ZA-IPipp29

IP rights sale agreement: in chemical compound

Contents

This agreement is dated [date] [redacted]:

ABC Limited, a company incorporated in the Republic of South Africa [under company registration number [number] and] whose registered office is at [[redacted]], [[redacted]] (“[redacted]”)

And

DEF Inc, a company incorporated in Australia under [act / law], whose main place of business is at [full [redacted]], [[redacted]] (“[redacted]”).

It is now agreed as follows:

1. Definitions

The following initially capitalised terms in this agreement shall have the following meanings, [redacted]:

“Affiliate”	With reference to a party to this agreement, means any human individual, or corporate body, or organisation of people acting together, who is able to Control its affairs or actions; [redacted], [redacted].
“Confidential Information”	means all information about the parties, including any information which may give a commercially competitive advantage to [redacted]. [redacted]:
	information about staff, their performance and [redacted],
	data or information relating to suppliers, product plans, marketing strategies, finance, performance, operations, customer [redacted], [redacted], [redacted], [redacted];
	information about the Intellectual Property, the Know-how and all [redacted];
	information created or arising from this

agreement;

information owned by a third party and in respect of which a party [redacted]-[redacted].

information, comment or implication published on [redacted].

data or information relating to pre-clinical and clinical trial results, processes, formulae, procedures, designs, drawings, apparatus, [redacted], [redacted], [redacted];

information about the Intellectual Property and [redacted]-[redacted].

[It does not include information that it is necessary to disclose to a customer or other person in the usual course [redacted]].

"Control" (including all derived terms), means, with respect to the relationship between two or more corporate bodies, the possession, directly or indirectly, of the power to direct the affairs or management of a corporate body, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise, including, without limitation, [redacted], [redacted], [redacted].

"Generic Version" shall mean any pharmaceutical product containing Hydrosolamid that is introduced in the Territory by a Third Party after the expiry of any patent or other protection [redacted].

“Hydrosolamid” means the chemical compound [specify formula exactly.]

"Intellectual Property" means intellectual property of every sort, whether

or not registered or registrable in any country, including intellectual property of kinds coming into existence after today; and including, among others, patents, trade marks, unregistered marks, designs, copyrights, software, domain names, discoveries, Know-[redacted], [redacted], [redacted].

"Hydrosolamid Know-how" means, relating to Hydrosolamid, scientific and technical information, procedures and ways of working and organising. It includes, without limitation, [redacted], [redacted], [redacted], [redacted].

"Person" means a human individual, a corporate entity, a partnership, a governmental authority and any organisation which is managed or Controlled as a unit. A reference to a Person includes reference to that Person's successors, legal representatives, permitted assigns and any Person to whom [redacted], [redacted], [redacted]-[redacted].

"Product" means any composition which contains Hydrosolamid as one or more of its active ingredients, intended of sale [redacted].

"Regulatory Approval" means, with respect to the Territory, all registrations and approvals required by governmental [redacted].

"Royalty" means the sums payable from time to time as set out [redacted] 9 [redacted].

"Territory" means the Commonwealth of Australia, and New Zealand and their territories and possessions and all countries and all island countries located [redacted]

[redacted] “[redacted]”.

2. Interpretation

In this agreement unless the context otherwise requires:

2.1. a reference to one gender shall include any or all genders and a reference to the singular may be interpreted [redacted].

2.2. in connection with any benefit given by this agreement, a reference to a party includes [redacted], [redacted].

2.3. a reference to a paragraph or schedule is to a paragraph or schedule to this agreement unless the context [redacted]. [redacted].

2.4. the headings to the paragraphs and schedules (if any) to this agreement are inserted [redacted].

2.5. any agreement by any party not to do or omit to do something includes an obligation not to allow some [redacted];

2.6. a reference to the knowledge, information, belief or awareness of any Person shall be deemed to include the knowledge, information, [redacted].

2.7. all money sums mentioned in this agreement are calculated net of VAT, which [redacted].

2.8. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail. If a version of this agreement [redacted], [redacted].

3. Warranties for authority

Each of the parties warrants to [redacted] :

3.1. it is properly registered and operates under the laws of the country of its incorporation and has full [redacted] ;

3.2. it is not subject to any order, decree or injunction by a court of competent jurisdiction which could prevent [redacted] .

3.3. it is not aware of anything within its reasonable control which might or will adversely affect [redacted] ;

3.4. it is not insolvent and knows of no circumstance which would entitle any creditor to appoint a receiver or to petition for winding [redacted] ;

3.5. its performance of this agreement will not:

3.5.1 conflict with or result in the breach of any provision of [redacted] ;

3.5.2 conflict with any law or [redacted] ;

3.5.3 constitute a default (or event which with the giving [redacted] , [redacted]) [redacted] .

3.6. it is not now a party to, and during the [redacted] , [redacted] , [redacted] , [redacted] .

4. Entire agreement

4.1. Nothing in this agreement shall create a partnership, [redacted] , [redacted] .

4.2. Neither party shall have, nor represent that it [redacted], [redacted], [redacted].

4.3. This agreement contains the entire [redacted].

4.4. Each party acknowledges that, in entering into this agreement, [redacted], [redacted], [redacted].

4.5. No express or implied licence of [redacted].

4.6. The limited warranties contained in this agreement are the only warranties [redacted]. [redacted].

4.7. Warranties of merchantability and fitness for a particular purpose, and all other express [redacted], [redacted].

5. PharmaCreator’s warranties

PharmaCreator represents and warrants that:

5.1. PharmaCreator is the owner or licensee of all Intellectual Property [redacted]-[redacted];

5.2. to the best of its knowledge, it has [redacted];

5.3. PharmaCreator Know-[redacted];

5.4. to the best of PharmaCreator’s knowledge, the development, manufacture, promotion, [redacted], [redacted], [redacted]

[redacted];

5.5. to the best of PharmaCreator's knowledge there are no patent [redacted], [redacted].

5.6. [except as listed in Schedule [3]] no action has at any [redacted], [redacted], [redacted];

5.7. neither manufacture nor use of Hydrosolamid [redacted]-[redacted];

5.8. Except as otherwise provided in this agreement, during the term of this [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted].

6. Licence of Hydrosolamid

6.1. For the price of R [10,000,000] (ten million South African Rand) and the Royalty, [redacted] ([redacted], [redacted].) [redacted], [redacted].

6.2. The licence includes the right [redacted].

6.3. PharmaCreator agrees not to assert any claim for patent infringement in [redacted], [redacted], [redacted].

6.4. The price shall be [redacted].

6.5. [Immediately after this agreement becomes effective / within 48 [redacted]] [redacted]

[redacted], [redacted];

6.6. If within [8] weeks of today, PharmaDeveloper identifies to PharmaCreator, any data or material in any medium that is missing after delivery of [redacted]-[redacted], [redacted]. [redacted].

6.7. Nothing in this agreement shall prevent or limit [redacted].

7. Clarification of rights

The parties agree on the following matters.

7.1. The grant set out in paragraph 6.1 above includes access for its own use only, for PharmaDeveloper to copy and use the chemistry, manufacturing [redacted], [redacted], [redacted], [redacted] [[redacted]], [redacted], [redacted].

7.2. Subject to this agreement, PharmaDeveloper shall be solely responsible for obtaining [redacted]. [redacted], [redacted], [redacted].

7.3. The fact that Royalty is payable on the Products shall not influence any pricing or marketing [redacted]. [redacted], [redacted].

7.4. [PharmaCreator has no power [redacted]].

7.5. The Licence may [redacted] - [redacted]:

7.5.1 that PharmaCreator approves the [redacted] ([redacted]);

7.5.2 that the assignee enters into an agreement directly with PharmaCreator [redacted] , [redacted];

7.5.3 the sub-licence is non-assignable;

7.5.4 PharmaDeveloper remains responsible to PharmaCreator under this agreement.

7.6. So far as may be required by any relevant law or practice, each of PharmaCreator and PharmaDeveloper shall file within twenty (20) [redacted] , [redacted] . [redacted] , [redacted] , [redacted] .

7.7. Nothing in this agreement shall prevent or limit PharmaCreator's right to [redacted] , [redacted] , [redacted] , [redacted] , [redacted] , [redacted] .

8. Royalty calculation

8.1. In this paragraph, "Net Sales Value" [redacted] , [redacted] , [redacted] :

8.1.1 normal trade [redacted] ;

8.1.2 the costs [redacted] , [redacted] , [redacted] ;

8.1.3 value added tax or other [redacted] , [redacted] ;

8.1.4 bank charges;

8.1.5 sales commission payable to third parties;

8.1.6 sales taxes;

8.1.7 other transaction taxes.

8.2. The Royalty is five per cent of the Net [redacted] - [redacted].

8.3. Royalty shall be payable on each Product until the lawful [redacted].

8.4. On or before [day / date] in each [month / year] [redacted], [redacted], [redacted], [redacted], [redacted], [redacted].

8.5. PharmaDeveloper shall pay the [redacted].

8.6. Royalty payment shall be made [redacted].

8.7. Payments shall be considered to have [redacted].

8.8. Payments due but unpaid on the due date shall bear interest at a rate of [redacted] [8] %, [redacted]. [redacted].

8.9. Any tax which PharmaDeveloper is required by law [redacted], [redacted].

8.10. If money is withheld on account of tax, PharmaDeveloper [redacted]. [redacted], [redacted]:

8.10.1 a written receipt for the tax paid;

8.10.2 other documentation necessary or desirable to enable [redacted]

[redacted].

8.11. If tax is payable or money withheld, the cost shall be borne [redacted].

8.12. PharmaDeveloper shall keep complete and accurate records and books [redacted].

8.13. PharmaCreator shall have the right, at its own cost and expense, not [redacted].

8.14. Such accountants will have access on reasonable notice to PharmaDeveloper's records during reasonable business hours for the [redacted].

8.15. The accountants shall be instructed to disclose [redacted].

8.16. If any underpayment by PharmaDeveloper is greater than ten percent (10%) of the amount [redacted].

8.17. The provisions of [redacted].

9. Ongoing Co-operation

9.1. PharmaCreator shall use every reasonable effort to co-operate with and assist PharmaDeveloper in any aspect of [redacted]

[redacted]. [redacted]:

9.1.1 the filing and progressing [redacted].

9.1.2 protecting any statutory or regulatory [redacted].

9.1.3 disclosing to PharmaDeveloper whatever part of its Know-[redacted].

9.1.4 providing information to [redacted].

9.2. For the co-[redacted]:

9.2.1 The first 100 hours shall be free;

9.2.2 After 100 hours, PharmaDeveloper shall pay to PharmaCreator [redacted], [redacted]-[redacted], [redacted].

9.3. PharmaCreator shall be under [redacted] [[redacted]] [redacted].

10. Third party infringement of Intellectual Property rights

10.1. If either party becomes aware of any infringement or [redacted], [redacted].

10.2. PharmaCreator shall have the first right, but not the [redacted], [redacted], [redacted], [redacted], [redacted].

10.3. PharmaCreator must notify PharmaDeveloper within [28] days [redacted], [redacted].

10.4. PharmaDeveloper agrees to co-operate with PharmaCreator in any litigation or other enforcement action that PharmaCreator may [redacted]. [redacted]-[redacted], [redacted].

10.5. All reasonable lawyers' fee and other expenses incurred by PharmaDeveloper in [redacted]-[redacted].

10.6. PharmaDeveloper shall have the right to participate and [redacted], [redacted].

10.7. PharmaDeveloper shall have no recourse against PharmaCreator arising out of PharmaCreator's handling of or decisions concerning any [redacted]. [redacted], [redacted]. [redacted].

10.8. If PharmaCreator fails to take action on a matter which affects or [redacted], [redacted]. [redacted], [redacted], [redacted].

10.9. PharmaDeveloper may at any time discontinue [redacted], [redacted].

10.10. If a party brings an action under this paragraph and subsequently ceases to pursue [redacted], [redacted].

10.11. All money recovered through any proceeding or claim, or from any settlement of it, shall belong to the party [redacted]. [redacted], [redacted], [redacted], [redacted].

11. Confidential Information

11.1. The parties are aware that, as a result of this agreement, they will each have access to and be entrusted with Confidential Information of the other. [redacted], [redacted], [redacted]. [redacted], [redacted]:

11.1.1 except as provided in this [redacted], [redacted], [redacted];

11.1.2 not use the Confidential Information in any way for themselves [redacted], [redacted];

11.1.3 not store, copy, or use the Confidential [redacted] [[redacted] . . . .]

11.1.4 keep all records only at the address [redacted] ([redacted]);

11.1.5 use their best endeavours to keep confidential ([redacted]) [redacted].

11.2. This paragraph does not apply to disclosure:

11.2.1 made with the consent [redacted];

11.2.2 of information or knowledge which was already in the [redacted];

11.2.3 of information which was already known to the receiving party, ([redacted]), [redacted]. [redacted];

11.2.4 by a third party who [redacted];

11.2.5 of information which can be [redacted];

11.2.6 by order of the [redacted];

11.2.7 of information which must be disclosed by the receiving party [redacted]; [redacted], [redacted], [redacted], [redacted], [redacted];

11.2.8 so far as [redacted];

11.2.9 required by applicable laws or governmental regulations or judicial or regulatory process or in [redacted]. [redacted].

11.3. The financial terms [redacted].

11.4. [redacted].

11.5. [redacted] 5 [redacted].

11.6. [redacted].

11.7. [redacted] - [redacted].

11.8. [redacted]-[redacted], [redacted]([redacted])[redacted].

12. Disclaimer

12.1. [redacted]. [redacted].

12.2. [redacted], [redacted], [redacted], [redacted], [redacted]([redacted])[redacted]. [redacted]. [redacted].

12.3. [redacted], [redacted]:

12.3.1 [redacted];

12.3.2 [redacted][[redacted]][redacted]; [redacted]

12.3.3 [redacted]; [redacted]

12.3.4 [redacted]-[redacted].

12.4. [redacted] ([redacted]) [redacted], [redacted], [redacted], [redacted], [redacted].

13. Indemnity by PharmaCreator

13.1. [redacted].

13.2. The conditions for the indemnity by PharmaCreator are:

13.2.1 PharmaDeveloper makes no statement prejudicial to PharmaCreator;

13.2.2 PharmaDeveloper has not contributed to the infringement;

13.2.3 [redacted];

13.2.4 [redacted]; [redacted]

13.2.5 [redacted].

13.3. [redacted]-[redacted], [redacted], [redacted]:

13.3.1 [redacted]; [redacted]

13.3.2 [redacted]; [redacted]

13.3.3 [[redacted], [redacted], [redacted]].

13.4. [redacted]

[redacted]

14. Indemnity by PharmaDeveloper

14.1. [redacted]:

14.1.1 [redacted];

14.1.2 its breach of this agreement;

14.1.3 [redacted];

14.1.4 [redacted];

14.1.5 [redacted];

14.2. [redacted].

14.3. [redacted].

15. Indemnification process

15.1. [redacted].

15.2. [redacted].

[redacted], [redacted] [redacted].

15.3. [redacted] .

15.4. [redacted], [redacted] [redacted].

15.5. [redacted], [redacted] [redacted].

15.6. [redacted], [redacted]-[redacted], [redacted]. “[redacted]” [redacted]-[redacted] [redacted]. [redacted] [redacted][redacted]-[redacted], [redacted], [redacted]-[redacted] [redacted].

15.7. [redacted].

16. Protection of Hydrosolamid

PharmaDeveloper agrees that it will:

16.1. [redacted];

16.2. [redacted], [redacted];

16.3. [redacted], [redacted].

16.4. [redacted], [redacted]:

16.4.1 [redacted], [redacted], [redacted], [redacted];

16.4.2 reduce the value of PharmaCreator’s business or reputation.

17. The measure of damages

17.1. [redacted].

17.2. [redacted], [redacted], [redacted], [redacted], [redacted], [redacted].

18. Termination

[redacted] [[redacted]]:

18.1. [redacted]. [redacted], [redacted]-[redacted], [redacted], [redacted], [redacted].

18.2. [redacted] [[redacted]] [redacted].

18.3. [redacted], [redacted] [30] [redacted], [redacted]. [redacted], [redacted], [redacted].

19. After termination

Upon termination of this agreement for any reason:

19.1. [redacted], [redacted], [redacted], [redacted];

19.2. [redacted].

19.3. [redacted], [redacted].

OR

19.4. [redacted].

20. Publicity / Announcements

20.1. [redacted].

OR

20.2. No party shall:

20.2.1 make any public announcement; or

20.2.2 disclose any information; or

20.2.3 [redacted];

[redacted].

20.3. [redacted], [redacted].

20.4. [redacted] [redacted] 2], [redacted].

21. Miscellaneous matters

21.1. [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted]. [redacted]. [redacted].

21.2. [redacted].

21.3. [redacted], [redacted].

21.4. [redacted], [redacted].

21.5. [redacted].

21.6. [redacted], [redacted], [redacted].

21.7. [redacted], [redacted], [redacted], [redacted]. [redacted], [redacted].

21.8. [redacted].

21.9. [redacted], [redacted].

21.10. [redacted].

21.11. [redacted]-[redacted].

It shall be deemed to have been delivered:

[redacted]: [redacted];

[redacted]: [redacted] 72 [redacted];

[redacted]-[redacted]-[redacted]: [redacted] 24 [redacted]-[redacted]. [[redacted]

[redacted]

21.12. [redacted]

21.13. [redacted]

21.14. [redacted]

21.15. [redacted]

21.16. [redacted]

21.17. [redacted]

Signed by [personal name] on behalf of [PharmaCreator name] as its / his representative who personally accepts liability for the proper authorisation by [PharmaCreator name] to enter into this agreement.

Signed by [personal name] on behalf of [PharmaDeveloper name] as its / his representative who personally accepts liability for the proper authorisation by [PharmaDeveloper name] to enter into this agreement.

Schedule 1

Schedule 2

Schedule 3

Schedule 4

Schedule 5

Explanatory Notes:

IP rights sale agreement: in chemical compound

Paragraph Specific Notes:

Notes referring to specific paragraphs

1. Definitions

Definitions are always very important. You should first decide on the contents of the document, then return to check what definitions are needed and whether they [redacted].

The definition relating to the subject matter of the agreement requires particular care on your part. The better you can define it, the better you are protecting it. As for "[redacted]", [redacted].

It is most important to leave in place the definition of “Affiliate” and mention of it in reference to the named parties. Each company has its own separate identity, so for example, a subsidiary will not be bound by the terms of an agreement to which it is not a party. [redacted].

You may also have to differentiate between the name you give to the package and any other name you might use to sell your own products. Be careful to avoid accidentally including in the definition of what you are selling, a name or software which [redacted], [redacted].

By all means use the search/replace function in your word processor to change them. Here are examples of changes to defined terms, but if you do change the defined word, [redacted].

You should first decide on the contents of the document, then return to check what definitions are needed and whether they really [redacted].

2. Interpretation

Leave these items in place unless there is a good reason to edit or remove. Each of these items has been carefully considered in the context of this

agreement and has been included for a purpose. [redacted].

3. Warranties for authority

Your agreement could be void against the party you intended if the person who signed it had no authority to do so. Your counter party may be happy with the agreement, but a void agreement may be prejudicial in your dealings with third parties. [redacted], [redacted], [redacted].

The importance of these warranties is largely in removing a defence of "I did not realise" in the event of some error on the part of a party. These matters [redacted].

4. Entire agreement

This paragraph prevents a party from later saying he was relying on some other document or web site or what was said. These provisions are more important in an international trade agreement, when another country may have slightly different law on, for example, implied conditions. If other documents are to be [redacted], [redacted], [redacted].

5. PharmaCreator’s warranties

These points are necessary for the proper protection of the licensee. They are not important to PharmaCreator who may [redacted].

This paragraph also contains the promise by the creator not to compete against his [redacted].

6. Licence of Hydrosolamid

This is the basis of the agreement. It is the actual grant of the licence. The licence terms are more complicated than a licence for example for film rights of a book, so we have not been able to use a string of adjectives to describe it. [redacted]. [redacted].

Our experience is that with any technical or scientific product there may be well be data or information which is required by the licensee but forgotten [redacted]. [redacted]. [redacted].

7. Clarification of rights

These points may well be self evident, but written into the agreement to avoid misunderstanding and cover possible [redacted]. [redacted].

8. Royalty calculation

You should treat this paragraph as a reminder of aspects you could use. It provides just one procedure you could [redacted]. [redacted], [redacted].

9. Ongoing Co-operation

Because any requirement for future co-operation cannot be identified and measured in advance, it is inevitable that the obligation to co-operate is all [redacted]. [redacted], [redacted], [redacted].

10. Third party infringement of Intellectual Property rights

Infringements leading to litigation are not common, but when they happen, the usual short notes found in legal agreements are hopelessly inadequate. When litigation happens, the [redacted]. [redacted]. [redacted], [redacted].

11. Confidential Information

In scientific and technical industries, confidentiality is one of the bed rocks of the business. We have given you a very full definition of confidential information and now we provide very full protection. We have set this out as applying to both parties, [redacted], [redacted]. [redacted] "[redacted]" [redacted].

12. Disclaimer

As stated, this disclaimer is in direct opposition to PharmaCreator’s warranties [redacted]. [redacted].

What disclaimer or warranty you give will depend on your type of product and your negotiating strength. A buyer [redacted].

We have provided for the disclaimer to apply [redacted].

13. Indemnity by PharmaCreator

This indemnity is limited to [redacted].

14. Indemnity by PharmaDeveloper

Very widely worded to give [redacted], [redacted].

15. Indemnification process

We have provided this procedure so as to avoid the probability of prolonged arguments about who should do what in the event of an infringement. Urgent action [redacted]. [redacted]-[redacted]. [redacted], [redacted].

16. Protection of Hydrosolamid

Here are [redacted].

17. The measure of damages

A [redacted]. [redacted].

18. Termination

Royalty arrangements usually have a cut-off date. No-one likes an obligation to make a payment [redacted]. [redacted] [[redacted]. [redacted]. [redacted]. [redacted], [redacted].

19. After termination

Edit to your requirement. We [redacted].

20. Publicity / Announcements

This paragraph is largely to protect from [redacted]. [redacted].

21. Miscellaneous matters

A number of special points. We have identified each of these as [redacted]. [redacted], [redacted]. [redacted]. [redacted].

Schedule 1

It is absolutely essential that you define Hydrosolamid clearly. [redacted], [redacted] “[redacted]”. [redacted].

Schedule 2

The same comments apply as for Schedule 1.

Schedule 3

The same comments apply as for Schedule 1.

Schedule 4

Attach press release.

Schedule 5

List approved sub contractors

End of notes