase of Divestiture Assets, the Divestiture Trustee shall notify such Person that the Divestiture is being made and shall provide to such Person a copy of this Agreement.

- (e) Where, in the opinion of the Divestiture Trustee, a Person has a good faith interest in purchasing Divestiture Assets and has executed a confidentiality agreement, in a form satisfactory to the Commissioner, with the Divestiture Trustee protecting any Confidential Information that such Person may receive in the course of its due diligence review of the Divestiture Assets, the Divestiture Trustee shall:
    - (i) promptly provide to such Person all information respecting the Divestiture Assets that is determined by the Divestiture Trustee to be relevant and appropriate;
    - (ii) permit such Person to make reasonable inspection of the Divestiture Assets and of all financial, operational or other non-privileged Records and information, including Confidential Information, that may be relevant to the Divestiture; and
    - (iii) give such Person as full and complete access as is reasonable in the circumstances to the personnel involved in managing the Divestiture Assets.
  - (f) The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets.
  - (g) The Divestiture Trustee shall provide to the Commissioner and to the Monitor, within 14 days after the later of the Divestiture Trustee's appointment and the commencement of the Divestiture Trustee Sale Period and thereafter every 21 days, a written report describing the progress of the Divestiture Trustee's efforts to complete the Divestiture. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Divestiture Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. The Divestiture Trustee shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding the status of the Divestiture Trustee's efforts to complete the Divestiture.
  - (h) The Divestiture Trustee shall notify Abbott and the Commissioner immediately upon the signing of any letter of intent or agreement in principle relating to the Divestiture Assets, and shall provide to Abbott a copy of any executed Divestiture Agreement upon receipt of the Commissioner's approval of the Divestiture contemplated in such Divestiture Agreement.
- [8] Abbott shall not be involved in the Divestiture process during the Divestiture Trustee Sale Period or in any negotiations with prospective Purchasers undertaken by the Divestiture Trustee, nor will Abbott have contact with prospective Purchasers during the Divestiture Trustee Sale Period.

- [9] Subject to any legally recognized privilege, Abbott and the Hold Separate Manager shall provide to the Divestiture Trustee full and complete access to all personnel, Records, information (including Confidential Information) and facilities relating to the Divestiture Assets, to enable the Divestiture Trustee to conduct its own investigation of the Divestiture Assets and to provide access and information to prospective Purchasers.
- [10] Abbott shall take no action that interferes with or impedes, directly or indirectly, the Divestiture Trustee's efforts to complete the Divestiture.
- [11] Abbott and the Hold Separate Manager shall fully and promptly respond to all requests from the Divestiture Trustee and shall provide all information the Divestiture Trustee may request. Abbott shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Divestiture Trustee on behalf of Abbott.
- [12] Abbott will do all such acts and execute all such documents, and will cause the doing of all such acts and the execution of all such documents as are within its power to cause the doing or execution of, as may be reasonably necessary to ensure that the Divestiture Assets are divested in the Divestiture Trustee Sale Period and that agreements entered into by the Divestiture Trustee are binding upon and enforceable against Abbott.
- [13] Abbott shall be responsible for all reasonable fees and expenses properly charged or incurred by the Divestiture Trustee in the course of carrying out the Divestiture Trustee's duties and responsibilities under this Agreement. The Divestiture Trustee shall serve without bond or security, and shall account for all fees and expenses incurred. Abbott shall pay all reasonable invoices submitted by the Divestiture Trustee within 60 days after receipt and, without limiting this obligation, Abbott shall comply with any agreement it reaches with the Divestiture Trustee regarding interest on late payments. In the event of any dispute: (i) such invoice shall be subject to the approval of the Commissioner; and (ii) Abbott shall promptly pay any invoice approved by the Commissioner. Any outstanding monies owed to the Divestiture Trustee by Abbott shall be paid out of the proceeds of the Divestiture.
- [14] Abbott shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Divestiture Trustee.
- [15] Abbott shall indemnify the Commissioner and hold the Commissioner harmless against any losses, claims, damages, liabilities or expenses arising out of, or in

connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability.

- [16] If the Commissioner determines that the Divestiture Trustee has ceased to act or has failed to act diligently, the Commissioner may remove the Divestiture Trustee and appoint a substitute Divestiture Trustee. The provisions of this Agreement respecting the Divestiture Trustee shall apply in the same manner to any substitute Divestiture Trustee.
- [17] Abbott may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner; provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commissioner.
- [18] The Commissioner may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information the Divestiture Trustee may receive from the Commissioner in connection with the performance of the Divestiture Trustee's duties.
- [19] Notwithstanding any term of this Agreement, the rights, powers and duties of the Divestiture Trustee under this Agreement shall not expire until the Divestiture is completed.

#### **IV. COMMISSIONER APPROVAL OF DIVESTITURE**

- [20] In the event the Blood Gas Divestiture is not made to Siemens pursuant to the Siemens Divestiture Agreement or the Cardiac Marker Divestiture and Cardiac Marker License is not made or granted, as applicable, to Quidel pursuant to the Quidel Divestiture Agreement, each of the Blood Gas Divestiture and the Cardiac Marker Divestiture together with the Cardiac Marker License shall be made to a single Purchaser and may proceed only with the prior approval of the Commissioner in accordance with this Part. For greater certainty, if a Divestiture is a notifiable transaction nothing in this Agreement affects the operation of Part IX of the Act.
- [21] The Divestiture Trustee shall comply with the following process for seeking and obtaining a decision of the Commissioner regarding his approval of a proposed Divestiture:
  - (a) The Divestiture Trustee shall promptly:

- (i) inform the Commissioner of any negotiations with a prospective Purchaser that may lead to a Divestiture; and
  - (ii) forward to the Commissioner copies of any agreement that is signed with a prospective Purchaser, including non-binding expressions of interest.
- (b) The Divestiture Trustee shall immediately notify the Commissioner that it intends to enter a Divestiture Agreement with a prospective Purchaser, or has entered into an agreement that, if approved by the Commissioner, will be a Divestiture Agreement within the meaning of this Agreement. If the Divestiture Trustee has entered into or intends to enter into more than one agreement in respect of the same Divestiture Assets, the Divestiture Trustee shall identify the agreement in respect of which it seeks the Commissioner's approval and the remainder of this Part shall apply only to that agreement unless the Divestiture Trustee designates a substitute agreement.
- (c) The notice described in Paragraph 21(b) shall be in writing and shall include: the identity of the proposed Purchaser; the details of the proposed Divestiture Agreement and any related agreements; and information concerning whether and how the proposed Purchaser would, in the view of the Divestiture Trustee, likely satisfy the terms of this Agreement.
- (d) Within 14 days following receipt of the notice described in Paragraph 21(b), the Commissioner may request additional information concerning the proposed Divestiture from any or all of Abbott, the Monitor, the Hold Separate Manager, the prospective Purchaser and the Divestiture Trustee. These Persons shall each provide any additional information requested from them. When they have provided a complete response to the Commissioner's request, these Persons shall comply with the following procedures:
  - (i) the Divestiture Trustee shall provide written confirmation to the Commissioner that the Divestiture Trustee has provided to the Commissioner all additional information requested from the Divestiture Trustee;
  - (ii) the Monitor shall provide written confirmation to the Commissioner that the Monitor has provided to the Commissioner all additional information requested from the Monitor;
  - (iii) an officer or other duly authorized representative of Abbott shall certify that he or she has examined the additional information provided by Abbott in response to the Commissioner's request and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects;

- (iv) an officer or other duly authorized representative of the Hold Separate Manager shall certify that he or she has examined the additional information provided by the Hold Separate Manager in response to the Commissioner's request and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects; and
- (v) an officer or other duly authorized representative of the prospective Purchaser shall certify that he or she has examined the additional information provided by the prospective Purchaser in response to the Commissioner's request and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects.

The date on which the last of the Divestiture Trustee, Abbott, the Monitor, the Hold Separate Manager and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the "**First Reference Date**".

- (e) Within 7 days after the First Reference Date, the Commissioner may request further additional information concerning the proposed Divestiture from any or all of the Persons identified in Paragraph 21(d). These Persons shall each provide any further additional information requested from them. When they have provided a complete response to the Commissioner's request, if any, these Persons shall comply with the procedures outlined in Paragraph 21(d) in regard to the further additional information provided. The date on which the last of the Divestiture Trustee, Abbott, the Monitor, the Hold Separate Manager and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the "**Second Reference Date**".
- (f) The Commissioner shall notify the Divestiture Trustee of the approval of, or the objection to, the proposed Divestiture as soon as possible, and in any event within 14 days after the date on which the Commissioner receives the notice described in Paragraph 21(b) or, if he requests any additional information under Paragraph 21(d) or further additional information under Paragraph 21(e), within 14 days after the later of:
  - (i) the First Reference Date; and
  - (ii) the Second Reference Date, if any.
- (g) The Commissioner's determination as to whether to approve a proposed Divestiture shall be in writing.

[22] In exercising his discretion to determine whether to approve a proposed Divestiture, the Commissioner shall take into account the likely impact of the



Divestiture on competition, and may consider any other factor he considers relevant. Prior to granting his approval, the Commissioner must also be satisfied that:

- (a) the proposed Purchaser is fully independent of and operates at arm's length from Abbott;
- (b) Abbott will have no direct or indirect interest in the Divestiture Assets following the Divestiture;
- (c) the proposed Purchaser is committed to carrying on the Divested Business;
- (d) the proposed Purchaser has the managerial, operational and financial capability to compete effectively in the supply of the Blood Gas Products and/or the Cardiac Marker Products, as the case may be, in and into Canada; and
- (e) the proposed Purchaser will, if the Commissioner grants his approval during the Divestiture Trustee Sale Period, complete the Divestiture during the Divestiture Trustee Sale Period.

#### **V. HOLD SEPARATE**

[23] During the period between Closing and the earlier of (i) the completion of the Blood Gas Divestiture to Siemens pursuant to the Siemens Divestiture Agreement and the Cardiac Marker Divestiture and grant of the Cardiac Market License to Quidel pursuant to the Quidel Divestiture Agreement, and (ii) the commencement of the Hold Separate Period, Abbott shall ensure that the management and operation of the Divested Business continues in a manner that is consistent with Abbott's hold separate obligations as set out in the Improved Commitments to the European Commission included as part of the decision of the European Commission dated January 25, 2017.

[24] During the Hold Separate Period, Abbott shall:

- (a) hold the Hold Separate Assets separate, apart and independent of Abbott and shall confer on the Hold Separate Manager all rights and powers necessary to conduct the business of the Hold Separate Assets;
- (b) not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or the Hold Separate Manager; and
- (c) take no action that interferes with or impedes, directly or indirectly, the Hold Separate Manager's duties and responsibilities.

[25] Prior to or at the commencement of the Hold Separate Period, the Commissioner shall appoint a Hold Separate Manager, responsible for managing and operating

the Hold Separate Assets independently of Abbott during the Hold Separate Period.

- [26] Within 5 Business Days after the appointment of the Hold Separate Manager, Abbott shall submit to the Commissioner for approval the terms of a proposed Management Agreement with the Hold Separate Manager and the Commissioner that confers on the Hold Separate Manager all rights and powers necessary to permit the Hold Separate Manager to manage and operate the Hold Separate Assets independently of Abbott during the Hold Separate Period in accordance with this Agreement.
- [27] Within 5 Business Days after receipt of the proposed Management Agreement referred to in Section 26, the Commissioner shall advise Abbott whether or not he approves the terms of the proposed Management Agreement. If the Commissioner does not approve the terms of the proposed Management Agreement, he shall prescribe alternative terms for the Management Agreement that Abbott shall incorporate into a final Management Agreement with the Hold Separate Manager and the Commissioner.
- [28] Without limiting the Commissioner's discretion to require additional terms, Abbott consents to the following terms and conditions regarding the Hold Separate Manager's rights, powers and duties, and shall include such terms in the Management Agreement:
- (a) The Hold Separate Manager shall report solely and exclusively to the Monitor.
  - (b) The Hold Separate Manager shall not have any involvement with, or receive any Confidential Information respecting, the businesses or assets of Abbott other than in respect of the Hold Separate Assets.
  - (c) Subject to the oversight of the Monitor, the Hold Separate Manager shall manage and maintain the operation of the Hold Separate Assets independently and separately from Abbott, in the regular and ordinary course of business and in accordance with past practice, and shall use commercially reasonable efforts to ensure the ongoing economic viability, marketability and competitiveness of the Hold Separate Assets.
  - (d) Without limiting the generality of Paragraph 28(c) above, the Hold Separate Manager shall:
    - (i) maintain and hold the Hold Separate Assets in good condition and repair, normal wear and tear excepted, and to standards at least equal to those that existed prior to the date of this Agreement;
    - (ii) take all commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers of the Divested Business related to the Hold Separate

Assets at least equal to those that existed prior to the date of this Agreement;

- (iii) not knowingly take or allow to be taken any action that adversely affects the competitiveness, operations, financial status or value of the Hold Separate Assets;
  - (iv) not alter or cause to be altered, to any material extent, the management of the Hold Separate Assets as it existed prior to the date of this Agreement, except with the prior approval of the Monitor;
  - (v) not terminate or alter any employment, salary or benefit agreements, as they existed at the date of this Agreement, for Persons employed in connection with the Hold Separate Assets, except with the prior approval of the Monitor;
  - (vi) ensure that the Hold Separate Assets are staffed with sufficient employees to ensure their viability and competitiveness, including by replacing any departing employees with other qualified employees subject to the prior approval of the Monitor; and
  - (vii) maintain inventory levels and payment terms consistent with the practices of Alere that existed, with respect to the Hold Separate Assets, prior to the date of this Agreement.
- (e) Abbott shall provide sufficient financial resources, including general funds, capital funds, working capital and reimbursement for any operating, capital or other losses, to permit the Hold Separate Manager to comply with its obligations under this Section. The Hold Separate Manager, subject to the prior approval of the Monitor, may request such funds at any time, and Abbott shall comply with any such request. If the Monitor believes that Abbott has not provided, is not providing or will not provide sufficient financial and other resources under this Paragraph, the Monitor shall forthwith refer the matter to the Commissioner, who shall make a final determination respecting the financial and other resources that Abbott must provide. Abbott shall comply with any determination made by the Commissioner on this issue.
- (f) The Hold Separate Manager shall have no financial interests affected by Abbott' revenues, profits or profit margins, except that Abbott shall provide to the Hold Separate Manager reasonable incentives to undertake this position. The Monitor shall determine the type and value of such incentives, which shall include continuation of all employee benefits, and such additional incentives as the Monitor determines may be necessary to assure the continuation and prevent any diminution of the viability, marketability and competitiveness of the Hold Separate Assets.

- (g) In addition to those Persons employed in connection with the Hold Separate Assets on the Closing Date, the Hold Separate Manager may employ such other Persons as the Monitor believes are necessary to assist the Hold Separate Manager in managing and operating the Hold Separate Assets.
  - (h) Subject to any legally recognized privilege, the Hold Separate Manager shall provide to the Monitor full and complete access to all personnel, Records, information (including Confidential Information) and facilities relevant to monitoring Abbott's compliance with this Agreement.
  - (i) The Hold Separate Manager shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request.
- [29] Abbott shall be responsible for all reasonable fees and expenses properly charged or incurred by the Hold Separate Manager in the course of carrying out the Hold Separate Manager's duties under this Agreement. The Hold Separate Manager shall serve without bond or security, and shall account for all fees and expenses incurred. Abbott shall pay all reasonable invoices submitted by the Hold Separate Manager within 30 days after receipt and, without limiting this obligation, Abbott shall comply with any agreement it reaches with the Hold Separate Manager regarding interest on late payments. In the event of any dispute: (i) such invoice shall be subject to the approval of the Commissioner; and (ii) Abbott shall promptly pay any invoice approved by the Commissioner.
- [30] Abbott shall indemnify the Hold Separate Manager and hold the Hold Separate Manager harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Hold Separate Manager's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Hold Separate Manager.
- [31] If the Commissioner determines that the Hold Separate Manager has ceased to act or has failed to act diligently, the Commissioner may remove the Hold Separate Manager and appoint a substitute Hold Separate Manager. The provisions of this Agreement respecting the Hold Separate Manager shall apply in the same manner to any substitute Hold Separate Manager.
- [32] Abbott and the Hold Separate Manager shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Monitor in consultation with the Commissioner, of access and data controls to prevent unauthorized access to or dissemination of Confidential Information of the Divested Business. The system shall include the following protocols:

- (a) The Monitor shall review all proposed communications between the Hold Separate Manager and Abbott before such communications occur.
- (b) Abbott's Continuing Employees shall not receive, have access to or use any Confidential Information respecting the Hold Separate Assets. If any of Abbott's Continuing Employees possesses Confidential Information respecting the Hold Separate Assets as of the commencement of the Hold Separate Period, such Person shall, within 5 Business Days following appointment of the Hold Separate Manager, (i) deliver any Records containing such Confidential Information to the Hold Separate Manager (or, at the Hold Separate Manager's option, destroy such Records) and a signed statement confirming that he or she is no longer in possession of any Records containing Confidential Information respecting the Hold Separate Assets; and (ii) submit to the Monitor a signed statement confirming that he or she undertakes not to share any Confidential Information respecting the Hold Separate Assets with any of Abbott's Continuing Employees.
- (c) Notwithstanding Paragraph 32(b), Designated Personnel of Abbott may receive aggregate financial and operational information relating to the Hold Separate Assets only to the extent necessary to comply with securities laws, prepare financial and regulatory reports, tax returns, administer employee benefits, defend litigation and comply with this Agreement. Any such information shall be: (i) reviewed by the Monitor prior to its receipt by any Designated Personnel; (ii) maintained in a separate confidential file that is accessible only to the Designated Personnel; and (iii) used only for the purposes set forth in this Section.
- (d) Neither the Hold Separate Manager nor any Hold Separate Employee shall receive, have access to or use any Confidential Information relating to Abbott's businesses other than the Hold Separate Assets.

## **VI. THIRD PARTY CONSENTS**

[33] It shall be a condition in any Divestiture Agreement (whether negotiated by Abbott or by the Divestiture Trustee) that Abbott shall, as a condition of closing and, in the case of the Quidel Divestiture Agreement, as contemplated by Section 2.04 thereof, and, in the case of the Siemens Divestiture Agreement, as contemplated by Section 2.05 thereof, obtain any consents and waivers from Third Parties that are necessary to permit the assignment to, and assumption by, a Purchaser of all material contracts, approvals and authorizations relating to the Divestiture Assets; provided, however, that Abbott may satisfy this requirement by certifying that the Purchaser has executed agreements directly with one or more Third Parties which make such assignment and assumption unnecessary.

## **VII. CONFIDENTIALITY OBLIGATIONS**

- [34] After the Closing Date, Abbott shall ensure that Confidential Information to the extent related to the Divested Business or the Divestiture Assets is not communicated to employees of Abbott engaged in the development, manufacturing, marketing or sales of the Competitive Products.
- [35] For greater certainty, Confidential Information for the purposes of Section 34 does not include information relating to the Divested Business or the Divestiture Assets that, in the opinion of the Monitor, (a) is necessary to (i) consummate the Transaction or the Divestiture; or (ii) carry out the obligations set out in this Agreement, or (b) relates to Abbott's general business strategies or practices and that does not discuss with particularity the Divested Products.

## **VIII. TRANSITION SERVICES AGREEMENT**

- [36] Abbott, or the Divestiture Trustee on behalf of Abbott, shall, at the option of a Purchaser, enter into a Transition Services Agreement to provide Transition Services to the Purchaser. The Transition Services provided pursuant to a Transition Services Agreement shall be at no greater than Abbott's Direct Cost.

## **IX. EMPLOYEES**

- [37] The Divestiture Trustee during the Divestiture Trustee Sale Period and the Hold Separate Manager (for the Hold Separate Employees) shall provide to any prospective Purchaser, the Commissioner and the Monitor information relating to the employees whose responsibilities involve the operation of the Divestiture Assets, to enable such Purchaser to make decisions regarding offers of employment to such employees. The Monitor shall review the information provided to ensure that it is sufficient to enable the Purchaser to make such decisions.
- [38] Abbott shall:
- (a) not interfere, directly or indirectly, with any negotiations by a Purchaser to employ any employees whose responsibilities involve the operation of the Divestiture Assets;
  - (b) not offer any incentive to such employees to decline employment with the Purchaser or to accept other employment with Abbott;
  - (c) remove any impediment, within Abbott's control, that may deter such employees from accepting employment with the Purchaser;
  - (d) waive any non-compete or confidentiality provisions of employment or other contracts that could impair the ability of such employees to be employed by the Purchaser; and

(e) pay or transfer to the Purchaser all current and accrued bonuses, pensions and other current and accrued benefits as of the completion of the Divestiture to which employees subsequently employed by the Purchaser would otherwise have been entitled had they remained in the employment of Abbott.

[39] For a period of one year following completion of the Divestiture, Abbott shall not, without the prior written consent of the Commissioner, directly or indirectly solicit or employ any Persons employed in connection with the Divestiture Assets who has accepted an offer of employment with the Purchaser unless such Person's employment has been terminated by the Purchaser.

#### **X. FAILURE OF DIVESTITURE TRUSTEE SALE**

[40] If, by the end of the Divestiture Trustee Sale Period, the Divestiture has not been completed, or if the Commissioner is of the opinion that the Divestiture likely will not be completed prior to the end of the Divestiture Trustee Sale Period, the Commissioner may apply to the Tribunal, at his election, for either: (i) such order as is necessary to complete the Divestiture; or (ii) such order as is necessary to ensure that the Transaction is not likely to lessen competition substantially.

#### **XI. MONITOR**

[41] The Commissioner shall appoint a Monitor, responsible for monitoring compliance by Abbott with this Agreement. Such appointment may occur at any time following registration of this Agreement. A reference in this Agreement to specific monitoring functions or tasks that are to be undertaken by the Monitor shall in no way detract from the Monitor's general right, power and duty to monitor all aspects of Abbott's compliance with this Agreement.

[42] Within 5 Business Days after the appointment of the Monitor, Abbott shall submit to the Commissioner for approval the terms of a proposed Monitor Agreement with the Monitor and the Commissioner that confers on the Monitor all rights and powers necessary to permit the Monitor to monitor compliance by Abbott with this Agreement.

[43] Within 5 Business Days after receipt of the proposed Monitor Agreement referred to in Section 42, the Commissioner shall advise Abbott whether or not he approves the terms of the proposed Monitor Agreement. If the Commissioner does not approve the terms of the proposed Monitor Agreement, he shall prescribe alternative terms for the Monitor Agreement that Abbott shall incorporate into a final Monitor Agreement with the Monitor and the Commissioner.

[44] Abbott consents to the following terms and conditions regarding the Monitor's rights, powers and duties and shall include such terms in the Monitor Agreement:

- (a) the Monitor shall have the power and authority to monitor Abbott's compliance with this Agreement and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Agreement and in consultation with the Commissioner.
  - (b) the Monitor shall have the authority to employ, at the expense of Abbott, such consultants, accountants, legal counsel and other representatives and assistants as the Monitor believes are necessary to carry out the Monitor's duties and responsibilities.
  - (c) the Monitor shall have no obligation or authority to operate or maintain the Divestiture Assets.
  - (d) the Monitor shall act for the sole benefit of the Commissioner, maintain all confidences and avoid any conflict of interest.
  - (e) the Monitor shall have no duties of good faith (except as required by law), of a fiduciary nature, or otherwise, to Abbott.
  - (f) the Monitor shall provide to the Commissioner every 30 days after the date of the Monitor's appointment until the Divestiture is complete and thereafter annually on or before the anniversary of the Divestiture, a written report concerning performance by Abbott of its obligations under this Agreement. The Monitor shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding Abbott's compliance.
- [45] Subject to any legally recognized privilege, Abbott shall provide to the Monitor full and complete access to all personnel, Records, information (including Confidential Information) and facilities relevant to monitoring Abbott's compliance with this Agreement.
- [46] Abbott shall take no action that interferes with or impedes, directly or indirectly, the Monitor's efforts to monitor Abbott's compliance with this Agreement.
- [47] Abbott shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request. Abbott shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Monitor on behalf of Abbott.
- [48] Abbott may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commissioner.



- [49] The Commissioner may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information the Monitor may receive from the Commissioner in connection with the performance of the Monitor's duties.
- [50] Abbott shall be responsible for all reasonable fees and expenses properly charged or incurred by the Monitor in the course of carrying out the Monitor's duties under this Agreement. The Monitor shall serve without bond or security, and shall account for all fees and expenses incurred. Abbott shall pay all reasonable invoices submitted by the Monitor within 60 days after receipt and, without limiting this obligation, Abbott shall comply with any agreement it reaches with the Monitor regarding interest on late payments. In the event of any dispute: (i) such invoice shall be subject to the approval of the Commissioner; and (ii) Abbott shall promptly pay any invoice approved by the Commissioner. Any outstanding monies owed to the Monitor by Abbott shall be paid out of the proceeds of the Divestiture.
- [51] Abbott shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Monitor.
- [52] If the Commissioner determines that the Monitor has ceased to act or has failed to act diligently, the Commissioner may remove the Monitor and appoint a substitute Monitor. The provisions of this Agreement respecting the Monitor shall apply in the same manner to any substitute Monitor.
- [53] The Monitor shall serve for such time as is necessary to monitor Abbott's compliance with this Agreement.

## **XII. COMPLIANCE**

- [54] Within 5 Business Days after the Closing Date, Abbott shall provide written confirmation to the Commissioner of the date on which the Transaction was completed.
- [55] Abbott shall provide a copy of this Agreement to each of its own and its Affiliates' directors, officers, employees and agents having managerial responsibility for any obligations under this Agreement, within 30 Business Days after the date of registration of this Agreement. Abbott shall ensure that its directors, officers, employees and agents with responsibility for any obligations under this Agreement receive sufficient training respecting Abbott's

responsibilities and duties under this Agreement, and the steps that such individuals must take in order to comply with this Agreement.

- [56] Abbott shall not, for a period of 10 years after the date when the Divestiture is completed, directly or indirectly acquire any interest in the Divestiture Assets, without the prior written approval of the Commissioner.
- [57] For a period of 2 years after the date when the Divestiture is completed, Abbott shall not, without providing advance written notification to the Commissioner in the manner described in this Section, directly or indirectly:
- (a) acquire any assets or shares of, or any other interest in, any human health bedside blood gas or cardiac marker testing business or animal health point of care blood gas testing business operating in Canada; or
  - (b) consummate any merger or other combination relating to any human health bedside blood gas or cardiac marker testing business or animal health point of care blood gas testing business operating in Canada.

If a transaction described in (a) or (b) is one for which notice is not required under section 114 of the Act, Abbott shall supply to the Commissioner the information described in section 16 of the *Notifiable Transactions Regulations* at least 30 days before completing such transaction. Abbott shall certify such information in the same manner as would be required if section 118 of the Act applied. The Commissioner may accept a competitive impact brief from Abbott instead of such information. The Commissioner may, within 30 days after receiving the information described in this Section, request that Abbott supply additional information that is relevant to the Commissioner's assessment of the transaction. In the event that the Commissioner issues such a request for additional information, Abbott shall supply information to the Commissioner in the form specified by the Commissioner and shall not complete such transaction until at least 30 days after Abbott has supplied all such requested information in the form specified by the Commissioner.

- [58] Six months after the date of registration of this Agreement and annually for the next 5 years on the six month anniversary of the date of registration, and at such other times as the Commissioner may require, Abbott shall file an affidavit or certificate, substantially in the form of Schedule A to this Agreement, certifying its compliance with Parts VIII, IX and XII of this Agreement and setting out the following information in detail:
- (a) the steps taken to ensure compliance;
  - (b) the controls in place to verify compliance; and
  - (c) the names and titles of employees who have oversight of compliance.

[59] If any of Abbott, the Hold Separate Manager, the Divestiture Trustee or the Monitor becomes aware that there has been a breach or possible breach of any of the terms of this Agreement, such Person shall, within 5 Business Days after becoming aware of the breach or possible breach, notify the Commissioner thereof, and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach, provided that notification of a possible breach is not required if such Person determines within those 5 Business Days that it could not reasonably be considered a breach of any of the terms of this Agreement. Abbott shall provide confirmation of its compliance with this provision in all affidavits and certificates of compliance filed with the Commissioner pursuant to Section 58 of this Agreement.

[60] Abbott shall notify the Commissioner at least 30 days prior to:

- (a) any proposed dissolution of Abbott; or
- (b) any other change in Abbott if such change may affect compliance obligations arising out of this Agreement including, but not limited to, a reorganization, material acquisition, disposition or transfer of assets, or any fundamental change for purposes of Abbott's incorporating statute.

[61] For the period commencing when this Agreement is registered and ending 10 years after the Divestiture is completed, for purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, Abbott shall, upon written request given at least 5 Business Days in advance to Abbott, permit any authorized representative(s) of the Commissioner, without restraint or interference:

- (a) to access, during regular office hours of Abbott on any Business Day(s), all facilities and to inspect and copy all Records in the possession or control of Abbott related to compliance with this Agreement, which copying services shall be provided by Abbott at its expense; and
- (b) to interview such officers, directors or employees of Abbott as the Commissioner requests regarding such matters.

### **XIII. DURATION**

[62] This Agreement shall become effective on the date when it is registered, and shall remain in effect for 10 years following the Divestiture, except that:

- (a) Parts II, III, IV, V, VI, and X of this Agreement shall be effective only until the Divestiture is completed; and
- (b) Part VIII of this Agreement shall be effective only until the Transition Services Agreement is terminated.

#### XIV. NOTICES

[63] A notice or other communication required or permitted to be given under this Agreement is valid if it is:

- (a) in writing and delivered by personal delivery, registered mail, courier service, facsimile (or electronic mail if to the Commissioner); and
- (b) addressed to the receiving party at the address(es) listed below, or to any other address designated by the receiving party in accordance with this Section.

if to the Commissioner:

Commissioner of Competition  
Competition Bureau Canada  
Place du Portage, 21st Floor  
50 Victoria Street, Phase I  
Gatineau, Quebec K1A 0C9

Attention: Commissioner of Competition  
Fax: (819) 953-5013  
Email address: [ic.avisdefusionmergernotification.ic@canada.ca](mailto:ic.avisdefusionmergernotification.ic@canada.ca)

with a copy to:

Executive Director and Senior General Counsel  
Competition Bureau Legal Services  
Department of Justice  
Place du Portage, 22nd Floor  
50 Victoria Street, Phase I  
Gatineau, Quebec K1A 0C9

Fax: (819) 953-9267  
Email address: [ic.cb\\_lsu\\_senior\\_general\\_counsel-avocat\\_general\\_principal\\_usj\\_bc.ic@canada.ca](mailto:ic.cb_lsu_senior_general_counsel-avocat_general_principal_usj_bc.ic@canada.ca)

if to Abbott:

Vice President, Abbott Transition Organization  
100 Abbott Park Road  
Abbott Park, Illinois 60064-3500  
Abbott Laboratories  
100 Abbott Park Road  
TRTM-F&A-TRANSITION TEAM  
Bldg. AP6C  
Abbott Park, Illinois 60064-6010

USA  
Office: 224-668-1263  
Fax: 224-668-5313

with a copy to:

Division Counsel, Antitrust, Licensing & Acquisitions  
100 Abbott Park Road  
Abbott Park, Illinois 60064-3500  
Dept. 332, Bldg. AP6A-2  
Abbott Park, Illinois 60064-6010  
USA  
Office: 224-667-4795  
Fax: 847-938-1206

and to:

Dany Assaf  
Torys LLP  
79 Wellington Street West, 30<sup>th</sup> Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2  
Office: 416-865-7303  
Fax: 416-865-7380

**[64]** A notice or other communication under this Agreement is effective on the day that it is received by the receiving party and is deemed to have been received as follows:

- (a) if it is delivered in person, by registered mail or by courier, upon receipt as indicated by the date on the signed receipt;
- (b) if it is delivered by facsimile, upon receipt as indicated by the time and date on the facsimile confirmation slip; or
- (c) if it is delivered by electronic mail, when the recipient, by an email sent to the email address for the sender stated in this Section or by a notice delivered by another method in accordance with this Section, acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this Section.

If a notice or other communication is received after 5:00 p.m. local time, or on a day that is not a Business Day, it shall be deemed to have been received on the next Business Day.

**[65]** Notwithstanding Sections 63 and 64, a notice or other communication that is not communicated in accordance with Sections 63 and 64 is valid if a representative

of the party to this Agreement that is the recipient of such communication confirms the receipt of such communication and does not, at the time of such confirmation, request that it be delivered differently.

## XV. GENERAL

[66] In this Agreement:

- (a) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (b) **Time Periods** – Computation of time periods shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21, and the definition of “holiday” in the *Interpretation Act* shall include Saturday.

[67] The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 105 of the Act. Abbott hereby consents to such registration. Following the filing of this Agreement, the Commissioner shall promptly issue a letter to Abbott indicating that, subject to the implementation of this Agreement, the Commissioner does not intend to make an application under section 92 of the Act in respect of the Transaction.

[68] The Commissioner may, after informing Abbott, extend any of the time periods contemplated by this Agreement other than Sections 53, 56, 57 and 62. If any time period is extended, the Commissioner shall promptly notify Abbott of the revised time period.

[69] Nothing in this Agreement precludes Abbott or the Commissioner from bringing an application under section 106 of the Act. Abbott will not, for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner’s conclusions that: (i) the Transaction is likely to result in a substantial lessening of competition in the supply in or into Canada of bedside blood gas and cardiac marker testing products for human health and point of care blood gas testing products for animal health; and (ii) the implementation of this Agreement is necessary to ensure that any substantial lessening of competition will not result from the Transaction.

[70] Abbott attorns to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement.

[71] This Agreement, together with the Monitor Agreement constitutes the entire agreement between the Commissioner and Abbott, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.

- [72] This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.
- [73] In the event of a dispute regarding compliance with or the interpretation, implementation or application of this Agreement, the Commissioner or Abbott may apply to the Tribunal for directions or an order. In the event of any discrepancy between the English language version of this Agreement and the French language version of this Agreement, the English language version of this Agreement shall prevail. In no event shall any dispute suspend the Divestiture Trustee Sale Period.
- [74] This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.

**[The remainder of this page is intentionally left blank.]**

The undersigned hereby agree to the filing of this Agreement with the Tribunal for registration.

DATED this 28<sup>th</sup> day of September, 2017.

**COMMISSIONER OF COMPETITION**

[Original signed by John Pecman]

Name: John Pecman  
Title: Commissioner of Competition

**ABBOTT LABORATORIES**

[Original signed by Hubert L. Allen]  
I have authority to bind the corporation

Name: Hubert L. Allen  
Title: Executive Vice President, General Counsel  
and Secretary



## SCHEDULE A

### FORM OF COMPLIANCE CERTIFICATION/AFFIDAVIT

I, **[name]**, of **[place]**, hereby certify in accordance with the terms of the Registered Consent Agreement dated • between Abbott Laboratories (“Abbott”) and the Commissioner of Competition (the “Commissioner”), that:

1. I am the **[title]** of Abbott, and have personal knowledge of the matters deposed to herein, unless they are stated to be on information and belief, in which cases I state the source of such information and believe it to be true.
2. On **[date]**, Abbott entered into a Consent Agreement (the “Consent Agreement”) with the Commissioner in connection with the proposed acquisition by Abbott, through a wholly owned subsidiary thereof, of all of the issued and outstanding shares of Alere Inc. (the “Transaction”).
3. The Transaction closed on **[date]** (the “Closing Date”).
4. The Divestiture (as defined in the Consent Agreement) to **[Purchaser]** was completed on **[date]**.
5. Pursuant to Section 58 of the Consent Agreement, Abbott is required to file annual reports certifying its compliance with Parts VIII, IX and XII of the Consent Agreement.

#### Oversight of Compliance

6. **[Names/titles]** have primary responsibility for overseeing compliance with this Agreement.

#### Closing Date

7. Pursuant to Section 54 of the Consent Agreement, Abbott is required to provide written confirmation to the Commissioner of the date on which the Transaction was completed. Such notice was provided on **[date]**.

#### Circulation of Consent Agreement

8. Pursuant to Section 55 of the Consent Agreement, Abbott is required to provide a copy of the Consent Agreement to each of its own and its Affiliates’ directors, officers, employees and agents having managerial responsibility for any obligations under the Consent Agreement, within 30 Business Days after the date of registration of the Consent Agreement. The Consent Agreement was circulated by **[whom]** to **[provide list]** on **[dates]**.

9. Pursuant to Section 55 of the Consent Agreement, Abbott is required to ensure that its directors, officers, employees and agents with responsibility for any obligations under the Consent Agreement receive sufficient training respecting Abbott's responsibilities and duties under the Consent Agreement. The following training has been provided: **[provide list of who was trained and by whom as well as a general statement of the content of the training]**

**Transition Service Agreement**

10. **[Describe any compliance obligations arising from Abbott's Transition Service Agreements, and confirm compliance with each – to be tailored to specific terms of consent agreement.]**

**Employees**

11. Sections 37 and 38 of the Consent Agreement require Abbott to take various steps in regard to its employees whose responsibilities involved the operation of the Divestiture Assets. Abbott has fully complied with the terms of those Sections and, more particularly:

**[Note: Describe steps taken to facilitate employee transfer to Purchaser, having regard to the terms of Sections 37 and 38; provide data on the # of employees who have transferred to the Purchaser.]**

**Notification of Breach**

12. Based on my personal knowledge and my inquiries of **[provide names]**, I am not aware of any breach or possible breach of any of the terms of the Consent Agreement within the meaning of Section 59 of the Consent Agreement.

DATED ●.

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Commissioner of Oaths

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Name and Title of Certifying Officer

## **SCHEDULE B**

### **Blood Gas Products**

- 1) Epoc Reader;\* [HR-1002-00-00]
- 2) Epoc Host 2 Motorola;\* [HH-1009-CA-00]
- 3) epoc Host Rx;\* [HH-0005-CA-00]
- 4) epoc Host 2 Motorola Refurbished;\* [HH-1R09-CA-00]
- 5) epoc BGEM Crea/CI Test card (50T);\* [CT-1006-00-00]
- 6) epoc BGEM Lac Test Card;\* [CT-1004-00-00]
- 7) Veterinary;
- 8) epoc BGEM Test Cards w/ Lactate (50T);\* [CT-1004-00-00]
- 9) epoc Care-Fill Capillary Tubes (50T);
- 10) EDM Software;
- 11) Total CO2 analyte;
- 12) Blood Urea Nitrogen (BUN) analyte;
- 13) the following products in development: BUN/TCO2eMP test card; next generation Epoc System with co-oximetry and tHb; eMP card CLIA-waived; tBili; iMag; Coagulation (ACT); and
- 14) all improvements or modifications to the abovementioned devices that are in existence as of the date of the Agreement.

## SCHEDULE C

### Cardiac Marker Products

- 1) Triage Cardio 3 Panel;
- 2) Triage Cardio 2 Panel;
- 3) Triage Cardiac Panel;
- 4) Triage Profiler SOB Panel;
- 5) Alere Triage® BNP Calibration Verification;\* [98015XR]
- 6) Alere Triage® BNP Control 1;\* [98013XR]
- 7) Alere Triage® BNP Control 2;\* [98014XR]
- 8) Alere Triage® BNP Test (US and OUS versions);
- 9) Alere Triage® Cardiac Panel (US and OUS versions);
- 10) Alere Triage® Cardiac Panel, TnI (US only);
- 11) Alere Triage® Cardiac Panel, TnI and CK-MB (US only);
- 12) Alere Triage® Cardio3 Panel (OUS only);\* [97400EU]
- 13) Alere Triage® Cardio2 Panel (OUS only);\* [97500EU]
- 14) Alere Triage® Troponin I Test (OUS only);\* [98600EU]
- 15) Alere Triage® D-Dimer Test (US and OUS versions);\* [98100]
- 16) Alere Triage® MeterPro (US and OUS versions) and related QC Device;\* [55070; 55001; 55040]
- 17) Alere Triage® NT-proBNP Control 1;\* [98713EU]
- 18) Alere Triage® NT-proBNP Control 2;\* [98714EU]
- 19) Alere Triage® NT-proBNP Test (OUS only);\* [98000XR; 98700EU]
- 20) Alere Triage® Profiler SOB™ Panel (OUS only);
- 21) Alere Triage® Total 3 Control 1;\* [88733]
- 22) Alere Triage® Total 3 Control 2;\* [88734]
- 23) Alere Triage® Total 5 Calibration Verification;\* [88755]
- 24) Alere Triage® Total 5 Control 1;\* [88753]
- 25) Alere Triage® Total 5 Control 2;\* [88754]
- 26) Alere Triage® TOX Drug Screen (US and OUS versions);\* [94400; 94400EU]
- 27) Alere Triage® TOX Drug Screen, 10 Test Panel (US only);
- 28) Alere Triage® TOX Drug Screen, 9 Test Panel (US only);
- 29) Alere Triage® TOX Drug Screen, 7 Test Panel (US only);
- 30) Alere Triage® TOX Drug Screen Control 1;\* [94413]
- 31) Alere Triage® TOX Drug Screen Control 2;\* [94414]
- 32) the following products in development: Kit, Triage Troponin T2; Kit, Control Level 1 Troponin T2; Kit, Calibration Verification Troponin T2; Kit, Triage Tox DS-X; Kit, Control Level 1 Tox DS-X; Kit, Control Level 2 Tox DS-X; Triage Tox DS-RX; Kit, Triage Procalcitonin (antibody generation); Triage Procalcitonin T2; Kit, Control Level 1 Procalcitonin; Kit, Control Level 2 Procalcitonin; and Kit, Calibration Verification Procalcitonin; and
- 33) all improvements or modifications to the abovementioned devices that are in existence as of the date of the Agreement.