0610031

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

In the Matter of	)	
ALLERGAN, INC., **a corporation;**	)	**Docket No. C-** **DECISION AND ORDER** **[Public Record Version]**
and	)	
INAMED CORPORATION, **a corporation.**	)	

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Respondent Allergan, Inc. ("Allergan") of Respondent Inamed Corporation ("Inamed"), hereinafter referred to as "Respondents," and Respondents having been furnished thereafter with a copy of a draft of a Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order

to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Allergan is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 2525 Dupont Drive, Irvine, California 92612.

2. Respondent Inamed is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 5540 Ekwill Street, Suite D, Santa Barbara, California 93111.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Allergan" means Allergan, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates (in each case controlled by Allergan), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Allergan shall include Inamed.

B. "Inamed" means Inamed Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates (in each case controlled by Inamed), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondents" means Allergan and Inamed, individually and collectively.

D. "Commission" means the Federal Trade Commission.

E. "Acquisition" means the acquisition contemplated by the "Agreement and Plan of Merger" dated December 20, 2005, by and among Allergan, Inc., Banner Acquisition, Inc., and Inamed Corporation.

F. "Agency(ies)" means any governmental regulatory authority or authorities in the world

responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Product. The term "Agency" includes, but is not limited to, the United States Food and Drug Administration ("FDA").

G. "BLA" means the Biologic License Application filed or to be filed with the FDA for the Joint Development Botulinum Products pursuant to 21 C.F.R. 601.2, et seq., and Section 351 of the Public Health Service Act, and all supplements, amendments, revisions thereto, any preparatory work, drafts and data necessary for the preparation thereof, and all correspondence between the Respondents and the FDA or other Agency relative thereto.

H. "Closing Date" means the date on which Respondent(s) (or a Divestiture Trustee) and Ipsen consummate a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey the Joint Development Botulinum Products Assets pursuant to this Order.

I. "Confidential Business Information" means all information that is not in the public domain related to the research, Development, manufacture, marketing, commercialization, distribution, importation, exportation, cost, pricing, supply, sales, sales support, or use of the Joint Development Botulinum Product(s) and/or any other information proprietary to Ipsen; *provided however*, that the restrictions contained in this Order regarding the use, conveyance, provision to employees, or disclosure of "Confidential Business Information" shall not apply to the following:

1. information that subsequently falls within the public domain through no violation of this Order or breach of confidentiality or non-disclosure agreement with respect to such information by Respondents;

2. information related to the Joint Development Botulinum Product(s) that is not proprietary to Ipsen that Respondent Allergan can demonstrate it obtained without the assistance of Respondent Inamed prior to the Acquisition; or

3. information that is required by Law to be publicly disclosed.

J. "Development" means all preclinical and clinical drug development activities (including formulation), including test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting clinical trials for the purpose of obtaining any and all approvals (including, but not limited to, formulating clinical study protocols, generating clinical study reports, and accumulating raw data from clinical studies from physician investigators that track the case history and observations for each patient), licenses, registrations, or authorizations from any Agency necessary for the manufacture, use, storage, import, export, transport, promotion, marketing, and sale of a Product (including any governmental price or

reimbursement approvals), Product approval and registration, and regulatory affairs related to the foregoing. "Develop" means to engage in Development.

K. "Divestiture Trustee" means a trustee appointed by the Commission pursuant to Paragraph IV of this Order.

L. "Direct Cost" means a cost not to exceed the cost of labor, material, travel, and other expenditures to the extent they are directly incurred to provide the relevant assistance or service. "Direct Cost" to Ipsen for its use of any of the Respondents' employees' labor shall not exceed the average hourly wage rate for such employee.

M. "Domain Name" means the domain name(s) (universal resource locators), and registration(s) thereof, issued by any entity or authority that issues and maintains the domain name registration. "Domain Name" shall not include any trademark or service mark rights to such domain names other than the rights to the Product Trademarks required to be divested.

N. "Effective Date" means the earlier of the following dates:

1. the date the Respondents close on the Acquisition pursuant to the Acquisition Agreement, or

2. the date the merger contemplated by the Acquisition Agreement becomes effective by filing the certificate of merger with the Secretary of State of the State of Delaware.

O. "Final FDA Approval" means approval of a Product by the FDA pursuant the Federal Food, Drug, and Cosmetic Act § 505(b), 21 U.S.C. 355(b).

P. "Governmental Entity" means any Federal, state, local, or non-U.S. government, or any court, legislature, governmental agency, or governmental commission, or any judicial or regulatory authority of any government.

Q. "Interim Monitor" means any monitor appointed pursuant to Paragraph III of this Order or Paragraph III of the related Order to Maintain Assets.

R. "Investigational New Drug Application" ("IND") means an application filed with the FDA pursuant to 21 C.F.R. § 312.1, et seq. (as defined in 21 C.F.R. § 312.3), or its foreign Agency equivalent, and all supplements, amendments, and revisions thereto, any preparatory work, drafts, and data necessary for the preparation thereof, and all correspondence between Respondent(s) and the FDA or other Agency relative thereto.

S. "Ipsen" means Ipsen Ltd., a company organized, existing, and doing business under the laws of England, with registered offices located at 190 Bath Road, Slough, Berkshire SL1 3XE, United Kingdom.

T. "Joint Development and Distribution Agreement" means the "Development and Distribution Agreement" by and between Ipsen Ltd. and Inamed Corporation dated July 30, 2002, and all amendments, exhibits, attachments, agreements, and schedules thereto. The Joint Development and Distribution Agreement is attached to this Order and contained in Non-Public Appendix III.

U. "Joint Development Botulinum Product(s)" means all Product(s) that contain botulinum toxin(s) and that are the subject of the Joint Development and Distribution Agreement.

V. "Joint Development Botulinum Products Assets" means all rights, title, and interest in and to (*except* as is otherwise provided below) all Product Intellectual Property and all assets related to the research, Development, manufacture, distribution, marketing, and sale of the Joint Development Botulinum Products for the United States market that are owned or controlled by, or licensed to Respondent Inamed on or before the Effective Date, to the extent legally transferable, including, without limitation, the following:

1. all Product Intellectual Property related to the Joint Development Botulinum Products;

2. all rights to all INDs or BLAs related to the Joint Development Botulinum Products;

3. all rights to all Joint Development Botulinum Products Key Clinical Trials;

4. all Product Scientific and Regulatory Material related to the Joint Development Botulinum Products;

5. all Product Marketing Materials related to the Joint Development Botulinum Products;

6. all other Confidential Business Information;

7. at Ipsen's option, all Product Assumed Contracts related to the Joint Development Botulinum Product(s); *provided, however,* that where any such contract or agreement also relates to Product(s) of the Respondent(s) other than the Joint Development Botulinum Product(s), Respondent(s) shall assign Ipsen all such rights under the contract or agreement as are related to the Joint Development Botulinum Product(s), but concurrently may retain similar rights for the purposes of the Retained Product(s); and

8. all Respondent Inamed's books, records, and files related to the foregoing, owned by, or in the possession or control of, Respondent Inamed, or to which Respondent Inamed has a right of access, in each case such as is in existence as of the Closing Date; *provided, however,* that in cases in which documents or other materials included in the Joint Development Botulinum Products Assets contain information: (1) that relates both to the Joint Development Botulinum Products and to other Products or businesses of Respondent Inamed and cannot be segregated in a manner that preserves the usefulness

of the information as it relates to the Joint Development Botulinum Products; or (2) for which Respondent Inamed has a legal obligation to retain the original copies, Respondent Inamed shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to Ipsen, Respondent Inamed shall provide Ipsen access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondent Inamed provides Ipsen with the above-described information without requiring Respondent Inamed completely to divest itself of information that, in content, also relates to Retained Products.

W. "Joint Development Botulinum Products Key Clinical Trials" means the following clinical trials related to the Development of the Joint Development Botulinum Products that are assigned the following study numbers: (1) Y-97-52120-717, (2) Y-97-52120-718, (3) Y-97-52120-085, (4) Y-97-52120-720, (5) Y-97-52120-096, (6) Y-97-52120-719, and (7) Y-97-52120-732.

X. "Joint Development Botulinum Products Releasee(s)" means any entity controlled by or under common control with Ipsen, any licensees, sublicensees, joint venture partners, manufacturers, suppliers, distributors, and customers of Ipsen, or of Ipsen's affiliated entities. "Joint Development Botulinum Products Releasee(s)" excludes the Respondents.

Y. "Joint Development Botulinum Products Termination Agreement" means the "Termination Agreement" by and between Ipsen Ltd. and Inamed Corporation dated December 20, 2005, and all amendments, exhibits, attachments, agreements, and schedules thereto. The Joint Development Botulinum Products Termination Agreement is attached to this Order and contained in Non-Public Appendix III.

Z. "Law" means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Governmental Entity having the effect of law.

AA. "New Joint Development Partner" means the entity designated by Ipsen as its joint venture partner to provide any aspect of the research, Development, manufacture, use, import, export, distribution, marketing, or sale related to the Joint Development Botulinum Products.

BB. "Ownership Interest" means any and all rights, present or contingent, of Respondents to hold any voting or nonvoting stock, share capital, equity or other interests, or beneficial ownership in an entity.

CC. "Patents" means all patents, patent applications, including provisional patent applications, and statutory invention registrations, in each case existing as of the Closing Date (*except* where this Order specifies a different time), and includes all reissues, divisions,

continuations, continuations-in-part, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions, related to any Product or device owned or controlled by Respondent(s) as of the Closing Date (*except* where this Order specifies a different time).

DD. "Product" means any pharmaceutical, biological, or genetic composition containing any formulation or dosage of a compound referenced as its pharmaceutically, biologically, or genetically active ingredient.

EE. "Product Access Personnel" means the employees of Inamed and Third Party Consultant(s) identified as such in Non-Public Appendix V of this Order.

FF. "Product Assumed Contracts" means all of the contracts or agreements (copies of each such contract to be provided to Ipsen on or before the Closing Date and segregated in a manner that clearly identifies the Third Party to each such contract):

1. that make specific reference to the Joint Development Botulinum Product(s) and pursuant to which any Third Party is obligated to purchase the Joint Development Botulinum Product(s) from Respondent Inamed;

2. relating to any clinical study and/or trial involving the Joint Development Botulinum Product(s);

3. with universities or other research institutions for the use of the Joint Development Botulinum Product(s) in scientific research;

4. relating to the particularized marketing of the Joint Development Botulinum Product(s) or educational matters relating to the Joint Development Botulinum Product(s);

5. constituting agreements to maintain information related to the Joint Development Botulinum Product(s) confidential;

6. involving any royalty, licensing, or similar arrangement involving the Joint Development Botulinum Product(s);

7. pursuant to which a Third Party provides any specialized services for the purposes of the research, Development, or manufacture of the Joint Development Botulinum Product(s) to Respondent Inamed, including consultation arrangements; and/or

8. pursuant to which any Third Party collaborates with Respondent Inamed in the performance of research, Development, marketing, or selling of the Joint Development Botulinum Product(s) or the business associated with the Joint Development Botulinum Product(s).

GG. "Product Copyrights" means rights to all original works of authorship of any kind related to the Joint Development Botulinum Product(s) and any registrations and applications for registrations thereof, including, but not limited to, the following: all promotional materials for healthcare providers; all promotional materials for patients; educational materials for the sales force; copyrights in all pre-clinical, clinical, and process development data and reports relating to the research and Development of the Joint Development Botulinum Product(s) or of any materials used in the research, Development, manufacture, marketing, or sale of the Joint Development Botulinum Product(s), including all raw data relating to clinical trials of the Joint Development Botulinum Product(s), all case report forms relating thereto and all statistical programs developed (or modified in a manner material to the use or function thereof (other than through user references)) to analyze clinical data, all market research data, market intelligence reports, and statistical programs (if any) used for marketing and sales research; customer information, promotional and marketing materials, the Joint Development Botulinum Product(s) sales forecasting models, medical education materials, sales training materials, Website content, and advertising and display materials; all records relating to employees who accept employment with Ipsen (excluding any personnel records the transfer of which is prohibited by applicable Law); all records, including customer lists, sales force call activity reports, vendor lists, sales data, reimbursement data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all data contained in laboratory notebooks relating to the Joint Development Botulinum Product(s) or relating to its biology; all adverse experience reports and files related thereto (including source documentation) and all periodic adverse experience reports and all data contained in electronic data bases relating to adverse experience reports and periodic adverse experience reports; all analytical and quality control data; and all correspondence with the FDA or other Agency.

HH. "Product Core Personnel (Group 1)" means the employees of Inamed identified as such in Non-Public Appendix V of this Order.

II. "Product Core Personnel (Group 2)" means the employees of Inamed identified as such in Non-Public Appendix V of this Order.

JJ. "Product Firewalled Employee(s)" means the following persons, individually and collectively:

1. Product Access Personnel,

2. Product Core Personnel (Group 1),

3. Product Core Personnel (Group 2),

4. Product Marketing Employees,

5. Product Research and Development Employees, and

6. any employee of Inamed not falling into the other aforementioned categories of "Product Firewalled Employees" determined by the Interim Monitor (if applicable) to have received any documents or other communications that disclose with particularity Confidential Business Information.

KK. "Product Intellectual Property" means all of the following related to the Joint Development Botulinum Product(s):

1. Patents;

2. Product Copyrights;

3. Product Trademarks;

4. 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;

5. rights to obtain and file for Patents and registrations thereof; and

6. 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 "Product Intellectual Property" does not include the names "Allergan," "Inamed," or the names of any other corporations or companies owned by Respondent Allergan or Respondent Inamed or related logos to the extent used on other of Respondents' Products.

LL. "Product Key Personnel" means the employee(s) of Inamed identified as such in Non-Public Appendix V of this Order.

MM. "Product Marketing Employee(s)" means all management level employees of Respondent Inamed who have participated (irrespective of the portion of working time involved unless such participation consisted solely of oversight of accounting, tax or financial compliance) in the market research, marketing, contracting, or promotion of the Joint Development Botulinum Product(s) since the date of the Joint Development and Distribution Agreement. "Product Marketing Employees" shall include all such employees of Respondent Inamed that have received any documents or other communications that disclose with particularity Confidential Business Information.

NN. "Product Marketing Materials" means all marketing materials used anywhere in the world related to the Joint Development Botulinum Product(s) as of the Closing Date, including, without limitation, all advertising materials, public relations materials, training materials, product data, price lists, pricing plans, pricing strategy materials, mailing lists, sales materials (*e.g.*, detailing reports, vendor lists, sales data, financial projections, forecasts of sales, and sales forecasting models), marketing information (*e.g.*, competitor information; consumer research data; market intelligence reports; promotional and marketing materials; brand name research information, including such information related to all brands considered for the Product; branding studies; branding strategy information; marketing plans, including pre-launch, short term, or long-term plans); statistical programs (if any) used for marketing and sales research, customer information (including physician and patient information), medical educational materials, Website content and advertising and display materials, speaker lists, artwork for the production of packaging components, television masters, and other similar materials related to the Product(s).

OO. "Product Personnel Information" means the following, as and to the extent permitted by the Law within the jurisdiction in which the individual resides or works:

1. with respect to each Product Access Personnel, Product Core Personnel (Group 1), and Product Core Personnel (Group 2), the following information:

    a. the date of hire and effective service date;

    b. job title or position held;

    c. a specific description of the individual's responsibilities related to the Joint Development Botulinum Products; *provided, however*, in lieu of this description, Respondent(s) may provide the individual's most recent performance appraisal;

    d. the base salary or current wages;

    e. the most recent bonus paid, aggregate annual compensation for the Respondent's last fiscal year and current target or guaranteed bonus, if any;

    f. employment status (*i.e.*, active or on leave or disability; full-time or part-time); and

    g. any other material terms and conditions of employment in regard to such individual that are not otherwise generally available to similarly situated individuals; and

2. at Ipsen's option, copies of all current employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.

PP. "Product Research and Development Employees" means all employees of Respondent Inamed who have participated (irrespective of the portion of working time involved unless such participation consisted solely of oversight of accounting, tax, or financial compliance) in the research or Development of the Joint Development Botulinum Products since the date of the Joint Development and Distribution Agreement. "Product Research and Development Employees" shall include all such employees of Respondent Inamed that have received any documents or other communications that disclose with particularity Confidential Business Information.

QQ. "Product Scientific and Regulatory Material" means all technological, scientific, chemical, biological, pharmacological, toxicological, regulatory, and clinical trial materials and information related to the Joint Development Botulinum Product(s), and all rights thereto, in any and all jurisdictions.

RR. "Product Trade Dress" means the current or planned trade dress of the Joint Development Botulinum Product(s), including, but not limited to, product packaging associated with the sale of the Joint Development Botulinum Product(s) in the United States and the lettering of the Product(s)' trade name or brand name.

SS. "Product Trademark(s)" means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration thereof (and all renewals, modifications, and extensions thereof), and all common law rights, and the goodwill symbolized thereby and associated therewith, for the Joint Development Botulinum Product(s).

TT. "Remedial Agreement" means the following: (1) any agreement between Respondent(s) and Ipsen that is specifically referenced in and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Joint Development Botulinum Products Assets, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final; and/or (2) any agreement between the Respondent(s) and Ipsen (or between a Divestiture Trustee and Ipsen) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Joint Development Botulinum Products Assets and that has been approved by the Commission to accomplish the requirements of this Order.

UU. "Retained Product" means any Product(s) other than a Joint Development Botulinum Product.

VV. "Third Party(ies)" means any private entity other than the following: (1) the Respondents, or (2) Ipsen.

WW. "Third Party Consultant(s)" means any Third Party (including, but not limited to, any clinical study and/or trial consultants, marketing consultants, or any individual (including, but not limited to, physician investigators involved in clinical studies)) who is performing or has performed work on behalf of Respondent Inamed or Ipsen related to the research, Development, manufacture, marketing, commercialization, distribution, importation, exportation, cost, pricing, supply, sales, sales support, or use of the Joint Development Botulinum Product(s) since the date of the Joint Development and Distribution Agreement. "Third Party Consultants" include, but are not limited to, the persons and entities listed in Appendix IV of this Order.

XX. "Website" means the content of the Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by Respondents; *provided, however*, "Website" shall not include the following: (1) content owned by Third Parties and other Product Intellectual Property not owned by Respondent(s) that are incorporated in such Website(s), such as stock photographs used in the Website(s), *except* to the extent that Respondent(s) can convey its rights, if any, therein; or (2) content unrelated to the Product(s).

II.

IT IS FURTHER ORDERED that:

A. Not later than twenty (20) days after the Effective Date, Respondents shall divest the Joint Development Botulinum Products Assets (to the extent that such assets are not already owned, controlled, or in the possession of Ipsen), absolutely and in good faith, to Ipsen pursuant to and in accordance with the Joint Development Botulinum Products Termination Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Ipsen or to reduce any obligations of the Respondents under such agreement), and such agreement, if it becomes the Remedial Agreement for the Joint Development Botulinum Products Assets, is incorporated by reference into this Order and made a part hereof;

provided, however, that if the Respondents have divested the Joint Development Botulinum Products Assets to Ipsen prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies the Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct the Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Joint Development Botulinum Products Assets to Ipsen (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

B. Any Remedial Agreement related to the Joint Development Botulinum Products Assets shall be deemed incorporated into this Order, and any failure by Respondents to comply with the terms of such Remedial Agreement shall constitute a failure to comply with this Order.

C. Respondents shall include in each Remedial Agreement for the Joint Development Botulinum Products Assets a specific reference to this Order and the remedial purpose thereof.

D. Upon reasonable notice and request from Ipsen to the Respondents, Respondents shall provide, in a timely manner at no greater than Direct Cost, assistance and advice of knowledgeable employees of Respondent Inamed as Ipsen might reasonably need to transfer the Joint Development Botulinum Products Assets, and shall continue providing such personnel, assistance and training, at the request of Ipsen, until such assets are fully transferred to Ipsen.

E. Respondents shall:

1. submit and deliver to Ipsen, at Respondents' expense, all Confidential Business Information within Respondents' possession or control as follows:

    a. in good faith;

    b. as soon as practicable, avoiding any delays in transmission of the respective information; and

    c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;

2. pending complete delivery of all such Confidential Business Information to Ipsen, provide Ipsen and the Interim Monitor (if any has been appointed) with access to the following:

    a. all Confidential Business Information within Respondents' possession and control;

    b. all Respondents' employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Joint Development Botulinum Products that contain Confidential Business Information and facilitating the delivery in a manner consistent with this Order;

    c. all Third Party Consultants who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Joint Development Botulinum Products that contain Confidential Business Information and facilitating the delivery in a manner consistent with this Order;

3. not use, directly or indirectly, any Confidential Business Information other than as necessary to comply with the following:

    a. the requirements of this Order or the related Order to Maintain Assets;

    b. the Respondents' obligations to Ipsen under the terms of any Remedial Agreement related to the Joint Development Botulinum Product(s); or

    c. applicable Law;

4. not use, directly or indirectly, any Confidential Business Information in connection with any suit, in law or equity, against Ipsen or the Joint Development Product Releasee(s) under United States Patents;

5. not disclose or convey any Confidential Business Information, directly or indirectly, to any person except Ipsen and such Joint Development Botulinum Products Releasee(s) or such Third Party Consultants as are authorized by Ipsen to receive such information; and

6. not provide, disclose, or otherwise make available, directly or indirectly, any Confidential Business Information to Respondent Allergan or any of Respondents' employees associated with business related to those Retained Products that contain botulinum toxin.

F. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary for the divestiture of the Joint Development Botulinum Products Assets to Ipsen, or for the continued research, Development, manufacture, sale, marketing, or distribution of the Joint Development Botulinum Products in the United States of America by Ipsen;

provided, however, Respondents may satisfy this requirement by certifying that Ipsen has executed any such agreements directly with each of the relevant Third Parties or agreed that such consent or waiver is not required.

G. Respondents shall not enforce any agreement against a Third Party or Ipsen to the extent that such agreement may limit or otherwise impair the ability of Ipsen to acquire all Confidential Business Information. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each such Third Party that allows the Third Party to provide all Confidential Business Information within the Third Party's possession or control to Ipsen. This includes, but is not limited to, such releases as may be necessary to permit the transfer to Ipsen of any attorney work-product related to the Product Intellectual Property in the possession of Respondent Inamed's outside counsel. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to Ipsen.

H. Until all of Respondent Inamed's rights to enforce restrictions on the use, disclosure, conveyance or provision of Confidential Business Information are fully assigned or conveyed to Ipsen, Respondents shall enforce any agreement against a Third Party to the extent that such agreement prevents or limits the ability of the Third Party to provide any Confidential Business Information to any person or entity other than: (1) Ipsen or (2) any Joint Development Botulinum Products Releasee(s) or Third Party Consultant authorized by Ipsen to receive such information.

I. Respondents shall:

1. for a period of at least one (1) year after the Closing Date, provide Ipsen and/or the New Joint Development Partner (as designated by Ipsen to employ or contract with the relevant person or entity) with the opportunity to enter into employment contracts with any of the Product Access Personnel, Product Core Personnel (Group 1) or to contract with any Third Party Consultant;

2. for a period of at least six (6) months after the Closing Date, provide Ipsen with the opportunity to enter into employment contracts with any of the Product Core Personnel (Group 2);

These periods are hereinafter referred to as the "Access Period(s)"; and

3. not later than ten (10) days after the Closing Date, provide Ipsen with the Product Personnel Information related to the Product Access Personnel, Product Core Personnel (Group 1) and Product Core Personnel (Group 2). Failure by Respondents to provide the Product Personnel Information for any relevant individual within the time provided herein shall extend the Access Period with respect to that individual in an amount equal to the delay.

J. During the respective Access Periods, Respondents shall:

1. not interfere with the hiring, employing, or contracting with the Product Access Personnel, Product Core Personnel (Group 1) or the Third Party Consultants by Ipsen or the New Joint Development Partner;

2. not interfere with the hiring, employing, or contracting with the Product Core Personnel (Group 2) by Ipsen;

3. remove any impediments within the control of Respondents that may deter the Product Access Personnel, Product Core Personnel (Group 1), Product Core Personnel (Group 2), and/or the Third Party Consultants from accepting such a relationship with Ipsen;

4. remove any impediments within the control of Respondents that may deter the Product

Access Personnel, Product Core Personnel (Group 1), and/or the Third Party Consultants from accepting such a relationship with the New Joint Development Partner;

5. eliminate any provisions of any Product Access Personnel's, Product Core Personnel (Group 1)'s, Product Core Personnel (Group 2)'s and/or Third Party's Consultant's contract with the Respondent(s) that has the potential to interfere with such employee's or Third Party's Consultant's ability to perform work related to the Joint Development Botulinum Products, including, but not limited to, those provisions that would prohibit such employee or Third Party Consultant from:

    a. being employed by or contracting with Ipsen;

    b. for those subject to Paragraph II.J.1, being employed by or contracting with the New Joint Development Partner as authorized by Ipsen to hire or contract with such employee or Third Party Consultant; or

    c. disclosing information related to the Joint Development Botulinum Products to Ipsen or the New Joint Development Partner;

6. facilitate Ipsen in notifying any Product Key Personnel, Product Access Personnel, Product Core Personnel (Group 1), Product Core Personnel (Group 2), and Third Party Consultant that such person or entity is specifically identified as such in this Order;

7. facilitate Ipsen in providing an explanation to each of the above-described persons or entities of the provisions of this Order related to such person or entity's potential employment or use by Ipsen or Ipsen's New Joint Development Partner;

8. not make any counteroffer to a Product Access Personnel or an individual who is a Third Party Consultant who receives a written offer of employment or contract from Ipsen or the New Joint Development Partner; and

9. in addition to the foregoing, provide to each Product Key Personnel who accepts employment with either Ipsen or Ipsen's New Joint Development Partner during the Access Period, an incentive equal to at least six (6) months of such employee's annual base salary to be paid within six (6) months of such employee's commencement of employment with Ipsen or Ipsen's New Joint Development Partner.

provided, however, that Paragraph II.J. shall not prohibit the Respondents from making offers of continued employment to, continuing to employ, or continuing to use the services of, any Product Access Personnel, Product Core Personnel (Group 1), Product Core Personnel (Group 2), or Third Party Consultant, during the Access Period (subject to the conditions of employment or contract prescribed in this Order regarding the prohibitions on use and disclosure of Confidential Business Information);

provided, further however, that Paragraph II.J. shall not prohibit the Respondents from maintaining any reasonable restrictions on the disclosure of proprietary non-public information related solely to the Respondents' Retained Products by an employee who accepts an offer of employment with Ipsen or the New Joint Development Partner where such restrictions were a part of the relevant employee's contract of employment with Respondent Inamed prior to December 20, 2005.

K. For a period beginning on the Effective Date and continuing until either the date of Final FDA Approval of the first of the Joint Development Botulinum Product(s) to receive such approval, or three (3) years after the Effective Date, whichever is earlier, Respondents shall not use any Product Access Personnel or any Product Core Personnel (Group 1) for any purpose related to the research, Development, manufacturing, marketing, or sales of any of Respondents' Retained Products that contain botulinum toxins. For a period beginning on the Effective Date and continuing until six (6) months after the Effective Date, Respondents shall not use any Product Core Personnel (Group 2) for any purpose related to the research, Development, manufacturing, marketing, or sales of any of Respondents' Retained Products that contain botulinum toxins;

provided, however, the periods of restriction may be reduced as to a particular individual identified as a Product Access Personnel, Product Core Personnel (Group 1) or Product Core Personnel (Group 2) provided that the Respondents have received the express written approval of Ipsen to the reduction of the period as it pertains to the particular individual.

L. For a period beginning on the Effective Date and continuing until one year after the Effective Date, Respondents shall not, directly or indirectly, use the services of any employee or contractor of a Third Party Consultant who was directly involved in the research, Development, manufacture, marketing, or sales of the Joint Development Botulinum Products for any purpose related to the research, Development, manufacturing, marketing, or sales of any of Respondents' Retained Products that contain botulinum toxins;

provided, however, this period of restriction may be reduced as to a particular employee or contractor, provided that the Respondents have received the express written approval of Ipsen to the reduction of the period as it pertains to the particular employee(s), contractor(s), or general groups of employees or contractors of the relevant Third Party Consultant.

M. Respondents shall require, as a condition of employment post-divestiture or as a condition of work to be performed on behalf of Respondents post-divestiture, that each Product Firewalled Employee or Third Party Consultant sign a confidentiality agreement pursuant to which such Product Firewalled Employee or Third Party Consultant shall be required strictly to maintain all Confidential Business Information as confidential to anyone except Ipsen and such Joint Development Botulinum Products Releasee(s) or Third Party Consultants as are authorized by Ipsen to receive such information and not to disclose any such information to any employees, executives, or other personnel of Respondents (other than as necessary to

comply with the requirements of this Order, the Remedial Agreement(s), or the Order to Maintain Assets). Respondents shall keep a file of such agreements until one (1) year after the Final FDA approval of the first of the Joint Development Botulinum Product(s) to receive such approval. Respondents shall provide a copy of such agreements to Ipsen. Respondents shall maintain complete records of all such agreements at Respondents' corporate headquarters and shall provide an officer's certification to the Commission stating that each of the relevant Product Firewalled Employees or Third Party Consultants has signed such agreement and has and is complying with the respective agreement. Respondents shall provide Ipsen with copies of such certifications.

N. Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Joint Development Botulinum Product(s) to all of Respondents' employees and any Third Party Consultant who:

1. had access to any Confidential Business Information;

2. are involved in the research, Development, manufacturing, distribution, sale, or marketing of any of Retained Products that contain botulinum toxins and/or are approved by the FDA for use in the cosmetic treatment of the facial area; and/or

3. may have Confidential Business Information related to the Joint Development Botulinum Products.

Such notification shall be in substantially the form set forth in the "Notice of Antitrust Remedy and Requirement for Confidentiality" attached to this Order as Public Appendix I, and to the Order to Maintain Assets as Public Appendix A. Respondents shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts until one (1) year after the Final FDA approval of the first of the Joint Development Botulinum Product(s) to receive such approval. Respondents shall provide a copy of such notification to Ipsen. Respondents shall maintain complete records of all such notifications at Respondents' corporate headquarters and shall provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondents shall provide Ipsen with copies of all certifications, notifications, and reminders sent to Respondents' personnel.

O. Until the Closing Date for the divestiture of the Joint Development Botulinum Products Assets has occurred, the Respondents shall provide all Third Party Consultants with reasonable financial incentives to continue performing their work related to the Joint Development Botulinum Products until the Closing Date. Such incentives shall include a continuation of all contractual benefits provided by Respondent Inamed as were provided to such Third Party Consultant prior to the decision to terminate the Joint Development Botulinum Products Agreement.

P. Counsel for Respondents (including in-house counsel under appropriate confidentiality arrangements) may retain unredacted copies of all documents or other materials provided to Ipsen and may have access to original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to Ipsen only in order to:

1. comply with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals), any data retention requirement of any applicable Governmental Entity, or any taxation requirements; or

2. defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena, or other proceeding relating to the divestiture or any other aspect of the Joint Development Botulinum Products Assets; *provided*, *however*, that Respondents may disclose such information as necessary for the purposes set forth in this Paragraph only pursuant to an appropriate confidentiality order, agreement, or arrangement;

provided, *however*, that pursuant to Paragraph II.P. Respondents shall: (1) require those who view such unredacted documents or other materials to enter into confidentiality agreements with Ipsen (but shall not be deemed to have violated this requirement if Ipsen withholds such agreement unreasonably); and (2) use their best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

Q. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against Ipsen or the Joint Development Botulinum Products Releasee(s) under any United States Patent that is owned or licensed by Respondent Inamed prior to the Effective Date that claims a method of making, using, or administering, or a composition of matter, relating to botulinum toxin(s) or that claims a device relating to the use thereof, if such suit would have the potential to interfere with Ipsen's freedom to practice the research, Development, manufacture, use, import, export, distribution, or sale of the Joint Development Botulinum Products. Respondents shall also covenant to Ipsen that as a condition of any assignment, transfer, or license to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue Ipsen or the Joint Development Botulinum Products Releasee(s) under such Patents, if the suit would have the potential to interfere with Ipsen's freedom to practice in the research, Development, manufacture, use, import, export, distribution, or sale of the Joint Development Botulinum Products. Respondents shall include the above-described covenants in the Remedial Agreement(s) with Ipsen.

R. Respondents shall not, in the United States of America:

1. use the Product Trademarks related to the Joint Development Botulinum Products or any mark confusingly similar to such Product Trademarks, as a trademark, trade name, or service mark;

2. attempt to register such Product Trademarks;

3. attempt to register any mark confusingly similar to or resulting in dilution of such Product Trademarks;

4. challenge or interfere with Ipsen's use and registration of such Product Trademarks; or

5. challenge or interfere with Ipsen's efforts to enforce its trademark registrations for and trademark rights in such Product Trademarks against Third Parties;

provided however, this Paragraph shall only apply to those Product Trademarks conceived, registered, or developed prior to the Effective Date. Respondents shall include the above-described covenant in the Remedial Agreement(s) with Ipsen.

S. For a period commencing on the date this Order becomes final and continuing for ten (10) years, Respondents shall not, without providing advance written notification to the Commission, acquire, directly or indirectly, through subsidiaries or otherwise, any additional or greater Ownership Interest in Ipsen or any entity that: (1) that engages in scientific research, Development, manufacture, distribution, marketing, or selling of the Joint Development Botulinum Product(s) and (2) has a financial interest in the Joint Development Botulinum Product(s), greater than that which exists as of the Closing Date. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of the Respondents and not of any other party to the transaction. Respondents shall provide two (2) complete copies (with all attachments and exhibits) of the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition; *provided, however*, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

T. Pending divestiture of the Joint Development Botulinum Products Assets, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the business related to the research, Development, manufacture,

distribution, marketing, and sale of the Joint Development Botulinum Products, to minimize any risk of loss of competitive potential for such business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Joint Development Botulinum Products Assets until after their respective transfer to Ipsen in a manner that ensures that there is no disruption, delay, or impairment of the Joint Development Botulinum Products Key Clinical Trials and regulatory approval process. Respondents shall not sell, transfer, encumber or otherwise impair the Joint Development Botulinum Products Assets (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the above-described business.

U. The purpose of Paragraph II of this Order is to ensure the continued research, Development, manufacture, marketing, and sale of the Joint Development Botulinum Products independently of Respondents and for the same purposes for which the Joint Development Botulinum Products were researched, Developed, manufactured, marketed and/or sold by Inamed and Ipsen at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint an Interim Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order and the Order to Maintain Assets (collectively "the Orders") and the Remedial Agreements. The Commission may appoint one or more Interim Monitors to assure Respondents' compliance with the requirements of the Orders and the related Remedial Agreements.

B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If neither Respondent has opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.

C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.

D. If one or more Interim Monitors are appointed pursuant to this Paragraph or pursuant to the relevant provisions of the Order to Maintain Assets in this matter, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each Interim Monitor:

1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission;

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;

3. The Interim Monitor shall serve until the latest of:

   a. the completion by Respondents of the divestiture of the Joint Development Botulinum Products Assets (including, but not limited to, the delivery of all Confidential Business Information in Respondents' possession or control to Ipsen) required to be divested pursuant to the Decision and Order in a manner that fully satisfies the requirements of the Orders and notification by Ipsen to the Interim Monitor that Ipsen is fully capable of completing the Joint Development Botulinum Products Key Clinical Trials;

   b. the implementation of appropriate firewalls and other measures within the Respondents' business operations to prevent the misuse or improper disclosure of Confidential Business Information; and

   c. the completion by Respondents of the last obligation under the Orders pertaining to the Interim Monitor's service;

   provided, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders;

4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Orders, including, but not limited to, their obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders;

5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have 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 Interim Monitor's duties and responsibilities;

6. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor;

7. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by Ipsen with respect to the performance of Respondents' obligations under the Orders or the Remedial Agreement. Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders; and

8. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.

F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph or the relevant provisions of the Order to Maintain Assets in this matter.

G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance

with the requirements of the Orders.

H. The Interim Monitor appointed pursuant to this Order or the relevant provisions of the Order to Maintain Assets in this matter may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IV.

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey relevant assets as required by this Order, the Commission may appoint a Divestiture Trustee(s) to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets required to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed pursuant to each of the relevant Paragraphs in a manner that satisfies the requirements of each such Paragraph. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by the Order.

D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the

Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed;

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, the Commission may extend the divestiture period only two (2) times;

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. Each divestiture shall be made in the manner and to an acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further* that Respondents shall select such entity within five (5) days after receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants,

attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;

6. Respondents 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 for, or defense of, any claim, whether or not resulting in any liability, *except* to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee;

7. In the event that the Divestiture Trustee determines that he or she is unable to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets required to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed in a manner that preserves their marketability, viability and competitiveness and ensures their continued use in the research, Development, manufacture, distribution, marketing, promotion, sale, or after-sales support of the relevant Product, the Divestiture Trustee may assign, grant, license, divest, transfer, deliver, or otherwise convey such additional assets of Respondents and effect such arrangements as are necessary to satisfy the requirements of this Order;

8. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed by this Order;

9. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and

10. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

G. The Divestiture Trustee appointed pursuant to this Paragraph may be the same person appointed as Interim Monitor pursuant to the relevant provisions of this Order or the relevant provisions of the Order to Maintain Assets in this matter.

V.

IT IS FURTHER ORDERED that:

A. Within five (5) days of the Acquisition, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.

B. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondents have fully complied with Paragraphs II.A., II.D., II.E.1, II.E.2., II.F., II.H., II.O., and II.T., Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall submit at the same time a copy of their report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Respondents shall include in their reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.

C. One (1) year after the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondents, (2) acquisition, merger, or consolidation of Respondents, or (3) other change in the Respondents that may affect compliance obligations arising out of the Order, including, but not limited to, assignment, the creation or dissolution of subsidiaries, or any other change in Respondents.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents related to compliance with this Order; and

B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date on which the Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

PUBLIC
APPENDIX I
TO THE DECISION AND ORDER

NOTICE OF ANTITRUST REMEDY AND REQUIREMENT FOR CONFIDENTIALITY

On **[INSERT]**, Allergan Inc. ("Allergan") and Inamed ("Inamed") hereinafter referred to as "Respondents," entered into an Agreement Containing Consent Orders ("Consent Agreement") with the Federal Trade Commission ("FTC") relating to the divestiture of certain assets. That Consent Agreement includes two orders: the Decision and Order and the Order to Maintain Assets.

The Decision and Order requires the divestiture of assets relating to Reloxin®. These assets are hereinafter referred to as the "Reloxin® Divested Assets." Both the Decision and Order and the Order to Maintain Assets require Respondents to commit that no Confidential Business Information relating to the Reloxin® Divested Assets will be disclosed to or used by any employee of the combined entity formed by the acquisition of a controlling interest in Inamed by Allergan ("Combined Entity"). In particular, this is to prevent Confidential Business Information from being used in any way for the research, development, sale, or manufacture of any product that competes or may compete with the Reloxin® Divested Assets after the proposed acquisition. The Decision and Order also requires the complete divestiture of ALL documents (including electronically stored material) that contain Confidential Business Information related to the Reloxin® Divested Assets. Accordingly, no employee of the Combined Entity may maintain copies of documents containing such information, except as otherwise permitted by the Consent Order, required by law, or to comply with Inamed's obligations to terminate the Joint Development and Distribution Agreement with Ipsen.

Under the Decision and Order, the Respondents are required to divest the Reloxin® Divested Assets to Ipsen. Until a complete divestiture of all of the Reloxin® Divested Assets occurs, the requirements of the second order – the Order to Maintain Assets – are in place to ensure the continued marketability, viability, and competitive vigor of the Reloxin® Divested Assets and to ensure that no Confidential Business Information related to Reloxin® is communicated to the employees of Allergan.

You are receiving this notice because you are one or more of the following: (i) an employee with work responsibilities related to Reloxin®; (ii) a Third Party Consultant to Inamed with work responsibilities related to Reloxin®; (iii) an employee of Allergan or the Combined Entity who has work responsibilities in some way related to products that compete or may compete with Reloxin®; or (iv) an employee, former employee, contractor, or former contractor of Inamed who might have Confidential Business Information in your possession related to Reloxin®.

All Confidential Business Information related to the Reloxin® Divested Assets must be retained and maintained by the persons involved in the operation of that business on a confidential basis, and such persons must not provide, discuss, exchange, circulate, or otherwise

disclose any such information to or with any other person whose employment involves responsibilities unrelated to the Reloxin® Divested Assets (such as persons with job responsibilities related to Allergan's BOTOX® products or other products that compete or may compete with Reloxin®). In addition, any person who possesses such Confidential Business Information related to the Reloxin® Divested Assets and who becomes involved in the Combined Entity's business related to any product that competes or may compete with Reloxin® must not provide, discuss, exchange, circulate, or otherwise disclose any such information to or with any other person whose employment relates to such businesses. Finally, any Inamed employee, former employee, contractor, or former contractor with documents that contain information that he or she believes might be considered Confidential Business Information related to Reloxin® and who has not received specific instructions as to how the documents in his or her possession should be disposed of should contact the contact person identified at the end of this notice.

Furthermore, the Decision and Order places restrictions upon the functions that certain management level employees of Inamed, or certain contractors to Inamed, can perform for the Combined Entity until [insert description of length of these restrictions].

Any violation of the Decision and Order or the Order to Maintain Assets may subject Allergan, Inamed, or the Combined Entity to civil penalties and other relief as provided by law. If you have any questions regarding the contents of this notice, the confidentiality of information, the Decision and Order or the Order to Maintain Assets, you should contact [insert name and title].

ACKNOWLEDGMENT

I, _____ (print name), hereby acknowledge that I

have read the above notification and agree to abide by its provisions.

PUBLIC
APPENDIX II
TO THE DECISION AND ORDER

THE ORDER TO MAINTAIN ASSETS

NON-PUBLIC
APPENDIX III
TO THE DECISION AND ORDER

AGREEMENTS RELATED TO
THE JOINT DEVELOPMENT BOTULINUM PRODUCTS

[Redacted From the Public Record Version But Incorporated By Reference]

NON-PUBLIC
APPENDIX IV
TO THE DECISION AND ORDER

THIRD PARTY CONSULTANTS

[Redacted From the Public Record Version But Incorporated By Reference]

NON-PUBLIC
APPENDIX V
TO THE DECISION AND ORDER

PRODUCT KEY PERSONNEL,
PRODUCT ACCESS PERSONNEL,
PRODUCT CORE PERSONNEL (GROUP 1),
AND
PRODUCT CORE PERSONNEL (GROUP 2)

[Redacted From the Public Record Version But Incorporated By Reference]