

企業人のための英文契約書の読み方・基礎 第1回

補足資料1. Secrecy Agreement

This Agreement made and entered into this _____ day of _____, 2012, by and between ABC Drug Corporation, a corporation duly organized under the laws of the State of New York having its principal place of business at - - -, Fifth Avenue, New York, N.Y., U.S.A. (hereinafter referred to as "ABC") and XYZ Pharmaceutical Co., Ltd., a corporation duly organized under the laws of Japan having its principal place of business at ○○○, Honcho 1-chome, Chuo-Ku, Tokyo, Japan (hereinafter referred to as "XYZ"),

WITNESSETH THAT:

WHEREAS, ABC is a leading pharmaceutical manufacturer in the United States and has originated and owns, through the expenditure of considerable time, effort, skill and expenses, a certain valuable technology;

WHEREAS, XYZ is a leading pharmaceutical company in Japan and desires to evaluate its interest in the said technology of ABC and to receive data and information as well as substances relating to the technology; and

WHEREAS, ABC is willing to disclose to XYZ the technology as may be necessary to permit XYZ to evaluate its interest in the technology;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto agree as follows:

Article 1 Definitions

As used herein, the following terms have the respective meanings as set forth below:

The term "Confidential Information" means any and all scientific, technical, industrial and economic data and information owned or possessed by ABC and to be disclosed by ABC to XYZ, whether in writing or orally or through any other media, during the period of this Agreement.

The term "Confidential Sample" means the pharmaceutically active substance(s) originated or invented by ABC which is to be provided by ABC for XYZ during the period of this Agreement.

The term "Patent" means the patents and patents applications filed by ABC in Japan which are listed in the Schedule A hereof and any and all extensions, continuations, continuations-in-part, divisions, renewals or reissues thereof.

The term "Evaluation" means to conduct testing, analyzing and studying on Confidential Information and/or substance(s) and to judge whether they are useful and valuable for the purpose of human

pharmaceuticals.

The term "Affiliated Company" means any company owing or owned by or in common ownership with either of the parties, directly or indirectly, to the extent of fifty percent (50%) or more of the stock having voting right.

The parties understand that any and all documentation and materials containing Confidential Information shall be clearly and conspicuously marked by ABC to indicate its confidential nature upon disclosure to XYZ.

Article 2 Confidentiality

XYZ shall keep and maintain confidential Information provided by ABC in strict confidence and shall not disclose any portion of it to any third party. XYZ shall hold confidential any and all data, information, and knowledge derived and obtained out of or in relation to Confidential Information during Evaluation and shall not disclose any portion of them to any third party. Either party shall not disclose the existence of the fact that both parties enter into the relationship hereunder and the contents thereof.

The said confidential obligation shall not apply to information:

- (a) which at the time of disclosure is in the public knowledge, or after disclosure becomes part of public knowledge through no fault of XYZ;
- (b) which before disclosure has been developed independently by XYZ, or after disclosure may be developed independently by XYZ, both as shown by its written records;
- (c) which before disclosure has been lawfully acquired by XYZ from a third party having the right to disclose it, or after disclosure may be acquired lawfully by XYZ from a third party having the right to disclose it with the third party's approval to disclose, both as proved by written documents.
- (d) which is required to be disclosed to a government agency pursuant to an order of the government agency or any law requiring disclosure thereof, provided, however, that ABC is provided with prior written notice of such disclosure;
- (e) which is disclosed by ABC to a third party without similar restriction of confidential obligation;
- (f) which is inevitably leaked out of XYZ despite that XYZ pays an attention to it with the degree same as its own proprietary information.

XYZ shall treat Confidential Sample as confidential, and shall not deliver, provide, or transfer Confidential Sample or any and all materials derived therefrom to any other third party. XYZ shall hold confidential any and all data, information, and knowledge obtained through analyzing and studying Confidential Sample, and/or materials derived therefrom, and shall not disclose these data, information, and knowledge to any other third party.

Article 3 Prohibition for Other Use

XYZ shall not use Confidential Information and Confidential Sample for any purpose other than Evaluation, without prior written consent of ABC.

Article 4 Restriction to Copy

XYZ shall not copy, reprint and/or reproduce a part or whole of Confidential Information, nor manufacture Confidential Sample, without prior written consent of ABC.

Article 5 Restriction to Access

XYZ shall limit access to Confidential Information and Confidential Sample, only to those of its officers and employees who are necessary to be involved in Evaluation, provided that such officers and employees shall have undertaken by a written agreement or employment rules the same obligation as XYZ is bound hereunder.

Article 6 Warranty and Representation

ABC warrants and represents that ABC owns or possesses the right to disclose Confidential Information to XYZ or to provide XYZ with Confidential Sample hereunder. ABC further warrants and represents that Confidential Information and Confidential Sample are partly or in whole covered by Patent as set forth in Article 1 (Definitions) hereof and that Patent will be properly prosecuted and maintained by ABC during the period of this Agreement. ABC further warrants and represents that Confidential Information and Confidential Sample are true and authentic and does not contain any misrepresentation or fake material. Notwithstanding the foregoing provisions, ABC does not warrant that Patent will be ultimately obtained and that Confidential Information and Confidential Sample will not infringe any intellectual property of others.

Article 7 No-binding

Nothing herein contained shall be construed as granting or going to grant XYZ any right or license, either express or implied, under Confidential Information or of Confidential Sample.

Furthermore, neither party shall be obligated to enter into any further agreement concerning Confidential Information or Confidential Sample.

Article 8 No Compensation

No compensation shall be paid by XYZ to ABC with regard to Confidential Information and Confidential Sample.

Any money to be paid by XYZ to ABC upon disclosure of Confidential Information or providing with Confidential Sample hereunder is mere out-of-pocket expense and shall not be construed as compensation thereof.

Article 9 Termination by Breach

In the event that either of the parties breaches any provision of this Agreement, the other party may

at its discretion terminate immediately the disclosure of Confidential Information and supply and use of Confidential Sample under this Agreement by sending written notice to the breaching party.

Article 10 Damages

For breaches of any provision of this Agreement by either of the parties, the other party is entitled to recover, and the breaching party shall be liable for, money damages which include not only direct damages caused from the breaching party's defaults but also incidental or consequential damages.

Article 11 Injunctive Relief

In addition to the damages, the other party's remedies for any breach hereof may include injunctive relief against such breach.

Article 11-A Right to take over Improvement

If XYZ makes any invention, creation, development, or improvement as a result of using Confidential Information or Confidential Sample for any other purpose than Evaluation in violation of Article 3 (Prohibition for Other Use) hereof, such invention, creation, development, or improvement shall become a property of ABC and XYZ shall cause those invention, creation, development, and improvement to be assigned to ABC upon ABC's request.

Article 11-B Attorney's Fees

In any action to enforce this Agreement, the prevailing party is entitled to an award of its reasonable attorney's fees

Article 12 Expiration of Period for Disclosure

The period for disclosure of Confidential Information and supply and use of Confidential Sample hereunder shall expire at the end of Evaluation, or on the third (3rd) anniversary of the execution date of this Agreement, which is earlier.

Article 13 Return

Upon the expiration of period pursuant to Article 12 (Expiration of Period for Disclosure, etc.) or the termination by breach pursuant to Article 9 (Termination by Breach), XYZ shall return to ABC Confidential Information together with all copies, reprinted or reproduced materials thereof and unused residue of Confidential Sample, provided, however, that XYZ may retain one(1) copy of each of Confidential Information in its legal counsel's office in order to be able to monitor its obligations hereunder.

Article 14 Remaining Obligations

The expiration of period pursuant to Article 12 (Expiration of Period for Disclosure, etc.) or the termination by breach pursuant to Article 9 (Termination by Breach) hereof does not affect,

- (1) the confidential obligation under Article 2 (Confidentiality),
- (2) the obligation of non-use for other purpose under Article 3 (Prohibition for Other Use),
- (3) the obligation to return under Article 13(Return), and
- (4) any other obligations hereunder which are not performed upon the expiration or the termination.

Article 15 Entire Agreement

This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements, negotiations, and commitments, written or oral, between the parties with regard to the subject matter hereof. This Agreement may not be changed or modified in whole or in part unless it is made in writing and signed by duly authorized representatives of both parties.

Article 16 Severability

If any provision of this Agreement is held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of all other provisions of this Agreement shall not in any way be affected or impaired.

Article 17 Assignability

Neither party may assign, transfer or delegate this Agreement and/or the benefits or obligations hereof to any other third party without the other party's prior written consent.

Article 18 Headings

The headings of Articles of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

Article 19 Governing Law

This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

Article 20 Good Faith Negotiation

The parties hereto shall endeavor to solve any dispute or difference arising out of or in relation to this Agreement through mutual and amicable discussion and good faith negotiation between the parties.

Article 21 Arbitration

Any and all disputes, controversies, or differences between the parties which may arise out of or in relation to this Agreement or for the breach thereof shall be submitted for arbitration to be held in San Francisco, California, U.S.A. Arbitration shall be proceeded by one or more arbitrators under the rules of American Arbitration Association. The award by the arbitrators shall be final and binding upon the parties.

Article 22 Jurisdiction

In the event that any disputes or controversies arise out of or in relation to this Agreement or the breach thereof, the court locating in the district of the defendant shall have the jurisdiction over the disputes or controversies.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate, each keeping one (1) original, by their duly authorized representatives on the day and year first above written.

XYZ Pharmaceutical Co., Ltd.

Representative Director, President

Date of Signature:

ABC Drug Corporation

President and CEO

Date of Signature: