



ADVANCED CONTRACTS
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CASE STUDY MATERIALS:
Sun Chemical

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Sun Chemical Co.

Sun Chemical Co.

Sun Chemical Co. is a large diversified chemical production and distribution company headquartered in South Korea. It has an established reputation as a major producer of industrial chemicals and specialized chemical process technology used in a variety of applications. Its products are distributed worldwide and are manufactured and repackaged at a variety of plants in Asia, Africa, Europe and Latin America.

Sun Chemical presently has no operations in the United States or Canada. Its products are distributed in Canada through Allied Chemical Inc., a Canadian corporation, under a long-term product supply and distribution agreement.

ChemFloat

One of Sun Chemical's new products is a chemical compound for use in the mining business. This compound, called ChemFloat, is used in the process of separating zinc and other base metals from waste rock as part of the refining process.

After ore containing zinc and other base metals is removed from the ground it is crushed and ground to a fine powder. The challenge then becomes to separate the zinc and other valuable metals from the waste rock. This has traditionally been done by a number of methods including smelting which has significant adverse environmental impacts. The cost of scrubbers and other technology necessary to eliminate these adverse environmental impacts make these separation technologies very costly to operate.

The alternative to smelting is floatation. Floatation involves mixing powdered ore with a chemical compound that, in reaction to the metals, separates them from the waste rock. Traditionally floatation has been significantly less effective in recovering metals. This is principally because of the complexity and cost involved in developing the required chemical compounds. The environmental costs incurred in disposing of the chemicals are also very high.

Sun Chemical's new ChemFloat process utilizes a revolutionary new chemical compound which significantly enhances the metal recovery compared to existing floatation compounds. It also has the remarkable advantage of being fully biodegradable. This significantly reduces the associated environmental costs. The environmentally friendly nature of the product also has significant marketing and public relations benefits to Sun Chemical and companies which use the technology.

Trade Secret

Sun Chemical invested heavily over many years in the development of ChemFloat. This investment is now paying dividends and Sun Chemical is very concerned to protect its investment. Unfortunately, Sun Chemical has been unable to obtain any formal intellectual property protection for the ChemFloat chemical formula. The subject matter is not patentable

and trademark, industrial design and copyright protection are not applicable. As a result, Sun Chemical's property rights in ChemFloat are protected only by trade secret law.

For these reasons Sun Chemical is very anxious about maintaining the confidentiality of the ChemFloat recipe. The problems relating to maintaining confidentiality are compounded in the case of ChemFloat however because the exact chemical mixture comprising ChemFloat must be adapted and somewhat altered for each mine application. The chemical and metallurgical composition of a particular ore must be analyzed and minor adjustments made to the ChemFloat mixture to maximize its effectiveness. This requires skilled metallurgists and chemists to continuously analyze samples of ore to determine the optimum mixture and adjust changes over time. To permit worldwide distribution, a team of trained expert ChemFloat chemists must be available to work at all mine sites.

Sun Chemical is also worried about reverse engineering. A skilled team of metallurgists and chemists could, if they acquired a sample of ChemFloat, analyze its components and produce an equivalent product. While this process of re-engineering would be costly and time consuming, Sun Chemical has been advised by its lawyers that it would be difficult to prevent third parties from using a ChemFloat equivalent which is developed in this way. It is therefore essential to maintain strict confidentiality and restricted access to ChemFloat at all mine sites.

ChemFloat Distribution

Because of its confidential proprietary nature and because of the need to adapt ChemFloat technology to specific mine applications, Sun Chemical has decided to license the use of this new product by third parties. Unlike Sun Chemical's other products, ChemFloat cannot simply be produced, bottled and sold. Also for this reason, Sun Chemical's usual distribution channels are not available. Its existing network of distributors purchase Sun Chemical products as principal and resell them to third parties. This is incompatible with the licensing structure.

On the advice of its lawyers, Sun Chemical has elected to eliminate the intermediary in its distribution of ChemFloat and deal directly with mine operators. The in-house legal counsel for Sun Chemical has prepared a form of license agreement under which specific mine sites are licensed to use ChemFloat. These agreements contemplate development of a customized ChemFloat mixture for each such mine site. ChemFloat chemists and metallurgists will be involved in the development of these customized mixtures ("cultures") and ChemFloat will produce the mixtures and ship them to the mine site. The license agreement contains strong confidentiality protections requiring the licensee to take precautions to protect the confidential and proprietary nature of the ChemFloat mixture. These include restricting access to storage containers and process facilities.

The form of license agreement contemplates a 25-year renewable license. This long term is required because it must cover the entire mine life. A mine operator will make significant investment in building a plant in which the ChemFloat process will be carried out (subject to Sun's specifications.). It is essential from the perspective of a licensee to ensure that the ChemFloat process will continue to be available to them. The licensee's lenders who will

finance mine development will wish to review a copy of the license agreement to ensure that this essential technology will continue to be available in the operation of the mine during the loan payback period.

The Small Problem

Sun Chemical has a small problem. Thirty years ago a subsidiary of Sun Chemical produced a chemical compound which was used in the manufacture of implants used in plastic surgery in the United States. Sales of the compound were made outside the U.S. to non-American companies that manufactured the implants. These companies subsequently sold them to U.S. medical supply companies. Because of this involvement, Sun Chemical fears that it may be named as a defendant in a class action or other lawsuit of the type that have been brought in the past in the United States against companies involved in the manufacture, distribution and sale of implant products. Such lawsuits resulted in the bankruptcy of Dow Corning.

The “small problem,” as it is called, is not well known even within Sun Chemical. Only a limited group of senior executives and in-house lawyers are aware of this potential liability. To the great relief of the management team, Sun Chemical has not yet been named as a defendant in any of these lawsuits.

The Dilemma

The United States is a huge potential market for ChemFloat. The increasingly restrictive environmental laws and the great mining potential in the northwestern states has created a huge demand for the ChemFloat technology. Because of the “small problem” however, Sun Chemical has been advised by its litigation counsel that it must, under no circumstances, enter into direct license agreements with mine operators in the United States. To do so could amount to consent to US jurisdiction for purposes of litigation. Litigation counsel have advised Sun Chemical that they are unlikely to come within the jurisdiction of U.S. courts hearing implant cases by virtue of the sales of the compound to non-United States companies outside the U.S. alone.

A number of alternative sales strategies for ChemFloat in the United States have been considered. All of the alternatives involve the use of a distributor or intermediary who will have the right to license the use of ChemFloat in the United States. ChemFloat’s litigation lawyers have however advised that under no circumstances can this distributor be the agent of Sun Chemical.

Sun Chemical’s ChemFloat marketing executives have identified Allied Chemical, Sun Chemical’s existing Canadian distributor, as a suitable distributor for ChemFloat in the United States.

Allied Chemical is a mid-size Canadian supplier of floatation and other chemicals to the mining industry. Its head offices are in Windsor, Ontario. While it has been in business for some years, the ChemFloat marketing executives have some concern regarding the long term financial stability of the business. Also, while they have confidence in the existing Allied Chemical management team and their willingness and ability to defend the confidential proprietary nature

of ChemFloat, there is concern that as the management of Allied Chemical changes, the new managers may not instill the same confidence. It is critical that the distributor, whoever it is, be vigilant in strictly and aggressively enforcing the confidentiality obligations in any license agreement.

The Solution?

The ChemFloat marketing team within Sun Chemical is concerned to begin distribution of ChemFloat in the United States as soon as possible. They are aware of certain competitors who may be developing competitive products and they hope to gain the jump on the competition.

An in-house lawyer at Sun Chemical in Asia has produced the attached draft of a license agreement between Sun Chemical and Allied Chemical with respect to ChemFloat in the United States. The draft has been sent to Sun Chemical's outside legal advisors in Los Angeles for their comments. It is proposed that the agreement will be governed by Ontario law (which for purposes of this assignment you should assume is the same as California law) and that any disputes over the Contract would be resolved through arbitration in Toronto, Canada.

Attachment

Technology Supply Agreement

Assignment

Assume you are Sun Chemical's outside legal counsel. Prepare an opinion letter for Sun Chemical's Asian counsel giving your assessment of the situation and the proposed agreement and recommending a course of action.

TECHNOLOGY SUPPLY AGREEMENT

entered into between

Sun Chemical Co.,
a company incorporated according to the law of the Republic of Korea, having its
principal place of business at Seoul, Republic of Korea
(hereinafter referred to as “Sun”).

and

Allied Chemical, Inc.
a corporation incorporated under the laws of the Province of Ontario, having its principal
place of business at Windsor, Ontario, Canada
(hereinafter referred to as “Allied”).

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Dated as of this ___ day of ____ 20__.

Whereas Sun is in possession of and has access to expertise and know-how in the treatment of zinc bearing ores wherein floatation processes are used to facilitate zinc recovery;

And Whereas Allied wishes in co-operation with others to make use of Sun's technology in a territory to be defined;

And Whereas the parties wish to record the terms of an agreement which they have entered into in respect of the foregoing and related matters;

Now therefore these presents witnesseth

1. INTERPRETATION

In this agreement, unless the context indicates otherwise —

- 1.1 “Affiliates” means any company controlling, controlled by or under common control with Sun Chemical Company, whether directly or indirectly;
- 1.2 “Assignment Agreement” means the agreement between Sun and Allied to be signed simultaneously with this agreement, regarding the assignment by Sun to Allied of the U.S. Trade Mark.
- 1.3 “Battery Limits” means all areas of the Plant which fall within the bund walls and vertical projections thereof surrounding each of the reactors, counter-current decantation thickeners and neutralization tanks, as well as the areas where the compressors/blowers and cooling towers are situated;
- 1.4 “ChemFloat™ Process” means the proprietary process available to Sun whereby floatation processes are used to facilitate zinc recovery in an ore-treatment system;
- 1.5 “ChemFloat™ Technology” means the proprietary technology at Sun's disposal for implementing the ChemFloat™ Process, including the Trade Mark and the Patent;
- 1.6 “Capital Cost” means any and all expenditure incurred in respect of plant and equipment within the Battery Limits in connection with the construction, erection and commissioning of a Plant;

- 1.7 [Deleted]
- 1.8 “Licensee” means any licensee of Sun in respect of the ChemFloat™ Technology and the ChemFloat™ Process.
- 1.9 “Opportunity” means any opportunity for the commercialization of the ChemFloat™ Process by Allied through:
- (i) sub-licensing of the ChemFloat™ Process to a third party; or
 - (ii) the establishment of a processing plant using the ChemFloat™ Process to process zinc bearing ore either on a contract basis or as principal;
- 1.10 “Patents” means U.S. patent application no. xxxxxx relating to the ChemFloat™ Process and the ChemFloat™ Technology, in connection with the ChemFloat™ Process and any patent granted on such application;
- 1.11 Plant means a processing plant utilizing the ChemFloat™ process and built according to Sun specifications`
- 1.12 “sub-license” or “sub-license agreement” means a sub-license to be granted pursuant to Clause 1.9(i) for the use of the ChemFloat™ Technology in a Plant owned by the sub-licensee;
- 1.13 “Technology fee” means any or more of lump sum payment; royalty; dividend; equity participation; joint venture; profit sharing arrangement, any other income earning arrangement which the parties may agree upon;
- 1.14 “Territory” means Canada, Mexico and the continental states of the United States of America including Alaska;
- 1.15 “The Effective Date” means _____ 20__;
- 1.16 “Trade Mark” means the trade mark ChemFloat™ excluding the U.S. Trade Mark, provided that if Sun or its assignee becomes the proprietor of or becomes entitled to become the proprietor of the U.S. Trade Mark, all references in this agreement to the “Trade Mark” shall be deemed to refer to the U.S. Trade Mark as well;
- 1.17 The headings in this agreement are inserted for convenience and shall not affect its construction;

1.18. The singular shall include the plural and vice versa and any reference to natural persons shall include artificial persons and vice versa.

2. OPPORTUNITIES

2.1 Subject to Clauses 2.2 and 2.3, Sun hereby grants Allied during the subsistence of the agreement the exclusive right to pursue Opportunities in the Territory.

2.2 Allied shall not in connection with any Opportunity conclude any agreement, arrangement or understanding with any person, otherwise than by the way of a written agreement governed by Ontario law which:

2.2.1 is valid and enforceable against such person and is confirmed to be so by an unqualified written opinion from local counsel acceptable to Sun;

2.2.2 contains the provision set out in Clause 8.7;

2.2.3 is signed by duly authorized representatives of Allied and the sub-licensee.

2.3 Nothing in this agreement shall preclude Sun or its Licensees from, or limit or restrict in any way the ability of Sun or its Licensees in:

2.3.1 Pursuing any existing or new Opportunity outside the Territory; or

2.3.2 pursuing any Opportunity within the Territory which arises or arose directly or indirectly from an approach by any third party to Sun or, its Licensees or Affiliates.

2.4 Subject to Clauses 2.3 and 2.5, Sun shall not actively market the ChemFloat™ Process in the Territory and shall not allow any of its Affiliates to market the ChemFloat™ Process in the Territory on its behalf.

2.5 Sun and its Affiliates shall have no obligation to refer to Allied any Opportunity in or from the Territory arising before the Effective Date.

3. SUPPLY OF CHEMFLOAT™ TECHNOLOGY

- 3.1 Within a reasonable time after conclusion of a written agreement in connection with the first Opportunity as contemplated in Clause 2.2, Sun shall supply the ChemFloat™ Technology to Allied in accordance with the terms of this agreement.
- 3.2 Allied shall not disclose or convey to others any of the ChemFloat™ Technology supplied to it by Sun otherwise than in terms of the provisions of a written agreement in connection with an opportunity as contemplated in Clause 2.2.
- 3.3 The ChemFloat™ Technology to be supplied by Sun to Allied in terms of Clause 3.1 shall include the technology set out in Annexure 1 to this agreement, which shall relate to process know-how only with respect to processes taking place within the Battery Limits depicted in Annexure 2 to this agreement, and any inventions, improvements and developments referred to in Clause 7.1. The ChemFloat™ Technology to be supplied shall not include any civil, mechanical or electrical engineering, instrumentation or construction drawings.
- 3.4 In any dispute between the parties regarding whether any technology withheld or not supplied by Sun falls within the scope of the technology referred to in Clause 3.3, the onus of proof shall lie with Allied.
- 3.5 In addition to the technology referred to in Clause 3.3, Sun shall within a reasonable time after written request from Allied and at Allied's cost supply or ensure that there is supplied to Allied suitable cultures for the purpose of applying the ChemFloat™ Technology to the Opportunity in question, provided that Allied shall at its own cost ensure that all governmental and other necessary approvals for the importation into the Territory of such cultures are obtained prior to such supply. Proof of such approvals shall be furnished to Sun upon request.
- 3.6 Allied shall not in connection with any Opportunity provide any process performance guarantee unless:
- 3.6.1 such guarantee is in writing;
- 3.6.2 Allied shall first have submitted the text of the proposed

guarantee to Sun.

3.7 If Allied has provided a process performance guarantee pursuant to Clause 3.6, then irrespective of the wording of such guarantee, Sun shall at the written request of Allied provide a warranty in favor of Allied on terms no more favorable to Allied than the following: The Plant in question, will, provided it is constructed by Allied or a sub-licensee in accordance with specifications and designs provided by Sun and operated as specified at a uniform feed rate with feedstock of specified quality:

3.7.1 be capable of treating a minimum capacity of _____ tons per day based on a 95% (ninety-five per centum) plant availability; and

3.7.2 will achieve a minimum _____ percentage removal.

Such performance guarantee will apply only in respect of a performance test conducted at the time of commissioning and will be subject to appropriate qualifications regarding construction and operation of the Plant and conduct of the performance test and will be the only guarantee or warranty provided by Sun.

3.8 The aggregate of any and all liability which Sun may incur arising out of any one or more breach of Clause 3.7 shall be limited to the lesser of an amount of \$_____ (United States Dollars) or 50% (fifty per centum) of the license fee payable to Sun in terms of Clause 6.1 in respect of such sub-license or Plant, as the case may be.

3.9 Clause 3.7 is not, and shall not be interpreted as, a stipulation for the benefit of any sub-licensee or any other person and nothing in that clause shall constitute Sun as the principal obligor or surety of Allied in favor of any sub-licensee.

4. TESTWORK AND SERVICES

Sun shall, in connection with any Opportunity, during the subsistence of this agreement, perform the testwork and services set out below at the reasonable request and cost of Allied and on the terms set out below:

4.1 Testwork

4.1.1 Sun shall from time to time conduct such amenability and pilot plant testwork on behalf of Allied pursuant to a written agreement between Sun and Allied, substantially in the form of Annexure 3.

4.1.2 The testwork shall be conducted at such localities as Sun may in its sole discretion determine, whether inside or outside the Territory.

4.1.3 Allied shall at its cost (including transport cost) supply all ore or ore concentrates which may be required by Sun for the testwork.

4.1.4 Sun shall provide Allied with the full results of the testwork.

4.2 Services

4.2.1 Sun shall from time to time at the request of Allied furnish ore-separation and analysis services on behalf of Allied pursuant to a written agreement between Sun and Allied substantially in the form of Annexure 4.

4.2.2 The services shall be conducted at Allied's request at a Plant, constructed pursuant to a sub-license contemplated by Clause 1.9(i).

4.3 The cost to Sun of providing the testwork and other services referred to in Clause 4.1 and 4.2 shall unless otherwise agreed between Allied and Sun be reimbursed by Allied to Sun at Sun's then prevailing man day costs for the personnel involved plus all subsistence and travel costs. Air travel shall be reimbursed at business class fares. Sun shall from time to time upon request furnish Allied with a schedule of its prevailing man day costs.

- 4.4 The reimbursement referred to in Clause 4.3 shall be made within 30 (thirty) days of receipt by Allied of Sun's invoice.
- 4.5 Allied acknowledges that Sun has a legitimate interest in ensuring that the ChemFloat™ Process and the ChemFloat™ Technology are properly applied in order to protect Sun's proprietary rights therein. Sun must ensure that any person who provides testwork and services to Allied in this regard is qualified and experienced in the field. Accordingly, Allied undertakes in favor of Sun that it shall not enter into any agreement, arrangement or understanding with any person for the provision of testwork and other services in connection with the ChemFloat™ Technology or the ChemFloat™ Process without the prior written agreement of Sun. Notwithstanding the foregoing, if Sun informs Allied in writing that it is unwilling or unable to provide such testwork or services, Allied shall be entitled to enter into a contract for the commission of a Plant and the provision of the services referred to in Clause 4.2.1 in respect of a particular Opportunity, provided that the other party to such contract shall have recognized experience of operating a Plant erected with Sun's knowledge and consent. Any such unwillingness or inability on the part of Sun shall not be a breach of Clause 4.2 above.

5. GRANT OF RIGHTS AND OBLIGATIONS OF SUN

- 5.1 Subject to the provisions of this agreement and in particular to Clause 2.3, Sun hereby grants to Allied during the subsistence of this agreement the exclusive right in the Territory to use the ChemFloat™ Technology (whether protected by Patents or not) and to sub-license other persons to do so in connection with Opportunities and pursuant to written agreements as contemplated in Clause 2.2.
- 5.2 Subject to the provisions of this agreement, Sun hereby grants to Allied during the subsistence of this agreement the non-exclusive right to use the Trade Mark in the Territory in relation to the ChemFloat™ Process in connection with the pursuit of Opportunities and to sub-license such use to any owners of Plants erected pursuant thereto.
- 5.3 Allied shall from time to time, if requested by Sun, perform all such acts as may in Sun's view be required to ensure that Allied's use of the Trade Mark is in all respects in accordance with the law of the Territory.

- 5.4 Allied acknowledges that the ChemFloat™ Process and the ChemFloat™ Technology constitute valuable proprietary rights and property of Sun and agrees to take all action within its control to safeguard the confidential and proprietary nature of the ChemFloat™ Process and the ChemFloat™ Technology and not to take any steps which may injure Sun's rights as proprietor of the ChemFloat™ Technology and the ChemFloat™ Trademark.
- 5.5 Allied shall not use or permit its sub-licensees to use the Trade Mark in any part of the Territory where it is not registered for use or where applications for registration have not been filed. Allied shall do everything required of it and shall sign such documents as may be required to enable it to be so registered as a registered user of the Trade Mark.
- 5.6 Allied shall not during the currency of this agreement or thereafter:
- 5.6.1 attack the validity of the Patents or the Trade Mark;
or
- 5.6.2 attack Sun's title thereto or ownership of any part of the ChemFloat™ Technology;
- 5.6.3 take any action which is or may be injurious to the validity or commercial value of the ChemFloat™ Technology, nor shall it assist or permit anyone else to do so.
- 5.7 Allied shall use and cause its sub-licensees to use the Trade Mark whenever they make reference, verbally or in writing, to the ChemFloat™ Process or the ChemFloat™ Technology and Allied shall not use or permit the use of any other Trade Mark, name or other description in relation thereto.
- 5.8 Allied shall forthwith advise Sun in writing of any event which comes to its notice in relation to any actual or alleged infringement of Sun's rights in the ChemFloat™ Technology or any infringement of intellectual property rights of any other person arising from the use of the ChemFloat™ Technology or where Allied is itself threatened with infringement of any proprietary rights of a third party relating to the ChemFloat™ Technology.
- 5.9 Allied shall not respond to any infringement or attack of the kind referred to in Clause 5.8 without Sun's prior written consent.

5.10 Sun shall have the exclusive right to institute or defend any proceedings arising from any infringement or attack referred to in Clause 5.8 and Allied shall furnish Sun with all such assistance and co-operation as may reasonably be required by Sun for the purposes of such proceedings.

5.11 Notwithstanding the assignment by Sun to Allied of all of Sun's right, title and interest in the U.S. Trade Mark in terms of the Assignment Agreement, Allied hereby grants to Sun the right to use the U.S. Trade Mark in the circumstances envisaged in each of Clauses 2.3.2 and 2.5 of this agreement and to sub-license such use in the circumstances envisaged in those clauses.

6. CONSIDERATION

6.1 In consideration of the rights granted to it under this agreement, in consideration of the ChemFloat™ Technology to be supplied to it and in consideration of the undertaking by Sun to perform work in terms of this agreement, Allied shall pay to Sun the following fees:

6.1.1 In the case of sub-licensees for the use of the ChemFloat™ Process, as contemplated in Clause 1.9(i), Allied shall, subject to Clause 6.1.2, pay to Sun a fee equal to 50% (fifty per centum) of the cash consideration payable to Allied under each such sub-license within 30 (thirty) days of the due date for the payment thereof under the sub-license, whether or not Allied has been paid.

6.1.2 The minimum fee payable by Allied to Sun in respect of each sub-license will be equal to 7.5% (seven and a half per centum) of the capital cost of each Plant to be constructed under the sub-license. If Sun has not received one third of such minimum fee upon the date of signature by the sub-licensee of the sub-license agreement, two thirds of such minimum fee upon the date of delivery of cultures to Allied for the purpose of the sub-license and all such minimum fee on the first date of successful performance testing of the Plant constructed under the sub-license, Allied shall pay to Sun the amount of such shortfall at those respective dates. Any amount paid by Allied in respect of such shortfall will be deductible from the next fee payment which falls due in terms of Clause 6.1.1.

6.1.3 In the case of Plants constructed by or on behalf of Allied as contemplated in Clause 1.9(ii), Sun shall receive a fee equal to 7.5% (seven and a half per centum) of the capital cost of each Plant, payable as to one third upon the date of signature of the sub-license agreement by the sub-licensee, one third upon the date of delivery of cultures to Allied for such Plant, and one third on the first date of successful performance testing of such Plant.

6.2 Allied shall keep:

6.2.1 proper books of accounts and records (including vouchers) relating to the cash consideration payable to Allied under sub-licenses and the capital costs of each Plant constructed by or on behalf of Allied under a sub-license; and

6.2.2 proper records relating to the date of signature of the sub-license agreement in question, the delivery of the Inoculum in question and the successful performance testing in question upon which the installments of the fees referred to in Clauses 6.1.1 and/or 6.1.2 are based; and

6.2.3 all other information as may be required for the purpose of determining the fees payable due to Sun in terms of Clause 6.1.

6.3 Sun shall at all times have access to the sub-licenses, books, records and other information referred to in Clause 6.2 and make a reasonable number of copies thereof free of charge.

6.4 Sun shall be entitled to appoint a certified public accountant registered as such in Canada to:

6.4.1 inspect the sub-licenses, books, records and other information referred to in Clause 6.2; and

6.4.2 make copies of all extracts from those sub-licenses, books, records and other information;

At any reasonable time during Allied's normal business hours for the purpose of determining whether Allied is in compliance with

its obligations in terms of Clause 6.2 and of verifying the fees referred to in Clause 6.1.

- 6.5 Sun shall bear the costs incurred by it in respect of the activities of the certified public accountant in terms of Clause 6.4 provided that if any fee paid by Allied or shown to be due to Sun is found to fall short of the correct amount by more than 2% (two per centum) thereof, then Allied shall refund those costs to Sun.

7. IMPROVEMENT AND DEVELOPMENTS

- 7.1 Allied shall during the currency of this agreement promptly disclose to Sun all inventions, improvements and developments made by its employees, agents or sub-licensees concerning the ChemFloat™ Process, the ChemFloat™ technology or any plant or equipment associated therewith.
- 7.2 All such inventions, improvements or developments, whether patentable or not shall belong to Sun and Allied shall, at Sun's request, ensure that all acts are performed and all documentation signed which may be required to evidence Sun's title thereto and, if applicable, to enable Sun to apply for and obtain patent protection in respect thereof throughout the world.
- 7.3 Sun shall likewise during the currency of this agreement inform Allied of inventions, improvements or developments of the kind referred to in Clause 7.1 which are made by Sun employees and make the same available for use by Allied as part of the ChemFloat™ Technology.
- 7.4 Allied shall procure that all sub-licenses entered into by it with sub-licensees shall contain provisions substantially the same as this Clause 7 in respect of the disclosure, ownership and use of improvements, inventions and developments by sub-licensees or their employees or agents.

8. CONFIDENTIALITY

- 8.1 Allied acknowledges that the ChemFloat™ Technology constitutes valuable confidential information of Sun worthy of protection.
- 8.2 Allied shall take all reasonable steps and institute such controls as are necessary to maintain the confidential and proprietary nature of the ChemFloat™ Technology in accordance with Sun's policies

and procedures from time to time and shall not disclose it to others or use it for any purpose otherwise than in the *bona fide* exercise of its rights under this agreement. Allied shall in so exercising its rights ensure that only so much of the ChemFloat™ Technology as is directly required by circumstances, is disclosed to its clients, customers or sub-contractors which by necessity are directly involved in the execution of a particular Opportunity.

- 8.3 Allied shall in exercising its rights in writing impose on the persons referred to in Clause 8.2 to whom disclosure in connection with the ChemFloat™ Technology is made the same obligations to maintain the confidentiality thereof and the same restrictions on the use and disclosure thereof as are imposed on Allied, its employees and agents in terms of this agreement.
- 8.4 Allied shall exercise proper controls over the disclosure of the ChemFloat™ Technology in order to protect the secrecy and confidentiality thereof and shall limit disclosure thereof to those of its employees who have a genuine need to have knowledge thereof.
- 8.5 Allied shall ensure that any clients, customers, sub-contractors, agents or employees to whom the ChemFloat™ Technology is disclosed in terms of Clauses 8.2 or 8.4 are bound by Allied in writing (in a form satisfactory to Sun) to maintain the confidentiality of the ChemFloat™ Technology and not to use it for any purpose other than in the performance of their duties as employees.
- 8.6 Allied shall not reproduce or make copies of any tangible forms of the ChemFloat™ Technology otherwise than in the *bona fide* exercise of its rights under this agreement or as expressly agreed in writing by Sun.
- 8.7 Allied shall not grant any sub-license or enter into any sub-license agreement for the use of the ChemFloat™ Process by a third party unless such sub-license contains provisions:
- 8.7.1 which are substantially the same as Clauses 5.3 to 5.10, 6.2, 6.3, 7, 9.5.3, 9.5.4 and this Clause 8, *mutatis mutandis*;
- 8.7.2 satisfactory to Sun relating to the protection of Sun's proprietary rights to the ChemFloat™ Technology in the event of a default by Allied under this agreement or the applicable sub-license; and