



MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (this “**Agreement**”) is entered into between Irvine Pharmaceutical Services, Inc. and its affiliates (the “**Company**”) and **Company** as of December 2, 2009, (the “**Effective Date**”), to protect the confidentiality of certain confidential information of Company or of **Company** to be disclosed under this Agreement solely for use in evaluating or pursuing a business relationship between the parties (the “**Permitted Use**”). Company and **Company** may be referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

“Affiliate” shall mean any corporation, company, partnership, joint venture, firm or other entity, which directly or indirectly controls, is controlled by, or is under common control with the respective party. For purposes of this definition of Affiliate, “control” shall mean (a) in the case of corporate entities, direct or indirect ownership of at least fifty percent (50%) of the stock or shares having the right to vote for the election of directors, or (b) in the case of non-corporate entities, direct or indirect ownership of at least fifty percent (50%) of the equity, voting share participation or other interest with the power to direct the management and policies of such non-corporate entities.

1. As used herein, the “**Confidential Information**” of a Party will mean, subject to Section 2, any and all technical and non-technical information disclosed by such Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”), which may include without limitation: (a) patent and patent applications, (b) trade secrets, and (c) proprietary and confidential information, ideas, techniques, inventions, know-how, processes, apparatuses, equipment, and formulae related to the current, future, and proposed products and services of each of the Parties, such as information concerning research, experimental work, development, design details and specifications, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, and marketing plans.

2. If the Confidential Information is disclosed verbally or visually, it will be identified as such at the time of disclosure.

3. Subject to Section 4, the Receiving Party agrees that at all times and notwithstanding any termination or expiration of this Agreement it will hold in strict confidence and not disclose to any third party any Confidential Information of the Disclosing Party, except as approved in writing by the Disclosing Party, and will use the Confidential Information of the Disclosing Party for no purpose other than the Permitted Use. The Receiving Party will limit access to the Confidential Information of the Disclosing Party to only those of the Receiving Party’s employees or authorized representatives having a need to know and who have signed confidentiality agreements containing, or are otherwise bound by, confidentiality obligations at least as restrictive as those contained herein.

4. The Receiving Party will not have any obligations under this Agreement with respect to a specific portion of the Confidential Information of the Disclosing Party if such Receiving Party can demonstrate with competent evidence that such portion of Confidential Information:



- (a) was in the public domain at the time it was disclosed to the Receiving Party;
- (b) entered the public domain subsequent to the time it was disclosed to the Receiving Party, through no fault of the Receiving Party;
- (c) was in the Receiving Party's possession free of any obligation of confidence at the time it was disclosed to the Receiving Party; or
- (d) was rightfully communicated to the Receiving Party free of any obligation of confidence subsequent to the time it was disclosed to the Receiving Party; or
- (e) was developed by employees or agents of the Receiving Party independently of and without reference to any information communicated to the Receiving Party by the Disclosing Party.

5. Notwithstanding the above, the Receiving Party may disclose certain Confidential Information of the Disclosing Party, without violating the obligations of this Agreement, to the extent such disclosure is required by a valid order of a court or other governmental body having jurisdiction, *provided that* the Receiving Party provides the Disclosing Party with reasonable prior written notice of such disclosure and makes a reasonable effort to obtain, or to assist the Disclosing Party in obtaining, a protective order preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required, or for which the order was issued.

6. The Receiving Party will immediately notify the Disclosing Party upon discovery of any loss or unauthorized disclosure of the Confidential Information of the Disclosing Party.

7. Upon termination or expiration of this Agreement, or upon written request of either Party, each Party will promptly return to the Disclosing Party or destroy all documents and other tangible materials representing the Disclosing Party's Confidential Information and all copies thereof, except for one (1) copy of the Disclosing Party's Confidential Information to be held in a secure location for the purpose of monitoring the obligations under this Agreement.

8. The Receiving Party recognizes and agrees that nothing contained in this Agreement will be construed as granting any property rights, by license or otherwise, to any Confidential Information of the Disclosing Party, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information. Neither Receiving Party will make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Confidential Information of the Disclosing Party.

9. The Receiving Party will not reproduce the Confidential Information of the Disclosing Party in any form except as required to accomplish the intent of this Agreement. Any reproduction by a Receiving Party of any Confidential Information of the Disclosing Party will remain the property of the Disclosing Party and will contain any and all confidential or



proprietary notices or legends that appear on the original, unless otherwise authorized in writing by the Disclosing Party.

10. This Agreement will terminate **five (5)** year(s) after the Effective Date, or may be terminated by either Party at any time upon thirty (30) days written notice to the other Party. Each Party's obligations under this Agreement will survive termination of this Agreement and will be binding upon such Party's heirs, successors, and assigns. Each Party's obligations hereunder will continue in full force and effect with respect to non-technical sales, marketing, and financial Confidential Information of the other Party for three (3) year(s) from the date of disclosure of such Confidential Information. Each Party's obligations with respect to all technical Confidential Information of the other Party will terminate only pursuant to Section 4.

11. This Agreement and any action related thereto will be governed, controlled, interpreted, and defined by and under the laws of the State of Delaware, without giving effect to any conflicts of laws principles that require the application of the law of a different state. This Agreement may not be amended except by in writing signed by both Parties.

12. Each Party acknowledges that its breach of this Agreement may cause irreparable damage to the other Party and hereby agrees that the other Party will be entitled to seek injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.

13. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole and, in such event, such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

14. Neither Party will communicate any information to the other Party in violation of the proprietary rights of any third party.

15. Neither Party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party, except that a Party may assign this Agreement without such consent to its successor in interest by way of merger, acquisition or sale of all or substantially all of its assets.

16. The Receiving Party will not export, directly or indirectly, any technical data acquired from the Disclosing Party under this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

17. The Recipient, their affiliates, subsidiaries and representatives will not, for a period of one year following the termination of this Agreement, directly or indirectly solicit for employment or employ any person who is now employed or retained by the Discloser or any



affiliate of the Discloser without the prior written consent of the Disclosing Party. Recipient acknowledges that Recipient’s breach of this Agreement may cause irreparable harm to Discloser for which Discloser is entitled to seek injunctive or other equitable relief as well as monetary damages.

18. All notices or reports permitted or required under this Agreement will be in writing and will be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices will be sent to the addresses set forth at the end of this Agreement or such other address as either Party may specify in writing.

19. This Agreement is the final, complete and exclusive agreement of the Parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the Parties with respect to such matters.

20. This Agreement may be signed in two counterparts, each of which is to be considered an original, and taken together as one and the same document; this Agreement may also be signed via facsimile or electronic transmission and signatures obtained in this manner shall be legal and binding on such Parties.

IN WITNESS WHEREOF, the Parties have caused this Mutual Non-Disclosure Agreement to be executed as of the Effective Date.

IRVINE PHARMACEUTICAL SERVICES, INC.

COMPANY

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: 10 Vanderbilt
Irvine, CA 92618

Address: _____
