

**DATED** \_\_\_\_\_ **2013**

**(1) ALERE INC.**

**AND**

**(2) Leeds and Partners**

**(3) NHS Leeds North Clinical Commissioning Group**

**(4) NHS Leeds West Clinical Commissioning Group**

**(5) NHS Leeds South & East Clinical Commissioning Group**

**(6) Leeds Teaching Hospitals Trust**

**(7) Leeds Community Healthcare Trust**

**(8) Leeds & York Partnership Trust**

**(9) Leeds City Council**

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**COLLABORATION FRAMEWORK AND EVALUATION  
AGREEMENT**

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**BETWEEN:**

- (1) **ALERE INC** whose registered office is at 51 Sawyer Road, Suite 200, Waltham, MA 02453 ("Alere"); and
- (2) **Leeds and Partners (L&P)** whose principal office is at City Exchange, 2nd Floor West, 11 Albion Street, Leeds LS1 5ES;
- (3) **NHS Leeds North Clinical Commissioning Group ("LNCCG")** whose principal office is at Leafield House, 107-109 King Lane, Leeds LS17 5BP;
- (4) **NHS Leeds West Clinical Commissioning Group ("LWCCG")** whose principal office is at Suites 2-4, Wira House, Wira Business Park, Leeds LS16 6EB;
- (5) **NHS Leeds South & East Clinical Commissioning Group ("LSECCG")** whose principal office is at 2180 Century Way, Thorpe Park, Leeds LS15 8ZB;
- (6) **Leeds Teaching Hospitals Trust ("LTHT")** whose principal office is at Chapeltown Road, Leeds, West Yorkshire LS7 4SA;
- (7) **Leeds Community Healthcare Trust ("LCH")** whose principal office is at First Floor, Stockdale House, Headingley Office Park, Victoria Road, Leeds LS6 1PF;
- (8) **Leeds & York Partnership Trust ("LYPFT")** whose principal office is at 2150 Century Way, Thorpe Park, Leeds LS15 8ZB;
- (9) **Leeds City Council ("LCC")** whose principal office is at Civic Hall, Calverley Street, Leeds LS1 1JF; and

with L&P, LNCCG, LWCCG, LSECCG, LTHT, LCH, LYPFT, AND LCC being together known as "**UK Partners**"

**WHEREAS**

- (A) Alere has innovative technology relevant to telehealth, care management and health and social care management. The UK Partners have experience, expertise and reputation in the UK healthcare sector. The Parties have a joint interest in sharing knowledge and developing technology for applications in the healthcare sector.
- (B) Alere and the UK Partners have each agreed to contribute expertise and know-how with respect to mutually beneficial projects subject to and on the terms and conditions of this Agreement and, subject to successful negotiations, to enter into a formal Collaboration Agreement in order to establish a suitable vehicle to enable the parties to collaborate on specific projects, with a facility for call-offs of individual collaborative projects.
- (C) Alere and the UK Partners thus wish to enter into this non-binding (except where expressly stated otherwise) Agreement to set out the heads of terms for the Collaboration Agreement and, pending agreement and execution of the Collaboration Agreement, to provide for some interim activities during a limited Evaluation Period.

**IT IS AGREED** as follows:

1. **INTERPRETATION**

- 1.1 In this Agreement the following terms will have the meaning set out below:

<b>"Arising IP"</b>	any Intellectual Property arising directly from the collaboration activities between the Parties during the Evaluation Period but, for the avoidance of doubt, excluding any Background IP;
<b>"Background IP"</b>	all Intellectual Property owned or controlled by either Party prior to the date of this Agreement or generated by a Party during the term of this Agreement but not resulting from the Evaluation Activities;
<b>"Collaboration Agreement"</b>	a formal agreement to be entered into between, on the one hand, Alere or, in Alere's sole discretion, a wholly owned entity designated by Alere and, on the other hand, such of the UK Partners who wish to participate to cover mutually beneficial collaboration projects on fair and reasonable terms to be agreed based on the Heads of Agreement;
<b>"Commercially Sensitive Information"</b>	the information comprising the information of a commercially sensitive nature relating to a Party, its Intellectual Property or its business which the Party has indicated to the other Parties that, if disclosed by the other Parties, would cause the Party significant commercial disadvantage or material financial loss;
<b>"Environmental Information Regulations"</b>	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
<b>"Evaluation Activities"</b>	shall have the meaning given it at Clause 4.1;
<b>"Evaluation Period"</b>	from the date of this Agreement until 1 October 2013 unless earlier terminated in accordance with this Agreement or extended by mutual agreement between all the Parties;
<b>"FOIA"</b>	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
<b>"FOI Legislation"</b>	the FOIA and the Environmental Information Regulations;
<b>"Good Industry Practice"</b>	that exercise of that degree of skill, care, prudence, efficiency, timeliness and foresight as would be expected from a leading organisation; within the relevant industry or business sector
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;
<b>"Heads of Agreement"</b>	the features and terms of and the timetable of actions and milestones for the Collaboration Agreement as outlined at Schedule 1 as envisaged by the Parties at the date of this Agreement given the facts and knowledge available at that time;

<b>"Intellectual Property"</b>	rights arising from patents, trade marks, service marks, registered designs, domain names, applications for any of the foregoing, trade and business names, unregistered trade marks and service marks, know-how, copyrights (including rights in software), rights in designs, rights in databases, rights in inventions, rights in improvements and rights of the same or similar effect or nature, in any part of the world;
<b>"Parties"</b>	collectively, Alere and the UK Partners;
<b>"Party"</b>	any of Alere or any UK Partner; and
<b>"Request for Information"</b>	a request for information or an apparent request under FOIA.

1.2 Unless the context requires otherwise, as used in this Agreement:

- 1.2.1 the terms and expressions set out in Clause 1.1 shall have the meanings ascribed therein;
- 1.2.2 the masculine includes the feminine and the neuter and vice versa;
- 1.2.3 the singular includes the plural and vice versa; and
- 1.2.4 references to any "software" include without limitation all programs, data files, databases, data and other related information stored on computer media or otherwise; and

1.3 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment or consolidation thereof.

1.4 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.5 References to Clauses and Schedules are, unless otherwise provided, references to clauses of and schedules to this Agreement. Any reference to a Paragraph is to the relevant paragraph of the Schedule in which it appears. All Schedules form part of this Agreement. If there is any conflict between (a) the Schedules and (b) the Clauses, then the Clauses shall prevail.

## 2. **CENTRAL PRINCIPLE AND OBJECTIVES**

2.1 This Agreement is not intended by the Parties to be legally binding and shall have no binding effect, except where expressly stated otherwise.

2.2 The central principle guiding the Parties in the operation of this Agreement is their commitment to work together in a co-operative and collaborative manner to achieve the stated objectives of each Party and to for the benefit of patients, health care professionals, Clinical Commissioning Groups and the National Health Service in accordance with the provisions of this Agreement.

2.3 The Parties aim to work together in a co-operative and collaborative manner, and will each give to, and welcome from, each other, constructive feedback on performance.

2.4 Subject to compliance by each Party with Clause 10 of this Agreement, the Parties will share information relevant to this Agreement openly and highlight any difficulties at the earliest practical time.

2.5 The Parties will support collaborative behaviour and confront behaviour that is inconsistent with the central principle as set out in Clause 2.2 above.

2.6 The UK Partners will cooperate in continuing to actively seek additional sources of funding to support their mutual activities pursuant to this Agreement (for example grant funds from research councils, central government, educational, regional or national or international fund sources).

### 3. **COLLABORATION AGREEMENT**

3.1 It is the intent of the Parties to enter into the Collaboration Agreement, which is intended to:

3.1.1 support and accelerate delivery of a model for community wide patient data sharing;

3.1.2 explore mutually beneficial collaborative activities; and

3.1.3 support and enhance services being provided by Alere Connected Health Limited pursuant to an existing agreement originally awarded by NHS Leeds in August 2012 for the provision of telehealth managed services.

3.2 The Heads of Agreement at Schedule 1 outline what the Parties currently believe may form the principal terms of the Collaboration Agreement, based on the Parties' current intentions and the facts known at this time. During the Evaluation Period, the Parties will negotiate and finalise the Collaboration Agreement in good faith.

3.3 The terms set out in the Heads of Agreement at Schedule 1 are not legally binding and are subject to, amongst other things, negotiation, execution and delivery of mutually satisfactory agreements, due diligence in connection therewith and to approval of such transactions and agreements by the respective Parties and their legal counsel.

### 4. **EVALUATION**

4.1 Whilst the Parties are negotiating the Collaboration Agreement and agreeing its detailed content, during the Evaluation Period, the Parties shall progress initial collaborative evaluation activities as set out below (or as otherwise agreed between all the Parties) and agreed as being useful preparation for and initial scoping of the activities to be carried out pursuant to the Collaboration Agreement (the "Evaluation Activities"). These initial collaborative evaluation activities are anticipated to include consideration investigation and scoping (both technically, legally and practically including funding, stakeholder approval, vehicles for ongoing operation) for the provision of:

4.1.1 provider portal;

4.1.2 patient portal;

4.1.3 clinical decision support;

4.1.4 analytics; and

4.1.5 managed hosting and operations for the system elements set forth in Clauses 4.1.1-4.1.4.

4.1.6 a documented output that will be a target blueprint and requirements document that could be used to specify the future provision of provider portal; patient portal; clinical decision support; analytics; and managed hosting and operations for the system elements set forth in Clauses 4.1.1-4.1.4.

4.2 The Evaluation Activities shall be undertaken by all Parties on a non-exclusive basis.

4.3 The Parties shall establish a project team of suitably qualified and experienced staff to diligently carry out the Evaluation Activities with all due skill and care; conducting their work in compliance with all applicable laws, rules and regulations and in accordance with this Agreement.

4.4 No Party will sub-contract any work on the Evaluation Activities without the prior written consent of the other Parties. For the avoidance of doubt, all persons employed by a Party on the Evaluation Activities shall remain the sole responsibility of that Party and that Party shall remain responsible

for the payment of the salaries and fees, and any taxation or other contributions payable thereon, of such persons.

- 4.5 The Parties shall use reasonable endeavours to carry out the Evaluation Activities diligently and to meet any timelines or milestones agreed in writing. The Evaluation activities will commence on the date of execution of this Agreement and continue for the duration of the Evaluation Period.
- 4.6 The Parties will communicate regularly during the Evaluation Period whether in person, by telephone or video conference and at each meeting will:
- 4.6.1 review the progress of the Evaluation Activities as a whole and as against any agreed timelines or milestones;
  - 4.6.2 progress towards finalisation and execution of the Collaboration Agreement; and
  - 4.6.3 discuss any other relevant matters arising.
- 4.7 Each Party may consult with any member of the other Party's staff as may be reasonably required (and to the extent that this does not interrupt or distract from their usual activities).
- 4.8 During the Evaluation Period, each Party shall be permitted to have reasonable access to relevant personnel, information and equipment of the others Parties in order to carry out work necessary for the Evaluation Activities.
- 4.9 Each Party shall have responsibility for and bear its own costs incurred in relation to the Evaluation Activities and pursuant to this Agreement. No payments will be due to any Party pursuant to this Agreement. Where it may be necessary to incur any external expense the Parties will discuss such expenses in advance and no such expenses will be incurred without agreement as to whether these are agreed and how these should be apportioned.
- 4.10 No Party shall be entitled to any payment nor be excused from any liability under this Agreement to the extent that it has misinterpreted any matter or fact relating to the Agreement in circumstances where any reasonable party who received the same information would have interpreted the facts correctly.
- 4.11 In the event that:
- 4.11.1 the Parties are unable, acting reasonably, to agree the terms of the Collaboration Agreement within the Evaluation Period (or such longer period as may be mutually agreed); or
  - 4.11.2 the UK Partners confirm in writing to Alere, at any time during the Evaluation Period, that they do not wish to enter into the Collaboration Agreement; or
  - 4.11.3 this Agreement terminates early;

then the Collaboration Agreement will not be executed and the Parties shall have no further liabilities or obligations toward the other Parties.

## 5. **QUALITY**

- 5.1 Each Party shall, upon the terms and conditions of this Agreement, perform its obligations under this Agreement for the benefit of all Parties, patients, CCGs and other National Health Service bodies and shall:
- 5.1.1 carry out the Evaluation Activities using all due skill, care and diligence, to the best of its ability and with the utmost good faith towards the other Parties, patients and other National Health Service bodies having regard to patient safety and, without prejudice to the generality of the foregoing, in accordance with the higher of the requirements of Good Industry Practice;

- 5.1.2 do nothing which will or might reasonably be expected to damage or otherwise adversely affect the reputation of the other Parties;
  - 5.1.3 so far as reasonably practicable, have a proactive approach to developing enhancements, improvements and efficiencies;
  - 5.1.4 familiarise itself with, comply with and carry out the Evaluation Activities in accordance with:
    - (a) all relevant statutes, laws, regulations and codes of practice from time to time in force including in relation to health, safety, security and environmental standards having statutory effect; and
    - (b) any mandatory standards set by appropriate national and international bodies;
  - 5.1.5 obtain and maintain at its own expense all licences, powers and consents necessary to perform its obligations hereunder;
  - 5.1.6 have and maintain effective and appropriate systems for the identification, mitigation and management of all risks associated with the delivery of the Evaluation Activities; and
  - 5.1.7 immediately notify the other Parties on becoming aware of any actual or potential problems that affect or might affect the Evaluation Activities.
- 5.2 The Parties agree that this Clause 5 is legally binding.

## 6. TERMINATION

- 6.1 Any Party (the "**Initiating Party**") may terminate this Agreement with immediate effect with regard to any other single Party by serving notice in writing to that other Party (the "**Breaching Party**") on or at any time:
- 6.1.1 after the occurrence of a material breach by the Breaching Party of any of its obligations under this Agreement which (if the breach is capable of remedy) the Breaching Party has failed to remedy within 30 days after receipt of notice in writing from the Initiating Party identifying the breach and requiring the Breaching Party to remedy the breach; or
  - 6.1.2 where the Breaching Party is unable to pay its debts or convenes a meeting of its creditors or a proposal is made for any composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if a trustee, administrator, receiver, administrative receiver or similar officer is appointed in respect of all or any part of its business or assets or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for its winding up or for the making of an administration order (otherwise than for the purpose of a solvent intra-group amalgamation or reconstruction) or (where the Breaching Party is a body created by statute) it materially ceases to operate, is dissolved or is de-authorised as a body corporate, or (where the Breaching Party is a trust) it is, or appears to be, clinically or financially unsustainable which has a material adverse effect on its participation in this Agreement or has a special trust administrator appointed or anything similar or analogous to any of the foregoing happens in relation to it under the laws of any jurisdiction in any part of the world or if it ceases to carry on business.
- Any notice given pursuant to this Clause 6.1 shall take effect immediately upon receipt or at such later date (if any) as is specified by the Initiating Party in the relevant notice.
- 6.2 In the event that:
- 6.2.1 the Evaluation Activities indicate and in good faith any of the Parties agree that a collaboration between the Parties is unlikely to be successful; or

6.2.2 the activities anticipated under the Collaboration Agreement appear in the reasonable opinion of any of the Parties unlikely to achieve success due to, for example, regulatory changes, funding issues or superseding technologies or being commercially unviable,

then any Party may serve written notice on the other Parties to terminate their involvement in the Agreement and such termination by a majority of the Parties shall terminate the Agreement in its entirety.

6.3 The Parties agree that this Clause 6 is legally binding.

## 7. **CONSEQUENCES OF TERMINATION**

7.1 In the event that this Agreement expires or terminates in accordance with this Agreement:

7.1.1 each Party shall return to the other any Confidential Information, reports, projections, drawings, models, designs, technical data, computer software, information or know-how in their possession which have been received from the other Party (or any information derived from the same); and

7.1.2 all rights and obligations of the Parties under this Agreement shall automatically terminate and return to with the exception of any accrued rights and obligations of the Parties at the date of expiry or termination or any provisions which are expressly or impliedly required to continue post-termination.

7.2 The Parties agree that this Clause 7 is legally binding.

## 8. **INTELLECTUAL PROPERTY**

8.1 Each Party shall retain ownership of its own Background IP.

8.2 Each Party hereby grants to the others a royalty-free licence for the duration of the Evaluation Period to use such of its Background IP as may be necessary for the purpose of carrying out the Evaluation Activities.

8.3 All Arising IP shall vest absolutely in the Parties involved in its creation or invention and, subject to the provisions of Clause 10, no Parties shall disclose the same to any third party except with the owning Parties prior written consent.

8.4 The Parties agree that this Clause 8 is legally binding.

## 9. **COMPLIANCE**

### *General*

9.1 Each Party shall comply with all relevant statutes, laws, regulations and codes of practice relating to this Agreement from time to time in force including in relation to health, safety, security and environmental standards having statutory effect.

### *Anti-Bribery*

9.2 Each Party shall fully comply with all applicable laws relating to: taxation; exchange controls; customs matters; anti-corruption; anti-trust; anti-money laundering; trade sanctions; and criminal matters.

### *Personal Data*



- 9.3 For the avoidance of any doubt, no UK patient data will be sold to Alere. Alere is an existing supplier to the NHS and as such has already complied with UK legal requirements for the processing of data relating to UK data subjects and additional standards required in order to supply services to the NHS.
- 9.4 In this Agreement, the terms Personal Data and Data Controller shall have the meanings given in the Data Protection 1998 and processing, process and processed shall be construed accordingly.
- 9.5 Each Party undertakes to the others that it shall comply with the obligations of a Data Controller and:
- 9.5.1 warrants that it has, or will have at all material times, (and shall use its best endeavours to procure that any agents and sub contractors have or will have at all material times) the appropriate technical and organisational measures in place against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data held or processed by it and that it has taken, or will take at all material times, all reasonable steps to ensure the reliability of any of its staff which will have access to Personal Data processed as part of its participation in the Agreement;
- 9.5.2 it will only act on the instructions of an other Party in relation to the processing of any Personal Data made available by or on behalf of that Party as part of this Agreement;
- 9.5.3 undertakes that it will only obtain, hold, process, use, store and disclose Personal Data as is necessary to perform its obligations under this Agreement and that such data will be held, processed, used, stored and disclosed only in accordance with the Data Protection Act 1998 and any other applicable law;
- 9.5.4 promptly provide to the other Party all information in its possession concerning any unauthorised or accidental disclosure or access made by a member of staff, director, agent, subcontractor or any other identified or unidentified third party to any Personal Data held by it on behalf of the other Party; and
- 9.5.5 comply with any relevant changes in data protection legislation.
- 9.6 All data relating to patients shall be retained by and owned by the relevant NHS body and Alere shall have no rights to such patient data other than in connection with this Agreement, save as may be expressly agreed in writing.
- 9.7 Each Party, whether acting as a Data Processor or a Data Controller as defined in the Data Protection Act 1998 shall indemnify and keep indemnified the other Parties in full from and against all claims, proceedings, actions, damages, costs, fines, expenses and any other liabilities which may arise out of, or in consequence of, the breach or purported breach of the Data Protection Act 1998 or the performance or non-performance by the first indemnifying Party of its obligations under this Agreement in relation to the Data Protection Act 1998, including loss of or damage to property, financial loss arising from any breach of the Data Protection Act 1998, or any other loss which is caused directly or indirectly by any act or omission of the indemnifying Party in relation to the Data Protection Act 1998. The indemnifying Party shall not be responsible for any loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Party seeking to be indemnified or by breach by the Party seeking to be indemnified of its obligations under this Agreement.
- 9.8 Notwithstanding the foregoing, it is understood as at the date of this Agreement that the Evaluation Activities will not involve the exchange or processing of patient data.

*Freedom of Information*

- 9.9 Alere acknowledges that the UK Partners are subject to the requirements of FOI Legislation and shall provide such assistance and co-operation as the UK Partners reasonably require to enable the UK Partners to comply with their obligations under FOI Legislation including providing such information as the UK Partners may reasonably require in order to support any decision by the UK Partners not to disclose any Information requested under FOI Legislation.
- 9.10 Alere shall:
- 9.10.1 in no event respond directly to a Request for Information unless expressly authorised to do so by the UK Partners;
  - 9.10.2 transfer any Requests for Information received by it to the UK Partners as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request for Information;
  - 9.10.3 provide the UK Partners with a copy of all Information in its possession or power in the form that the UK Partners reasonably requires within five (5) Business Days (or such other period as the UK Partners may specify) of the UK Partners requesting that Information; and
  - 9.10.4 provide all necessary assistance as reasonably requested by the UK Partners to enable the UK Partners to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 9.11 The UK Partners shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- 9.11.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
  - 9.11.2 in the case of a qualified exemption whether the public interest in disclosing the Information is outweighed by the public interest in maintaining the exemption; or
  - 9.11.3 is to be disclosed in response to a Request for Information.
- In every case in which Information relating to Alere is subject to a Request for Information, the relevant UK Partner shall notify Alere of the Request for Information and allow Alere the opportunity to present arguments and justifications for the application of any relevant exemptions.
- 9.12 Alere acknowledges that the UK Partners may be obliged under FOI Legislation to disclose Information (including Commercially Sensitive Information):
- 9.12.1 without consulting with Alere; or
  - 9.12.2 following consultation with Alere and having taken its views into account.
- 9.13 All Parties shall ensure that all Information produced in the course of this Agreement or relating to this Agreement is retained for disclosure or destroyed as applicable in the ordinary course of business and in accordance with its records management, destruction and retention policies in place from time to time and shall permit the other Parties to inspect such records as requested from time to time.
- 9.14 Notwithstanding any other Clause in this Agreement, the UK Partners shall not be responsible to Alere or to each other for any loss, damage, harm or detriment howsoever caused, arising from or in connection with the disclosure of any Information relating to this Agreement or otherwise relating to Alere or one another (including Commercially Sensitive Information) however held or recorded, in respect of any Request for Information.

9.15 The Parties agree that sub-clauses 9.1-9.14 are legally binding.

*Audit*

9.16 Each Party shall, for a period of at least two (2) years from and including whichever shall be the later date of:

9.16.1 the date of expiry or termination of this Agreement; or

9.16.2 such longer period as may be required to comply with its obligations under this Agreement,

maintain, any records or information and documentation as required under this Agreement.

10. **CONFIDENTIALITY**

10.1 For the purposes of this Clause, "**Confidential Information**" means all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one Party (the "**Disclosing Party**") to the other Party or Parties (the "**Receiving Party**") whether before or after the date of this Agreement including, without limitation, any information relating to the Disclosing Party's products, software, systems, services, operations, processes, plans or intentions, product information, pricing, know-how, Intellectual Property, trade secrets, market opportunities and business affairs.

10.2 Subject always to Clause 10.5 during the term of this Agreement and for a period of 5 years after termination or expiration of this Agreement for any reason whatsoever the Receiving Party shall:

10.2.1 keep the Confidential Information confidential;

10.2.2 not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with Clause 10.3; and

10.2.3 not use the Confidential Information for any purpose other than the performance of its obligations or the exercise of its rights under this Agreement.

10.3 During the term of this Agreement the Receiving Party may disclose the Confidential Information to its employees (the "**Recipient**") to the extent that it is necessary for the purposes of effectively carrying on the Evaluation Activities.

10.4 The Receiving Party shall use reasonable endeavours to procure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.

10.5 The obligations contained in Clauses 10.1 to 10.4 shall not apply to any Confidential Information which:

10.5.1 is at the date of this Agreement or at any time after the date of this Agreement comes into the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;

10.5.2 can be shown by the Receiving Party to the satisfaction of the Disclosing Party to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party;

10.5.3 subsequently comes lawfully into the possession of the Receiving Party from a third party under no obligation of confidence to the Disclosing Party in respect of such Confidential Information; or

10.5.4 is or has been independently developed by the Receiving Party, as evidenced by written record.

10.6 The Parties agree that this Clause 10 is legally binding.

## 11. GENERAL

11.1 The Parties acknowledge that each of the UK Partners are Contracting Authorities within the meaning of the Public Contracts Regulations 2006 (Regulations). The Parties acknowledge that the UK Partners are required to comply with the Regulations, and it is not intended that any provision in this Agreement shall affect in any way the obligation of the UK Partners to comply with the Regulations, including the duties of Contracting Authorities to advertise Public Services Contracts (within the meaning of those Regulations), and to act in a fair, open and non-discriminatory manner.

11.2 This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and supersedes all previous such agreements. For the avoidance of doubt, the existing agreement relating to telehealth services referred to at Clause 3.1.3 is a separate agreement and shall continue in full force and effect in accordance with its terms.

11.3 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of all of the Parties.

11.4 Except as expressly provided in this Agreement the rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

11.5 If the performance of any part of this Agreement is prevented, restricted, interfered with or delayed by reason of any cause beyond the reasonable control of the Party liable to perform, then that part shall, upon giving written notice to the other Parties, be excused from such performance to the extent of such prevention, restriction, interference or delay, provided the affected Party shall use its best efforts to avoid or remove such causes of non-performance.

11.6 Nothing in this Agreement shall be construed as creating a partnership between the Parties or as constituting any Party as the agent of the other Party for any purpose whatsoever and no Party shall have the authority or power to bind the other Party or to contract in the name of or create a liability against the other Parties in any way or for any purpose.

11.7 The rights granted under this Agreement are personal and no Party shall assign or transfer or purport to assign or transfer any of its rights or obligations under this Agreement except with the prior written consent of the other Parties

11.8 No person other than the Parties to this Agreement shall have a right to enforce any provision of this Agreement and no other person shall have any rights to enforce a term of this Agreement which confers a benefit on that person. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

11.9 Any notice or other communication under or in connection with this Agreement shall be in writing in the English language and shall be delivered personally or sent by first class post pre-paid recorded delivery or by fax or email, to the Party or Parties due to receive the notice or communication at its address set out in this Agreement or such other address as any Party may specify by notice in writing to the others.

11.10 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

11.10.1 if delivered personally, when left at the address referred to in Clause 11.9;

11.10.2 if sent by mail two days after posting it;

11.10.3 if sent by fax or email, when clearly received in full.

11.11 To the extent that this Agreement is legally binding, it is governed by, and shall be construed in accordance with, English law.

11.12 The courts of England shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the legally binding clauses of this Agreement.

11.13 The Parties agree that this Clause 11 is legally binding.

**AS WITNESS WHEREOF** the Parties have executed this Agreement on the date above written.

**EXECUTED** by an authorised  
representative of  
**ALERE INC.**

date:

**EXECUTED** by an authorised  
representative of  
**LEEDS AND PARTNERS**

date:

**EXECUTED** by an authorised  
representative of  
**NHS LEEDS NORTH  
CLINICAL COMMISSIONING GROUP**

date:

**EXECUTED** by an authorised  
representative of  
**NHS LEEDS WEST  
CLINICAL COMMISSIONING GROUP**

date:

**EXECUTED** by an authorised  
representative of  
**NHS LEEDS SOUTH & EAST  
CLINICAL COMMISSIONING GROUP**

date:

**EXECUTED** by an authorised  
representative of  
**LEEDS TEACHING HOSPITALS TRUST**

date:

**EXECUTED** by an authorised  
representative of  
**LEEDS COMMUNITY HEALTHCARE  
TRUST**

date:

**EXECUTED** by an authorised  
representative of  
**LEEDS & YORK PARTNERSHIP TRUST**

date:

**EXECUTED** by an authorised  
representative of  
**LEEDS CITY COUNCIL**

date:

## SCHEDULE 1

### NON BINDING HEADS OF AGREEMENT FOR COLLABORATION AGREEMENT

<b>Structure</b>	<p>The Collaboration Agreement will form a framework to set out the ongoing relationship between the Parties in connection with research and development and related collaboration activities, with a facility for call-offs of individual work projects by individually agreed work orders (the first of which is outlined at the “Content” section below).</p> <p>The Parties will raise proposals for collaborative projects of mutual benefit from time to time by notice in writing. The Parties will then seek to agree:</p> <ul style="list-style-type: none"><li>• the collaboration activities to be carried out and any specifications and deliverables of such;</li><li>• any additional requirements or particular equipment or other resources required;</li><li>• the place of performance of any collaborative activities, timetable for performance and any applicable milestones;</li><li>• any special conditions required (which would vary the terms and conditions of the Collaboration Agreement in respect of the particular collaborative activities; and</li><li>• once the above matters referred have been agreed by the Parties and incorporated in a work order, such work order shall be executed by the Parties</li></ul>
<b>Content</b>	<p>The first work order anticipated under the Collaboration Agreement, is intended to include activities relating to:</p> <ul style="list-style-type: none"><li>• support and acceleration of delivery of a model for community wide patient data sharing;</li><li>• provider portal;</li><li>• patient portal;</li><li>• clinical decision support;</li><li>• analytics; and</li><li>• managed hosting and operations</li><li>• corporate structures for operation and maintenance of a health information exchange system;</li><li>• exploration of mutually beneficial collaborative activities; and</li><li>• support and enhance services being provided by Alere Connected Health Limited pursuant to an existing agreement originally awarded by NHS Leeds in August 2012 for the provision of telehealth managed services</li></ul>

<b>Access</b>	It is recognised that Parties may need to grant each other access to their premises, staff and equipment for the purposes of carrying out the collaboration activities. Each Party shall as a condition of such access, act at all times in accordance with any reasonable direction of the other Parties including, without limitation, with regard to health and safety procedures and policy, site safety rules, IT security and data policy and confidentiality requirements
<b>Governance</b>	Each Party shall appoint a representative as its primary point of contact with regard to the Collaboration Agreement and the activities thereunder and a Collaboration Board shall be appointed for overall governance and oversight of activities under the Collaboration Agreement
<b>Payments</b>	No payments will be due from any Party to another Party unless such payment is expressly agreed to, in writing, in advance. The Collaboration Agreement will contain general principles on ownership and access to learnings and benefits jointly arising thereunder and the Parties contemplate that such general principles may include the sharing of revenue arising from exploitation of such learnings and benefits
<b>Intellectual Property</b>	The Collaboration Agreement will contain general principles on ownership and access to intellectual property jointly arising thereunder and the Parties contemplate that such general principles may include the sharing of revenue arising from exploitation of such intellectual property. A general principle will be that each Party will have access to and rights to use intellectual property arising under the Collaboration Agreement for purposes of satisfying its obligations thereunder.
<b>Third Party IP Rights</b>	Any deliverables under the Collaboration Agreement will not be in a form which restricts or ties their use or exploitation under the Collaboration Agreement to additional payments, licences or consents from a Party or third party (save where the Party introducing such a deliverable procures a royalty-free, irrevocable licence to use such underlying rights or where the licence is for readily available, standard commercial off-the-shelf software).
<b>Service Levels</b>	The Collaboration Agreement will include agreed service levels, KPIs or specifications under which collaborative activities will be carried out and which any deliverables must meet
<b>Termination</b>	The Collaboration Agreement will have a flexible term, with provisions for extension of the Collaboration Agreement itself and work orders thereunder or early termination for breach, insolvency or change of policy or strategy (but not for convenience). The Collaboration Agreement will contain exit management plans to ensure an efficient transition following any termination or expiry of work orders.
<b>Data Protection</b>	The Collaboration will include provisions covering data privacy, use of patient data, informatics and IT security. The overall standard will be that required for suppliers to the NHS. For the avoidance of any doubt, no UK patient data will be sold to Alere
<b>Jurisdiction</b>	These Heads and the Collaboration Agreement shall be governed by and construed in accordance with the laws of England. The Parties will submit to the exclusive jurisdiction of the English Courts.
<b>General</b>	The Collaboration Agreement will contain provisions regarding, without limitation, warranties, force majeure, limitations on assignment, confidentiality, severability, serving of notices, termination provisions, and the ownership, prosecution and enforcement of intellectual property.
<b>Legal</b>	Each Party shall bear its own legal costs associated with the drafting and negotiation of the Collaboration Agreement.