

## MONITOR AGREEMENT

This Monitor Agreement (this "Agreement") entered into this <sup>15</sup> day of September, 2017 by and between ING Financial Markets LLC ("ING" or the "Monitor"), Abbott Laboratories ("Abbott"), and Alere Inc. ("Alere," collectively with Abbott, "Respondents") provides as follows:

**WHEREAS**, the United States Federal Trade Commission (the "FTC") has accepted or will shortly accept for public comment an Agreement Containing Consent Order, including a proposed Decision and Order and a proposed Order to Maintain Assets ("Asset Maintenance Order," and collectively, the "Orders"), which, among other things, (i) would require the divestiture of Alere's Epoc Products and Triage Products businesses, as defined in the Orders, and (ii) contemplates the appointment of a Monitor to monitor Respondents' compliance with their obligations under the Orders;

**WHEREAS**, the FTC may appoint ING as Monitor pursuant to Section III of the proposed Decision and Order;

**WHEREAS**, the Orders further provide that Respondents shall execute an agreement, subject to the prior approval of the FTC, that confers all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the terms of the Orders; and

**WHEREAS**, the parties to this Agreement intend to be legally bound, subject only to the FTC's approval of this Agreement.

**NOW, THEREFORE**, the parties agree as follows:

All capitalized terms used in this Agreement and not specifically defined herein shall have the respective definitions given to them in the Orders.

### ARTICLE I

**1.1 Monitor's Responsibilities.** The Monitor shall be responsible for monitoring Respondents' compliance with their obligations as set forth in the Orders and the Remedial Agreements (including any Transition Services Agreement), as defined in the Remedial Agreements ("Monitor's Responsibilities"). In doing so, the Monitor recognizes that he shall act in a fiduciary capacity on behalf of the FTC. The Monitor will be serving hereunder as an independent contractor and no employment relationship shall exist between the Monitor and the Respondents. The Monitor shall have all rights, duties, powers and authorities required by the Orders, and nothing in this Agreement shall change, amend, modify or otherwise limit those rights, duties, powers, and authorities.

**1.2 Access to Relevant Information and Facilities.** Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to the personnel, books and records of Respondents kept in the ordinary course of business, facilities, technical information related to Respondents' compliance with its obligations under the Orders and the Remedial Agreement, and such other relevant information as the Monitor may reasonably request.

Respondents shall cooperate with any reasonable request of the Monitor. The Monitor shall give Respondents a written request and at least five days' prior notice of any request for such access or such information and shall attempt to schedule any access or requests for information in such a manner as will not unreasonably interfere with Respondents' operations. At the request of the Monitor, Respondents shall promptly arrange meetings and discussions, including tours of relevant facilities, at reasonable times and locations between the Monitor and employees of Respondents who have knowledge relevant to the proper discharge of its responsibilities under the Orders.

**1.3 Compliance Reports.** Respondents shall provide the Monitor with copies of all compliance reports filed with the FTC in a timely manner, but in any event, no later than five (5) business days after the date on which Respondents file such a report with the FTC.

**1.4 Additional Personnel.** Respondents agree that, to the extent authorized by the Orders, the Monitor shall have the authority to employ, at the expense of the Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's Responsibilities.

**1.5 Monitor's Obligations.** The Monitor shall:

- a. Carry out the Monitor's Responsibilities, including submission of periodic reports to the FTC staff concerning performance by Respondents' of their obligations under the Orders, and any additional written reports as may be requested by the FTC staff;
- b. Cooperate as appropriate with ING Bank N.V. London Branch ("ING London"), the Monitoring Trustee appointed pursuant to the Respondents' Commitments to the European Commission;
- c. Maintain the confidentiality of all non-public information, including Confidential Business Information, provided to the Monitor by Respondents, the FTC-Approved Acquirer, any supplier or customer of Respondents, or the FTC in connection with the Monitor's Responsibilities ("Confidential Information"). Such Confidential Information shall be used only for the purpose of discharging the Monitor's obligations pursuant to this Agreement and not for any other purposes, including, without limitation, any other business, scientific, technological, or personal purpose. The Monitor may disclose Confidential Information only to:
  - i. Persons employed by or working with the Monitor under this Agreement and who have executed a confidentiality agreement consistent with the provisions of this Agreement;
  - ii. Persons employed by Respondents;
  - iii. Persons employed by ING London, the Monitoring Trustee appointed pursuant to the Respondents' Commitments to the European Commission; and



- iv. Persons employed at the FTC and working on this matter.
- v. The Monitor shall maintain a record and inform the FTC of all persons to whom Confidential Information related to this Monitor Agreement has been disclosed.
- d. Require any consultants, accountants, attorneys, and any other representatives and/or assistants retained by the Monitor to assist in carrying out the Monitor's Responsibilities to execute a confidentiality agreement that requires such third parties to treat Confidential Information with the same standards of care and obligations of confidentiality to which the Monitor must adhere under this Agreement;
- e. Maintain the confidentiality, for a period of ten (10) years after the termination of this Agreement, of all other aspects of the performance of the Monitor's Responsibilities and not disclose any Confidential Information relating thereto except as required by law. In the event that Monitor is requested pursuant to subpoena or other legal process to produce any documents or to provide testimony relating to this matter in judicial or administrative proceedings to which the Monitor is not a party, Respondents shall reimburse the Monitor at standard billing rates for all professional time and expenses, including reasonable attorneys' fees, incurred in preparing for and responding to requests for documents and providing testimony;
- f. Upon termination of the Monitor's duties under this Monitor Agreement, the Monitor shall consult with the FTC's staff regarding disposition of any written and electronic materials (including materials that Respondent provided to the Monitor) in the possession or control of the Monitor that relate to the Monitor's duties, and the Monitor shall dispose of such materials, which may include sending such materials to the FTC's staff, as directed by the staff. In response to a request by Respondent to return or destroy materials that Respondent provided to the Monitor, the Monitor shall inform the FTC's staff of such request and, if the FTC's staff do not object, shall comply with the Respondents' request. Nothing herein shall abrogate the Monitor's duty of confidentiality, which includes an obligation not to disclose any non-public information obtained while acting as a Monitor.

For the purpose of this Agreement, information shall not be considered confidential or proprietary to the extent that it is or becomes part of the public domain (other than as the result of any action by the Monitor or by any employee, agent, affiliate or consultant of the Monitor), or to the extent that the recipient of such information can demonstrate that such information was already known to the recipient at the time of receipt from a source other than the Monitor, the Respondents, or any director, officer, employee, agent, consultant or affiliate of the Monitor or the Respondents, when such source was not known to recipient after due inquiry to be restricted from making such disclosure to such recipient.

**1.6 Monitor Payment.** Respondents will pay Monitor for services rendered by the Monitor pursuant to this Agreement in accordance with the confidential fee schedule listed on Schedule A to this Agreement. In addition, Respondents will pay: (a) out-of-pocket expenses reasonably incurred by the Monitor in the performance of the Monitor's Responsibilities; and (b) fees and disbursements reasonably incurred by such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's Responsibilities. The Monitor shall invoice Respondents monthly, including details and an explanation of all matters for which the Monitor submits an invoice to Respondents. Respondents shall pay such invoices within sixty (60) days of receipt. Any consultants, accountants, attorneys, and other representatives and assistants retained by the Monitor shall invoice their services to the Monitor who will review and approve such invoices and submit to Respondents for payment. At their own expense, Respondents may retain an independent auditor to verify such invoices. A late payment charge of one percent (1%) per month (or the maximum rate permitted by law, whichever is less) may be added to any outstanding invoices that are past due. The Monitor and Respondents shall submit any disputes about invoices to the FTC for assistance in resolving such disputes.

**1.7 Monitor's Indemnification and Limitation of Liability.** Respondents shall (i) indemnify and hold harmless ING and all affiliates of ING and its directors and employees (the "Indemnified Parties") and (ii) hold the Indemnified Parties harmless (regardless of any action, whether in contract, statutory law, tort or otherwise) against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's Responsibilities, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from gross negligence, willful misconduct, or bad faith by the Monitor. In addition, the parties shall not be liable to each other for any consequential, incidental, special or punitive damages, nor shall the Monitor be liable for direct compensatory damages in excess of the fees actually received by the Monitor for the performance of services hereunder.

**1.8 Disputes.** In the event of a disagreement or dispute between Respondents and the Monitor concerning Respondents' obligations under one or both of the Orders, and, in the event that such disagreement or dispute cannot be resolved by the parties, either party may seek the assistance of the individual in charge of compliance at the FTC.

**1.9 Conflicts of Interest.** If the Monitor becomes aware during the term of this Agreement that he has or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Monitor of any of the Monitor's Responsibilities, the Monitor shall immediately inform Respondents and the FTC of any such conflict. ING may accept other retentions during the term of this Agreement and thereafter, provided that, during the pendency of this Agreement, ING agrees not to accept any other engagement which would result in ING working in a position directly adverse to the FTC, Respondents, or the FTC-Approved Acquirer in any substantially related matter.

**1.10 Standard of Care.** In the performance of the Monitor's Responsibilities, the Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of his own business affairs.



## ARTICLE II

**2.1 Term.** This Agreement shall terminate upon the earliest of: (a) such time as is necessary to monitor Respondents' compliance with the provisions of the Orders and the Remedial Agreement, including for as long as Respondents are providing Transition Services to the Acquirer pursuant to the a Transition Services Agreement; (b) the expiration or termination of the Orders; (c) the expiration or termination of the Divestiture Agreement; (d) Respondents' receipt of written notice from the FTC that the FTC has determined that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor, or that the employment of a Monitor is no longer required; or (e) with at least thirty (30) days advance notice to be provided by the Monitor to Respondents and to the FTC, upon resignation of the Monitor.

If this Agreement is terminated for any reason, the confidentiality provisions set forth in Section 1.5 above will remain in force.

**2.2 Termination.** In the event that ING wishes to terminate this Agreement, ING shall provide written notice to the Respondents and the FTC. Respondents and ING shall work in good faith with the FTC to identify and propose to the FTC a successor Monitor. ING shall continue to serve as Monitor under the terms of this Agreement until such time as the FTC approves a successor Monitor, and ING's termination of this Agreement shall be effective only upon the approval by the FTC of a successor Monitor.

**2.3 Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by the substantive laws of the state of New York, including all matters of construction, validity and performance. The Orders shall govern this Agreement and any provisions herein which conflict or are inconsistent with them may be declared null and void by the FTC and any provision not in conflict shall survive and remain a part of this Agreement.

**2.4 Disclosure of Information.** Nothing in this Agreement shall require Respondents to disclose any material information that is subject to a legally recognized privilege or that Respondents are prohibited from disclosing by reason of law or an agreement with a third party.

**2.5 Assignment.** This Agreement may not be assigned or otherwise transferred by Respondents or the Monitor without the consent of Respondents and the Monitor and the approval of the FTC. Any such assignment or transfer shall be consistent with the terms of the Orders.

**2.6 Modification.** No amendment, modification, termination, or waiver of any provision of this Agreement shall be effective unless made in writing, signed by all parties, and approved by the FTC. Any such amendment, modification, termination, or waiver shall be consistent with the terms of the Orders.

**2.7 Approval by the FTC.** This Agreement shall have no force or effect with respect to the Orders until approved by the FTC.

**2.8 Entire Agreement.** This Agreement, and those portions of the Orders incorporated herein by reference, constitute the entire agreement of the parties and supersede any and all prior agreements and understandings between the parties, written or oral, with respect to the subject matter hereof.

**2.9 Duplicate Originals.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

**2.10 Section Headings.** Any heading of a section is for convenience only and is to be assigned no significance whatsoever as to its interpretation and intent.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**MONITOR**

ING Financial Markets LLC

**RESPONDENTS**

Abbott Laboratories

  
Name *Philip Comerford Jr.*  
Title *Managing Director*

\_\_\_\_\_  
Name  
Title

Alere Inc.

\_\_\_\_\_  
Name  
Title

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

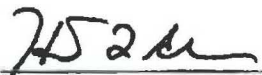
**MONITOR**

ING Financial Markets LLC

**RESPONDENTS**

Abbott Laboratories

\_\_\_\_\_  
Name  
Title

  
\_\_\_\_\_  
Name Hubert L. Allen  
Title Executive Vice President  
General Counsel and Secretary

Alere Inc.

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Name  
Title



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

**MONITOR**

ING Financial Markets LLC

**RESPONDENTS**


Abbott Laboratories

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Name  
Title

Alere Inc.

\_\_\_\_\_  
Name  
Title

  
\_\_\_\_\_  
Name Douglas Barry  
Title Asst. Gen. Secretary